

TOWNGAS TELECOMMUNICATIONS COMPANY LIMITED
BUSINESS CONTINUITY SERVICES – TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATIONS

1.1 In these Business Continuity Services Terms and Conditions (the “**BCS Terms and Conditions**”), the following terms and phrases shall have the following meanings:

“ Affiliate ”	means an entity that owns or controls, is owned or controlled by, or is under common control or ownership with a Party, where “control” is the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise;
“ Agreement ”	means collectively these BCS Terms and Conditions (including all Schedules and attachments hereto), the General Terms and Conditions published at http://www.towngastelecom.com/resources/ , and the Service Application Form accepted by the Company;
“ Business Day ”	means a day other than Saturday, Sunday or public holiday in Hong Kong;
“ Commencement Date ”	means the required service date specified by Customer in the Service Application Form;
“ Company ”	means Towngas Telecommunications Company Limited of 23rd Floor, 363 Java Road, North Point, Hong Kong;
“ Contract Period ”	means each contract period during the Term, which has a duration equivalent to the Initial Contract Period;
“ Customer ”	means the person, corporation or other entity so named as such on the Service Application Form;
“ Effective Date ”	means the date on which the Company signed and accepted the Service Application Form submitted by Customer, which shall be the date when these BCS Terms and Conditions shall come into effect as between the Parties;
“ Fee ”	means the fees and charges set out in the Service Application Form and all other charges payable by the Customer pursuant to these BCS Terms and Conditions;
“ Guaranteed ”	means one type of the Services where Customer is granted access to one or more non-exclusive positions for the Services at the Location at the time of Invocation provided that unoccupied Guaranteed positions are available at the time of Invocation by Customer;
“ Guaranteed Plus ”	means one type of the Services where Customer is granted access to one or more non-exclusive positions for the Services at the Location at the time of Invocation, provided that unoccupied Guaranteed Plus positions are available at the time of Invocation by Customer;
“ Guaranteed Premium ”	means one type of the Services where Customer is granted access to one or more exclusive positions for Services at the Location at the time of Invocation by Customer;
“ Initial Contract Period ”	means the contract period specified in the Service Application Form;
“ Invocation ”	means the event whereby a designated representative of Customer advises the Company verbally by calling the Company’s designated phone number informing the Company that unplanned circumstances including (but not limited to) those set out in the applicable Schedule have occurred at Customer’s premises and the Customer requires the Company to provide the Services;
“ Location ”	means 22 Chun Cheong Street, Tseung Kwan O Industrial Estate, New Territories;
“ Party ”	means Customer or Company, and “Parties” means both Customer and Company;
“ Schedule ”	means schedule(s) attached to these BCS Terms and Conditions and containing additional terms and conditions specific to particular types of Services, including, where applicable, the service descriptions, the service level agreements, the guidelines for use of the Services and the prices included in a formal quotation from Company to the Customer;
“ Services ”	means the business continuity services that Company provides to Customer under this Agreement, which shall be provided by Company at different service levels or types called Guaranteed Premium, Guaranteed Plus, Guaranteed and Shared, as may be designated by Customer in the Service Application Form;

“Service Form”	Application	means the prescribed forms of the Company used by Customer to order Services, which shall only become effective upon acceptance by the Company;
“Shared”		means one type of the Services where Customer is granted access to one or more non-exclusive positions for the Services at the Location at the time of Invocation provided that (i) unoccupied Shared positions are available at the time of Invocation by Customer; and (ii) such Customer shall vacate the position if another customer of Company invokes its access to the Services to occupy as Guaranteed Premium or Guaranteed Plus or Guaranteed; and
“Term”		means the term of this Agreement as determined pursuant to Clause 8.5.

2. THE SERVICES

- 2.1 Customer may submit Service Application Forms for Services and subject to availability, Company may accept the service application by countersigning on the Service Application Form. Each Service Application Form shall be binding only after acceptance by Company.
- 2.2 Subject to Clause 2.1 and in consideration of payment of the Fees by Customer, the Company shall provide the Services to Customer at the Location during the Term in the event of Invocation in accordance with the terms and conditions of this Agreement, and in particular, pursuant to the type of Services designated by Customer.

