

## NETVIGATOR 56K Basic Plan TERMS AND CONDITIONS

### 1. Our responsibilities

"We" and "us" means Hong Kong Telecommunications (HKT) Limited. We will provide you (the Subscriber) with login ID(s) and password(s) to access **NETVIGATOR 56K** subject to the terms and conditions of this Agreement and, without limitation, to our rights to do any of the following at any time: (i) deactivate **NETVIGATOR 56K**, with or without notice to you, to carry out system maintenance, upgrading, testing and/or repairs; (ii) limit or suspend your access to **NETVIGATOR 56K**, with or without notice to you, where we are of the opinion that such action is appropriate as a result of your use of **NETVIGATOR 56K**; (iii) although we are not obliged to, we may delete any suspected spam email, virus-infected files and/or emails, with or without notice to you; (iv) take any steps or omit to take any steps, with or without notice to you, for any reason we deem relevant to the management and operation of **NETVIGATOR 56K** and our business, that may expand, reduce, modify, suspend, limit, make inaccessible or adversely affect any of, or any part of, the Services (being any of the services which may be accessed through **NETVIGATOR 56K**, or by the use of login ID(s) and passwords provided by us whether such services are supplied by us or by third parties), or any of, or any part of, the Content (being any still picture or other series of moving images, whether animated or otherwise, music video, music, voice, data, information and/or other material, goods or services that may be accessed through **NETVIGATOR 56K** or by the use of login ID(s) and passwords provided by us whether such services are supplied by us or by third parties); and (v) introduce new fees, amend the amount of fees payable, amend the terms and conditions of this Agreement and/or amend any operating rules which govern your use of **NETVIGATOR 56K** by: (a) posting the details of such amendments on [www.netigator.com](http://www.netigator.com); and/or (b) sending you a notification of such amendments via post or such other means as determined by us, such amendments to take effect 7 days after such posting on [www.netigator.com](http://www.netigator.com) is made and/or on a date as specified in such notification. Without limitation to any other provision in this Agreement, we expressly disclaim and exclude any liability whatsoever arising directly or indirectly from us exercising any of our rights as set out herein.

### 2. Your responsibilities

You will (i) be strictly and solely responsible for any use of the login ID(s) and password(s) provided to you and any Designated User (being those other persons specified on the Application Form who will be issued with separate login ID's and passwords to access **NETVIGATOR 56K**) in accessing **NETVIGATOR 56K**, the Services or the Content, and you agree that any such use will be treated by us as a use by you; (ii) not copy, distribute, publish, transmit, upload, download or otherwise exploit any Content unless you own that Content or possess an appropriate licence; (iii) not use **NETVIGATOR 56K** to publish, distribute, transmit or circulate any unsolicited information, message or content (whether they are for advertising or promotional purpose or otherwise) or any content that is obscene, indecent, seditious, offensive, defamatory, threatening, liable to incite racial hatred, discriminatory, menacing or in breach of confidence; (iv) not hack, break into, access, use or attempt to hack, break into, access or use any part of **NETVIGATOR 56K**, its Content and/or any data areas on our server(s) for which you have not been authorised by us; (v) not hack, break into, access, use or attempt to hack, break into, access or use any part of any website(s) of any third parties, its contents and/or any data areas on any server(s) of any third parties for which you have not been authorised; (vi) not store or upload any kind of tools, software or materials in any storage space assigned by us to you in our server(s) that can be used, in our sole opinion, for hacking or any other illegal or improper purpose; (vii) ensure that each of the Designated Users comply with these terms and conditions; (viii) abide by all relevant laws of Hong Kong and any operating rules, as amended from time to time, when using **NETVIGATOR 56K**; (ix) subject to any other term contained in this Agreement, not assign, transfer or sub-license all or any part of your rights or obligations under this Agreement; and (x) in relation to any content which you upload to **NETVIGATOR 56K**, be deemed to have granted to us an irrevocable perpetual licence to copy, distribute, publish and transmit such Content as is necessary for the operation of **NETVIGATOR 56K**, without charge, unless agreed otherwise between you and us; (xi) safeguard your login ID and password and ensure that they are not disclosed or provided to any other person and ensure that any Designated User safeguard its login ID and password and ensure that they are not disclosed or provided to any other person; (xii) not use your login ID and password, and ensure that a Designated User does not use its login ID and password, to access the internet using **NETVIGATOR 56K** from more than one computer at any one time.

You acknowledge that (i) no unused free usage hours of access time may be carried forward to the following month; and (ii) except for that Content which is supplied by us as principal, it is not our policy to exercise any editorial control over or to edit or amend any Content before it is transmitted or made available through **NETVIGATOR 56K**. However, you hereby authorise us to amend or delete any Content which is uploaded or otherwise provided by you where any such Content is, in our sole opinion defamatory, in breach of copyright, illegal or otherwise not appropriate to be accessed by or through using **NETVIGATOR 56K**.

