

# TOWNGAS TELECOMMUNICATIONS FIXED NETWORK LIMITED

## GENERAL TERMS AND CONDITIONS

### A. GENERAL

#### 1. Definitions

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

“Agreement” means these Conditions and the Quotation;

“Company” means Towngas Telecommunications Fixed Network Limited of 23<sup>rd</sup> Floor, 363 Java Road, North Point, Hong Kong;

“Conditions” means these terms and conditions and any other terms and conditions the Company may have in respect of its Services;

“Customer” means the customer to whom the Company has agreed to provide the Services and whose details appear in the Quotation, and shall include its staff and authorised personnel;

“Customer Equipment” means any equipment, including but not limited to the servers, peripherals, wiring and other equipment provided by the Customer;

“Deposit” means the deposit payable by the Customer to the Company in the amount as set out in the Quotation;

“Fees” means the fees as set out in the Quotation and all other charges payable by the Customer pursuant to these Conditions;

“Licence” means the licence granted by the Company to the Customer under these Conditions;

“Quotation” means the quotation and/or agreement signed by the Company and the Customer to which these Conditions are attached;

“Services” means any services provided by the Company to the Customer as set out in the Quotation, including but not limited to the Data Centre Services, Data Services, Internet Access Services and Cloud Computing Services; and

“Term” means the term of the Agreement as set out in the Quotation.

The headings of these Conditions are for convenience only and shall not affect the interpretation of the Agreement.

#### 2. Provision of Services

In consideration of the payment of the Fees, the Company shall (i) provide the Services and/or (ii) grant the Licence subject to these Conditions during the Term.

#### 3. Payment Terms

(a) The Customer shall pay to the Company the Fees, inclusive of all applicable taxes and tariffs.

(b) The Fees shall be paid by the Customer without set-off or counterclaim.

(c) Unless otherwise set out in the Quotation, all one-off fees shall be payable upon signing of the Agreement, and all monthly fees shall be payable on the first business day of each calendar month except that the first month’s payment shall be paid on the signing of the Agreement.

(d) The Customer acknowledges that the provision of the Services is conditional on the Company receiving payment of the Fees in full. In the event of any non-payment of the Fees or suspected fraudulent activity in relation to payment of the Fees by the Customer, the Company reserves the right to forthwith withhold, suspend or cancel the Services or Licence.

(e) Interest will be charged on overdue accounts at a 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.

#### 4. Credit Approval and Security Deposit

(a) At any time during the term of the Agreement, the Company reserves the right to carry out a credit check against the Customer. Upon the request of the Company, the Customer shall provide the Company with such credit

information. Delivery of the Services is subject to credit approval.

(b) Upon signing of the Agreement, the Customer shall, if required under the Agreement, pay to the Company the Deposit as security for the Customer’s performance of the Agreement.

(c) If there shall be any Fees in arrears or any breach of any terms by the Customer, the Company may apply the Deposit towards such arrears or remedying such breach and the Customer shall top-up any amount deducted.

(d) At the expiration or early termination of the Agreement, subject to any breach of the Agreement by the Customer, the Company shall refund the Deposit to the Customer within 3 months after the expiry or early termination of the Agreement. The Deposit is not transferable and is refundable to the Customer only upon full and final settlement of all outstanding amounts.

#### 5. Suspension of Services

(a) The Company shall have the right to modify or discontinue any aspect of the Services or Licence at its discretion upon 10 days prior written notice to the Customer.

(b) The Company reserves the right to suspend the Services immediately for the following reasons:

(i) in order to upgrade, repair or maintain the Services (including any telecommunications link, hardware or software);

(ii) where the Customer fails to pay the Fees;

(iii) where, in its reasonable opinion, it suspects that the Customer has breached its obligations under the Agreement;

(iv) where the Customer does or suffers anything to be done which jeopardizes the Services or any network to which it is from time to time connected;

(v) where the Customer network or Customer Equipment is being used or is suspected of being used by a third party for spamming, hacking, or any other action that is or may be detrimental to the Services or the network.

(c) Once the Services have been suspended or terminated or the Licence is revoked or access to the Customer Equipment is denied, reinstatement shall be at the sole discretion of the Company and subject to such conditions as the Company may think fit.

(d) The exercise of the Company's rights of suspension under this clause will not (i) exclude its rights to terminate the Services later in respect of that or any other event, nor (ii) prevent it from claiming damages from the Customer in respect of any breach.

#### 6. Maintenance of Services

The Company shall have the right from time to time carry out scheduled maintenance upon prior notice to the Customer, or emergency maintenance without prior notice to the Customer. During such period, the Services may fall below the normal functioning level.

#### 7. Warranty

(a) The Customer shall use the Services and/or Licence at its own risk.