3. PAYMENT OF FEES

- 3.1 In consideration for the provision of the Services, the Customer will pay to Company the Fees notified by Company to the Customer from time to time. The Customer shall be solely responsible to pay any tax, levy, charge, impost, duty or withholding which is assessed, levied, imposed or collected by any governmental agency and any interest, fine, penalty, charge, fee or other amount imposed in respect of the use of Services. Customer shall pay to the Company the Fee for the Services as set out in the applicable Schedule or the Service Application Form, comprising of one-time set-up fee/one-off charge, monthly service fees/monthly charge and/or other charges.
- 3.2 Invoicing and settlement must take place in accordance with the standard procedures of Company from time to time or such alternative procedures as may be listed in the Service Application Form. Customer shall pay to the Company the non-refundable one-time set-up fee as set out in the applicable Schedule/Service Application Form on the Commencement Date. All monthly charges are paid monthly in advance and the first monthly charge shall be due and payable on the Commencement Date. For each type of Services purchased (such as Guaranteed Premium, Guaranteed Plus, Guaranteed and Shared), Customer shall pay the Activation Fee in order to be entitled to the Services at the Location.
- 3.3 If this Agreement is terminated prior to the expiration of the Term for any reason other than due to a material breach by Company, in addition to any and all charges previously incurred by Customer for the Services prior to the date of termination, Customer shall pay the Company a cancellation fee in an amount equal to 100% of the monthly service fees which would have been incurred by Customer for the remaining unexpired Contract Period from the date of termination. The Parties agree that Customer’s obligations and payments required under this Clause 3.3 is a genuine pre-estimate of the minimum loss that Company will suffer upon such termination and hence such payment shall not be considered or construed as a penalty payment.
- 3.4 To the maximum extent permitted by applicable law, Company may charge a late payment interest charge calculated at the rate of 2% per month above the base rate from time to time in force of HSBC. Such interest will be calculated on a daily basis from the date payment was due until the date payment is received and will be compounded monthly. Company has the right to suspend further provision of the Services until payment (including interest) in full is received.
- 3.5 Fees do not include any applicable taxes or duties which may be imposed by relevant authority in relation to the Services or any electricity charges or any third party charges.

4. CUSTOMER’S RESPONSIBILITIES

- 4.1 To enable the Company to provide the Services, Customer shall at its own expense:
 - 4.1.1 subject to any legal, regulatory or confidentiality restrictions that may apply, provide the Company with access to all information and documentation within Customer’s possession or control as the Company may reasonably require for the purpose of providing the Services;
 - 4.1.2 make available to the Company for consultation and guidance staff who are familiar with Customer’s requirements for the purpose of providing the Services; and
 - 4.1.3 undertake such responsibilities attributable to Customer as set out in the applicable Schedule.
- 4.2 Customer shall use the Services only for lawful purpose and in compliance with all applicable laws and prevalent security policies of the Company. Customer shall not misuse or abuse any of the property or equipment of the Company or its customers.
- 4.3 Customer shall have no right or interest in any of the Company’s supplied equipment other than the right to use such equipment during the Term while payments are current. Customer shall be liable to the Company for any damage to such equipment or property of the Company or its Affiliates or their respective customers caused by Customer or Customer’s employees, agents, representatives or contractors. Customer shall follow reasonable instructions from the Company in relation to the use and care of the Company’s supplied equipment and property.

- 4.4 Customer shall be responsible for all aspects of installation and removal of its equipment and shall install its equipment at the Location after obtaining written authorisation from the Company. Prior to termination or expiration of the Term, Customer shall remove all of its equipment and any other property from the Location at its own costs. If Customer fails to remove such property prior to termination or expiration of the Term, the Company, at its option and at Customer's expense, may remove and store any and all such property, return such equipment to Customer or dispose of such equipment without any liability to Customer or any third party. Customer shall assume all risk of loss to its equipment and shall be liable to the Company for any damage to the Location or equipment of the Company or other customers of the Company or its Affiliates caused by Customer, Customer's equipment or Customer's representatives, agents, contractors or employees.
- 4.5 Customer shall keep in full force and effect during the Term to the satisfaction of the Company:
- 4.5.1 commercial general liability insurance in an amount not less than HK\$10 million per occurrence or aggregate for bodily injury and property damage;
- 4.5.2 employer's liability insurance in an amount of not less than HK\$10 million per occurrence and an unlimited amount for aggregate; and
- 4.5.3 workers' compensation insurance in an amount not less than that required by applicable law.
- 4.6 Customer shall be solely responsible for ensuring that its agents (including contractors and subcontractors) maintain other insurance at levels no less than those required by applicable law and customary in Customer's and its agents' industries. Prior to installation of any equipment in the Location or otherwise as the Company may request, Customer shall furnish the Company with certificates of insurance which evidence the minimum levels of insurance set forth above, and cause its insurance to name the Company as an additional insured and notify the Company in writing of the effective date of such coverage.