You agree to indemnify us against any action, liability, cost, claim, loss, damage, proceeding, and/or expense suffered or incurred by us arising from or which is related to (i) your use, any Designated User's use and/or any other person's use of **NETVIGATOR 56K** where such person was able to access **NETVIGATOR 56K** by using your or a Designated User's login ID and/or password; and (ii) any breach or non-observance of any term of this Agreement by you or any Designated User.

If we request personal data from you that constitutes Personal Data (meaning Personal Data as that term is used in the Personal Data (Privacy) Ordinance), you may decline to provide the Personal Data but in that event we may decline to provide **NETVIGATOR 56K** to you. You agree that we may use the Personal Data for any and all of the following purposes: (a) the provision of **NETVIGATOR 56K** or the Services to you (including the transfer of such Personal Data to other telecommunications network providers or third parties as necessary for the provision of **NETVIGATOR 56K**) and/or the transfer of such Personal Data to Affiliates (meaning any other entity which directly or indirectly controls us, is controlled by us, or is under common control with us) as necessary for the provision of Services by such Affiliates; (b) matching (as defined in the Personal Data (Privacy) Ordinance) the Personal Data with other data collected for other purposes and from other sources including third parties in relation to the provision of **NETVIGATOR 56K**; (c) marketing of goods and/or services by us, our agents, Affiliates or subsidiaries, in relation to **NETVIGATOR 56K** or the Services provided by our Affiliates; (d) improving of goods and/or services in relation to the provision of **NETVIGATOR 56K** or the provision of Services by our Affiliates; (e) processing of any benefits arising out of or in connection with **NETVIGATOR 56K**; (f) analysing, verifying and/or checking your credit, payment and/or status in relation to the provision of **NETVIGATOR 56K**; (g) processing of any payment instructions, direct debit facilities and/or credit facilities in relation to provisioning **NETVIGATOR 56K** or requested by you; (h) enabling the daily operation of your accounts with us or our Affiliates and/or the collection of amounts outstanding from you (which may include disclosing your personal data to debt collection agencies) in relation to **NETVIGATOR 56K**, the Services, the Content or any products and services provided by our Affiliates; (i) enabling us to comply with our obligations to interconnect or other industry practices; (j) keeping you informed of other services we provide; (k) prevention or detection of crime; (l) disclosure as required by law; and (m) any other purposes as may be agreed to by the parties. You agree that the Personal Data may be disclosed and transferred in Hong Kong or in places outside Hong Kong to our Affiliates, agents, contractors, telecommunications operations, any other third parties, including collection agencies, credit reference agencies, security agencies, credit providers or other financial institutions and any of our actual or proposed assignees or transferees of our rights with respect to you for such person to use, disclose, hold, process, retain or transfer for the purposes listed in this paragraph or any other purposes incidental thereto.

You shall, as soon as practicable, notify us of any changes of address or any other particulars provided to us which may affect the provision of **NETVIGATOR 56K** to you. On our request, you shall provide us with information relating to you and your use of **NETVIGATOR 56K** reasonably required by us: (a) to assist us in complying with our obligations under any applicable law; (b) to report to any government agency regarding compliance with those obligations; and (c) to assess whether or not you have complied, are complying and will be able to continue to comply with all of your obligations under this Agreement.

If you do not provide us with this information within 2 business days, you licence us and our authorised representatives during the term of the Agreement and for 3 months after its termination, to enter the premises owned or occupied by you during business hours, after giving reasonable notice, for the purpose of obtaining any information requested under this paragraph.

You acknowledge and agree that we may check your storage space as assigned by us to you in our server(s) if required to do so by law or if in good faith we reasonably believe that such checking is necessary to: (i) enforce the terms of this Agreement; (ii) respond to claim(s) by third parties that your use or any Designated User's use of **NETVIGATOR 56K** violates the rights of third parties, is illegal or improper; or (iii) protect the rights, property or safety of **NETVIGATOR 56K**, its users, other web sites and the public.