(b) The Company does not provide any warranty in relation to the Services or the Licence, whether implied or statutory, including but not limited to warranty:

(i) that the Services will be uninterrupted or error free;

(ii) in respect of any result from the use of Services or Licence; and

(iii) in respect of title, merchantability, or fitness for any purpose.

#### 8. Customer Equipment and Warranties

(a) The Customer warrants that:

(i) the Customer Equipment is safe and does not adversely affect or otherwise interfere with the operation, functionality and performance of

equipment of other customers or cause any injury to any person;

- (ii) its staff and authorized personnel shall behave properly and shall not damage or interfere with the operation, functionality and performance of the equipment of other customers or cause any injury to any person;
  - (iii) its use of the Services does not infringe any third party rights or violate any law; and
  - (iv) it has sufficient title to the Customer Equipment to deal with the Customer Equipment as under this Agreement.
- (b) The Customer agrees to indemnify the Company for any loss, damage, costs, claims or expenses suffered by the Company as a result of a breach of any of the above warranties.
- (c) Unless otherwise agreed by the Company in writing, the Company shall not be liable for any damage to or the operation or maintenance of the Customer Equipment.

## 9. Customer Obligations

The Customer shall:

- (i) not resell, hire or lease, or allow use of the Services by any third party other than its own customers, without the prior written consent of the Company; and where it resells, hire, leases or otherwise allows use of the Services to any of its own customers, it shall ensure that its customers comply with all relevant obligations of the Customer in respect of the Services;
- (ii) not utilise the Services in connection with the sending or receiving of materials or data which is in violation of any law or regulation or which may be viewed as being defamatory, offensive, abusive, indecent, obscene or in breach of confidence, privacy or any third party rights;
- (iii) not disrupt or cause to disrupt the network or equipment of the Company; and
- (iv) provide all assistance required by the Company to provide the Services.

## 10. Service Rules and Practices of the Company

The Customer shall comply with any service rules and/or practices in relation to the Services which may be prescribed by the Company from time to time.

## 11. Confidential Information

- (a) Each party shall treat as strictly confidential all information received or obtained as a result of entering into or performing this Agreement which either the Company or the Customer desires to be held in confidence.
- (b) Either party may disclose information which would otherwise be confidential if and to the extent:
- (i) required by the law of the relevant jurisdiction;
  - (ii) disclosed on a strictly confidential basis to the professional advisers, auditors and bankers of that party; or
  - (iii) the information has come into the public domain through no act or omissions of that party or is otherwise previously known to that party not having been received in breach of any confidentiality undertaking.

## 12. Security

The Customer shall be responsible for protecting the Customer Equipment and any data or software contained therein from any unauthorised access. The Company provides no online security for the Customer Equipment except where otherwise stated.

## 13. Liability

Except in respect of any liability of the Company for death or personal injury resulting from the Company's gross negligence, the Company shall not be liable to the Customer for (i) any indirect or consequential loss or damage, costs, expenses or other claims for consequential compensation whatsoever, (ii) any loss of business, profits, revenue or contracts, loss or corruption of data and all service interruptions whether caused by the gross negligence of the Company, its employees, subcontractors or agents, which arises out of or in connection with the provision of the Services by the Company.

## 14. Indemnity

The Customer shall indemnify the Company and keep the Company indemnified against all liabilities, claims, costs, losses, loss of profits, damages and expenses and other pecuniary or consequential loss

(including reasonable legal costs and expenses) whatsoever arising from:

- (i) any improper use or any use in violation of law or third party rights of the Licence or the Services;
- (ii) any breach of the Agreement by the Customer;
- (iii) negligence, fraud, misconduct, act or omission by the Customer;
- (iv) the implementation of the Customer's instructions by the Company; or
- (v) the existence or conditions of the Customer Equipment.

## 15. Limitation of Liability

(a) Except to the extent prohibited by law, the Company's liability will be limited to:

- (i) in the case of Customer Equipment (where the Company agrees in writing to be liable for any damage as set out in clause 8(c) above), repairing or replacing the Customer Equipment or supplying equivalent equipment, or paying the cost of doing so; or
- (ii) in the case of the Services or Licence, supplying the Services or grant the Licence again or paying the cost of doing so.

(b) Notwithstanding any other provisions herein, the liability of the Company 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.

## 16. Force Majeure

(a) None of the parties shall be liable to any other for any delay or non-performance of its obligations under this Agreement arising from any cause or causes beyond its reasonable control including, without limitation, any of the following: act of God, governmental act, war, fire, typhoon, flood, explosion, civil commotion or industrial dispute of a third party, armed hostilities, act of terrorism, revolution, blockade, embargo, strike, lock-out, sit-in, industrial or trade dispute, adverse weather, disease, accident to (or breakdown of) plant or machinery, shortage of any material, labour, transport, electricity or other supply, or regulatory intervention.