5. SUB-CONTRACTING

Customer acknowledges and agrees that the Company may sub-contract the whole or any part of the Services under this Agreement to a third party provided that the Company shall remain responsible for all obligations and acts or omissions of the subcontractors.

6. NOMINATED REPRESENTATIVES

- 6.1 The Parties agree that their respective representatives who are authorised to make decisions on their behalf for the purposes of the performance of this Agreement, are those specified in the applicable Schedule.
- 6.2 The Parties may change their authorised representatives from time to time by giving at least three (3) Business Days' notice thereof in writing to the other Party.

7. CONFIDENTIALITY

- 7.1 Each Party shall keep confidential any information obtained from the other Party, under or in connection with this Agreement and shall not divulge the same to any third party without prior written consent of the other Party.
- 7.2 The obligation of confidentiality shall not apply to:
- 7.2.1 any information in the public domain otherwise than by breach of this Agreement;
- 7.2.2 information in the possession of the receiving party thereof before divulgences as aforesaid;
- 7.2.3 information lawfully obtained from a third party who is free to divulge the same; or
- 7.2.4 information required to be disclosed by law or regulation or at the direction of any court or any governmental or regulatory body, provided that the Party making the disclosure shall provide the other Party with reasonable prior notice before making the disclosure to enable that other Party to seek a protective order or other appropriate remedy.
- 7.3 The Company and Customer shall only divulge confidential information to those employees, officers, directors and professional advisers on a need-to-know basis and shall ensure that such employees and individuals are aware of and comply with these obligations as to confidentiality.

8. TERMINATION

- 8.1 Either Party shall be entitled to terminate this Agreement by written notice to the other Party if the other party:
- 8.1.1 commits a material breach of this Agreement and, in the case of a breach capable of remedy, fails to remedy the same within thirty (30) days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied; or
- 8.1.2 commits an act of bankruptcy or insolvency, is placed into liquidation or receivership, passes a resolution for its winding up (otherwise than for the purpose of amalgamation or reconstruction) or makes any assignment or arrangement for the benefit of its creditors.

- 8.2 Notwithstanding anything to the contrary in this Agreement, the Company may terminate this Agreement upon giving one (1) months' prior written notice to Customer in the event that any part of the Location becomes or will become unavailable due to redevelopment, demolition, renovation, refurbishment or otherwise, without any liability to the Customer.
- 8.3 Upon termination of this Agreement, each Party undertakes to return to the other Party without retaining copies, unless otherwise required by law or regulation, any equipment, documentation, information or other materials belonging to the other Party or which it has no legal right to retain. Information not capable of physical return shall be kept confidential in accordance with this Clause 8.
- 8.4 Termination of this Agreement shall not affect any rights of the Parties which have accrued prior to the date of the termination of this Agreement.

Unless terminated earlier in accordance with this Agreement, this Agreement commences on the Effective Date and shall continue in full force according to the Initial Contract Period. Unless either Party gives the other Party at least 30 days written notice prior to the expiration of the Initial Contract Period, after the Initial Contract Period, this Agreement will automatically renew for successive periods of such duration equal to the Initial Contract Period. Either Party will have the right to elect not to further renew this Agreement if it gives written notice of non-renewal to the other Party at least 30 days prior to the expiration of the then-current Contract Period. For the avoidance of doubt, during the Contract Periods subsequent to the Initial Contract Period, only monthly service fees and activation fees are payable by Customer.

- 8.5 If there is Service suspension, expiration or termination of this Agreement during the Contract Period, the Customer agrees that it shall not be entitled to any refund of any Fees, prepaid or otherwise. Customer further agrees that it shall be required to pay the Company the monthly service fees during such suspension and it shall be required to pay the Company the monthly service fees pursuant to Clause 3.3 until such relevant Contract Period ends, including but not limited to any interest due to late payment or indemnities due to breach of the Agreement.
- 8.6 Clauses 3.3, 3.4, 7, 8.3, 8.4, 8.6 and 9 shall survive termination of this Agreement.

