

NETVIGATOR 56K Business Plan

TERMS AND CONDITIONS

1. Our responsibilities

"We" and "us" means Hong Kong Telecommunications (HKT) Limited. We will provide you (the Subscriber) with a login ID and password to access **NETVIGATOR 56K**. You should note that we may (i) deactivate **NETVIGATOR 56K** at any time without notice to carry out system maintenance, upgrading, testing and/or repairs; (ii) limit or suspend your access to **NETVIGATOR 56K** without notice where we are of the opinion that such action is appropriate as a result of your use of **NETVIGATOR 56K**; (iii) expand, reduce and/or modify any of the Services (being any of the services which may be accessed through **NETVIGATOR 56K**), or any Content (being any still picture or other series of moving images, whether animated or otherwise, music video, music, data, information and/or other material, goods or services that may be accessed through **NETVIGATOR 56K**), amend the amount of any fees, introduce new fees and/or amend the terms and conditions of this Agreement, and/or amend any operating rules which govern your use of **NETVIGATOR 56K** by posting the details of such amendments on www.netvigator.com, such amendments to take effect 7 days after any such posting is made.

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 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) provision **NETVIGATOR 56K** 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**); (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 (meaning any other entity which directly or indirectly controls us, is controlled by us, or is under common control with us) or subsidiaries, in relation to **NETVIGATOR 56K**; (d) improving of goods and/or services in relation to provisioning of **NETVIGATOR 56K**; (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 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 account and/or the collection of amounts outstanding in your account in relation to **NETVIGATOR 56K**; (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.

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 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 websites 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. We can provide you with a hard copy of the invoice if you pay the additional handling charge set out on the Application Form. 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 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. 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.

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. 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.