(b) Subject to the party so delaying promptly notifying the other party in writing of the cause and the likely duration of the delay and PROVIDED THAT the party shall use reasonable endeavours to limit the effect of such event on the other party, the performance of the delaying party's obligations, to the extent affected by the delay, shall be suspended during the period that the cause persists PROVIDED THAT if performance is not resumed with 30 days after that notice the non-delaying party may by written notice terminate this Agreement.

## 17. Termination

(a) The Agreement shall become effective on the day specified in the Quotation and ends at the expiration of the Term.

(b) The Customer shall in writing notify the Company not less than one calendar month before the expiry of the Term if it does not wish to renew the Agreement. In the absence of such notice and unless the Company terminates the Agreement in writing in accordance with this clause, the Agreement shall automatically be renewed on a monthly basis on the same terms with the same amount of Fees payable by the Customer and either party may by one month's written notice terminate the Agreement during such renewed term.

(c) Either party may terminate the Agreement by immediate written notice if:

- (i) the other party is in material breach of any of its obligations under the Agreement and such breach is not remedied (if capable of remedy) after 30 days' notice of default;
- (ii) the other party goes into liquidation whether compulsory or voluntary, or disposes of all or substantially all of its assets or business;
- (iii) the other party ceases to carry on business, has a receiver appointed, enters into any composition with its creditors, or suffers execution to be levied upon the space on the Customer's goods including without limitation the Customer Equipment;
- (iv) the Company is unable to offer the Services or the Licence to the Customer; or
- (v) the Licence is deemed to be a tenancy due to any law, regulation or other reason beyond the Company's control.

- (d) If the Customer terminates the Agreement prior to the expiry of the Term other than in accordance with subclause (c) above, it shall remain liable for the Fees for the entire Term.
- (e) Unless otherwise provided in the Agreement, the Customer shall not be entitled to any refund of prepayments or transfer of such prepayments to any third party upon termination.
- (f) The Company reserves the right to repossess, uninstall and remove all apparatus leased to the Customer if the Customer commits a breach of the Agreement or upon termination of the Agreement.

**18. The Company's Right to Revise Terms and Conditions**

The Company reserves the right to alter, add to or delete any of these Conditions at any time without giving prior notice to the Customer. The Customer agrees that the use (whether or not by the Customer) of the Services and Licence will constitute the Customer's acceptance of these Conditions (as from time to time amended).

**19. Assignment to Subsidiaries and Associated Companies**

The Company is entitled to transfer and/or assign all or any of its rights and obligations hereunder to any of its subsidiaries or associated companies from time to time without the consent of the Customer.

**20. Gas Supply Services**

- (a) Notwithstanding any provisions in the Agreement to the contrary, the Customer acknowledges and agrees that the efficient supply of gas services by the Hong Kong and China Gas Company Limited (**Towngas**) is a paramount consideration in the performance of and in giving effect to any provision under the Agreement.
- (b) The Company reserves the right to suspend (and in its discretion reactivate) the Services in the event that Towngas disconnects, suspend the use of or otherwise cut off any gas pipelines or other infrastructure of any kind at any time or conducts emergency operations.
- (c) If the Company exercises its rights in accordance with this clause 20, it shall not be considered a breach of the Agreement nor shall it be liable to the Customer for any loss, damage or liability sustained by the Customer or by any other person which is directly or indirectly attributable to such exercise.

**21. Publicity**

Except as otherwise stated in the Agreement, these Conditions grant no right to any party to use the other party or the other party's affiliates' trademarks, service marks or trade names or to otherwise refer to the other party in any marketing, promotional or advertising materials or activities. Neither party shall issue any publication or press release relating to, or otherwise disclose the existence of, or the terms and conditions of any contractual relationship between the parties including but not limited to these Conditions without the express written consent of the other party, except as may be required by law. The Customer consents and expressly allows the Company to disclose that the Customer uses the Services of the Company to other customers or potential customers of the Company.

**22. Governing Law**

These Conditions shall be governed by and construed in accordance with the laws of Hong Kong.

**23. General Provisions**

- (a) Nothing in the Agreement shall be construed as creating the relationship of landlord and tenant between the Company and the Customer.
- (b) If any of the provisions of the Agreement shall be illegal or invalid, it shall not affect the legality, validity, and enforceability of the other provisions of the Agreement. The illegal or invalid provision shall be deemed to have been deleted from the Agreement.
- (c) The Customer shall not assign, novate, sub-licence or transfer any of its rights or obligations under the Agreement without the prior written consent of the Company.
- (d) No waiver by the Company shall be construed as a waiver of any preceding or succeeding breach of any provision under the Agreement.
- (e) The Customer shall abide by all applicable laws in relation to the use of the Services and Licence.

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FIXED CARRIER LICENCE  
TELECOMMUNICATIONS ORDINANCE (Chapter 106)

TOWNGAS TELECOMMUNICATIONS FIXED NETWORK LIMITED (TTFN)

**Name of Tariff:** General Terms and Conditions

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