9. LIABILITY AND INDEMNITY

- 9.1 Customer shall at all times indemnify, hold harmless and defend the Company, its Affiliates and their respective directors, officers, employees and agents (in this clause referred to as "those indemnified") from and against any loss (including legal costs and expenses) or liability reasonably incurred or suffered by any of those indemnified arising from or relating to:
- 9.1.1 any claim, suit, demand, action or proceeding by any person against any of those indemnified where such loss or liability was caused by any act, omission or fault of Customer, its employees, agents or sub-contractors in connection with this Agreement; or
- 9.1.2 a breach of any of Customer's obligations in Clauses 4 and 7.
- 9.2 In no event shall the Company be liable to Customer for any special, consequential, incidental, punitive, indirect damages, loss of profits, loss of business, loss of revenue, loss of goodwill or loss of anticipated savings, arising out of or in connection with this Agreement, even if the Company was advised of the possibility of such damages.
- 9.3 Notwithstanding any other provisions herein, the maximum aggregate liability of the Company in contract, tort or otherwise arising out of or relating to this Agreement will in no event exceed the total amount of the Fees received by the Company in the six months preceding the date of the events giving rise to the claim. In no event will Company be liable to Customer or any other person for interruption of or failure to provide the Services or for any other loss, cost or damage caused by or relating to Customer's violation of these BCS Terms and Conditions.
- 9.4 To the extent permitted by law, all implied conditions, representations and warranties including, without limitation, any implied warranties or conditions of merchantability, fitness for a particular purpose, satisfactory quality, design or quality, against infringement or arising from a course of dealing, usage, or trade practice are expressly excluded.
- 9.5 Nothing in these BCS Terms & Conditions shall be construed as limiting the liability of either Party for personal injury or death resulting from the negligence of a Party or its employees, and for loss or damages incurred as a result of any fraud of the other Party.

10. FORCE MAJEURE

- 10.1 Neither Party shall in any circumstances be liable to the other for any loss of any kind whatsoever, including, but not limited to, any damages or abatement of charges whether directly or indirectly caused to or incurred by the other Party by reason of any failure or delay in the performance of its obligations hereunder which is caused, wholly or partly, by circumstances beyond the reasonable control of that Party, including, without derogation from the generality of the foregoing, any delays caused by the other Party's failure to perform or delay in performing its obligations under this Agreement, third party delay or non-performance, civil disturbance, epidemics, embargoes, catastrophic weather, fire, earthquake, any act of God, flood, lightning, failure or shortage of power supplies, act or omission of Government, local or district authorities or other competent authorities, war, military operations or riot (each a "**Force Majeure Event**") provided that the Party whose obligations are so affected shall use all reasonable efforts to minimise the effect of such Force Majeure Event and notify the other Party in writing of the existence of the Force Majeure Event relied on, indicating its nature, likely duration and effects of such Force Majeure Event and the cessation or termination of such Force Majeure Event as far as commercially practicable.
- 10.2 The Party who is affected by a Force Majeure Event shall be excused from the performance of its obligations which are affected by the Force Majeure Event and the time for performance of such obligations shall be extended for and during the period of the Force Majeure Event.

11. ENTIRE AGREEMENT AND AMENDMENT

11.1 This Agreement supersedes all prior agreements and understanding between the Parties for performance of the Services, and constitute the complete agreement and understanding between the Parties unless modified in writing and signed by both Parties.

11.2 In order to continuously improve its operations, the Company may from time to time alter the Services, the service level agreements, the terms of service or these BCS Terms and Conditions without prior notice to Customer. Revisions or amendments may be posted on Company website.

11.3 The Customer may change the selected Services in accordance with the process in the Agreement. However, handling fee will be charged.

11.4 In the event of a conflict or inconsistent provisions, the Service Application Form duly signed by both Parties will take precedence over these BCS Terms and Conditions and these BCS Terms and Conditions shall take precedence over the General Terms and Conditions published at Company's website.

12. ASSIGNMENT

Customer will not sell, assign, transfer, pledge or encumber this Agreement or any right hereunder, or delegate any duty or obligation under this Agreement, by assignment or operation of law, without Company's prior written consent. Company may assign this Agreement to any of its Affiliates. Company shall not assign this Agreement or any part thereof or any interest therefrom to any other third party without Customer's prior written consent. This Agreement will inure to the benefit of and bind all permitted successors, assigns, receivers and trustees of each Party.

13. WAIVER

No delay, neglect, failure by a party to exercise a right, delay in exercising that right or forbearance on the part of either Party in enforcing against the other Party any terms or conditions of this Agreement shall either be or be deemed to be a waiver or in any way prejudice any right of that Party under this Agreement.

14. NOTICE

All notices hereunder shall be in writing addressed to the nominated representatives of the Parties as specified in the applicable Schedule.

15. SEVERABILITY

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement will remain in effect to the greatest extent permitted by law.

16. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and interpreted in accordance with laws of Hong Kong. The Parties agree to submit to the exclusive jurisdiction of the Courts of Hong Kong for determining any disputes.