### 3. Payment

We will send you an invoice every month with a list of all Fees (being fees for monthly subscription, storage, Content, PNETS charges and any other relevant fees and charges current from time to time) which relate to your use of **NETVIGATOR 56K**, the Services and/or any Content. The Fees will be calculated by reference to data recorded or logged by us or our Affiliates and not by reference to any data recorded or logged by you. Records held and logging procedures adopted by us will be conclusive evidence of the usage of **NETVIGATOR 56K**, the Services and the Charges payable by you. Usage charges for **NETVIGATOR 56K** and the Services will be measured using such unit of measurement as is adopted by us for such usage from time to time. We can provide you with a hard copy of the invoice if you pay the additional handling charge set out on the Application Form. Unless otherwise specified, all subscription fees are payable monthly in advance. You agree to pay the full amount of such invoice by the payment method selected by you on the Application Form, such payment to be made before the due date for payment as specified on the invoice. You hereby authorise us to charge your credit or charge card with the full amount of such invoice at any time before the due date for payment on the invoice, such authorisation to continue after the expiry date on any such card (and where you are not the cardholder, you hereby agree to procure such authorisation from the cardholder). Any disputes regarding an invoice must be raised within 30 days of the date of the invoice notwithstanding, where relevant, any terms to the contrary in any cardholder agreement with the bank. Please note that no credit or refund is available in respect of any time when **NETVIGATOR 56K** is Down or suspended. If you have not paid any invoice by the due date, we reserve the right to (i) charge interest on any outstanding amount at 2% per month until the invoice has been paid in full and to charge a handling fee, collection agency fee, reconnection fee and/or require a security deposit if your access to **NETVIGATOR 56K** is suspended or terminated before payment is made; and (ii) transfer any amount that is owing to you or due from you under any of your accounts, if you have more than one account with us, so as to settle any outstanding amount due to us under any of your accounts whether they have been terminated or suspended. You acknowledge that if we invoice you for Content as agent for a third party provider of that Content, we are not the supplier of that Content.

### 4. Software Licence

We hereby grant to you a non-exclusive and non-transferable licence for you to store, run and use the Software (i.e. that software which is supplied to you to access **NETVIGATOR 56K**) on your computer in accordance with the terms and conditions of this Agreement and the software licence which accompanies the Software but not further or otherwise. Except to the extent permitted by law, you shall not alter, modify, adapt or translate the Software nor decompile, disassemble or reverse engineer the same nor attempt to do any such thing.

### 5. General Warranties & Liability

To the extent permitted by law, we disclaim any representation or warranty whether express or implied as to the title, fitness for a particular purpose, merchantability, accuracy or standard of quality of **NETVIGATOR 56K**, the Software, the Services and/or any Content, that **NETVIGATOR 56K** will be uninterrupted or error free, any obligation to maintain the confidentiality of information (although our current practice is to maintain such confidentiality), the results to be obtained from use of **NETVIGATOR 56K**, any Services and/or any Content unless otherwise specifically mentioned in this Agreement.

Without limitation to the above disclaimer or any other provision in this Agreement, you acknowledge and agree that unless we have entered into an agreement with a Voice over Internet Protocol (VoIP) service provider allowing it to use **NETVIGATOR 56K** to deliver VoIP services then such service provider will continue to have no entitlement to use **NETVIGATOR 56K** to deliver VoIP services and accordingly, it may not be possible to access VoIP services supplied by such service provider using **NETVIGATOR 56K** or, if accessible, the standard or quality of such VoIP services may be adversely affected. A list of VoIP service providers who have entered into an agreement with us to utilize **NETVIGATOR 56K** to deliver VoIP services is available on [www.netigator.com](http://www.netigator.com).

You agree that our liability under this Agreement shall in any event not exceed the total Fees paid by you to us for the immediately preceding twelve months prior to any incident giving rise to a claim.

To the extent permitted by law, we expressly disclaim any liability for (i) any damage to or loss of data suffered by you arising from your use of **NETVIGATOR 56K**, the Software, the Services and/or any Content; (ii) any claim based in contract, tort, or otherwise for any loss of revenue (whether direct or indirect), loss of profits or any consequential loss whether of an economic nature or not; (iii) any claim relating to any Services and/or any Content supplied, provided, sold or made available by or through **NETVIGATOR 56K** (or any failure or delay to so supply, provide, sell or make available); (iv) any injury, disease, seizure or loss of consciousness suffered by you or any person who accesses **NETVIGATOR 56K** using your login ID and/or password, arising whether directly or indirectly from accessing and using **NETVIGATOR 56K**, any of the Services or playing any computer games through **NETVIGATOR 56K**; and (v) any disruption or suspension of **NETVIGATOR 56K** or any part thereof which is attributable to an event or circumstance beyond our reasonable control.

### 6. Termination

We may terminate this Agreement at any time on the giving of at least one calendar month notice to you or immediately by notice to you if you breach any term of this Agreement. You may terminate this Agreement at any time by giving at least one calendar month prior notice to us.

### 7. Effect of Termination

Upon the date of termination of this Agreement, all licences, rights and privileges granted to you under the terms of this Agreement shall cease. Under no circumstances will you be entitled to a refund of any Fees, interest on any security deposit or any pro rata monthly service fee. Any termination of this Agreement shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision contained in this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.

### 8. General

We may appoint agents, assign or sub-contract the whole or any part of our rights and/or obligations contained in this Agreement to any person at any time. The English version of these terms and conditions shall prevail over any Chinese version which is provided for information purposes only. If any term or condition of this Agreement becomes or is declared illegal, invalid or unenforceable for any reason, such term or condition shall be divisible from this Agreement and shall be deemed to be deleted from this Agreement. This Agreement shall be governed by the laws of the Hong Kong SAR and the parties hereby submit to the non-exclusive jurisdiction of the courts of the Hong Kong SAR.