

UNIFIED CARRIER LICENCE  
TELECOMMUNICATIONS ORDINANCE (Chapter 106)

HKBN Enterprise Solutions Limited

**Name of Tariff:**

General Terms and Conditions of Service (Consumer)

**Description of Tariff:**

General Terms and Conditions of Service (Consumer) is revised with effect from 1 October 2016. Full text is attached.

**Effective Date of Tariff:**

1 October 2016

**Revision History:**

Last revision: U0022-005-OCT2013-N

## **General Terms and Conditions**

This document details the terms and conditions for the provision of the Services by HKBN. The Subscriber is deemed to have accepted the Conditions and the relevant tariffs when applying for the Services.

**"Agreement"** means the Conditions herein and the Special Terms and Conditions as may be amended by HKBN from time to time;

**"Cancellation Charge"** means the cancellation charge as stipulated from time to time payable as liquidated damages to HKBN on termination of the Agreement prior to expiration of any Minimum Commitment Period;

**"Charges"** means any applicable charges charged by HKBN for the provision of Services, Software or Equipment from time to time including, without limitation to, storage charges and other connection time charges, access charges, handling charges, access kit charges, installation, removal or delivery charges, late charges and such other fees and charges payable by the Subscriber to third parties through using the Services (including PNETS charges) as may be charged from time to time;

**"Conditions"** means the terms and conditions set out herein;

**"Contents"** refers to any software, content, data, information or other material that is accessible by or through using HKBN's Services including, but without limitation to, all electronic mail and other messages and all textual, audio, video, still image, graphical and other content;

**"Content Provider"** means any party providing Content and/or operating services accessible by or through using the Services;

**"Due Date"** means the due date specified in the relevant invoice, or if no such date is specified, the date which is 15 days from the date of the invoice;

**"Equipment"** means the equipment (if any) provided by HKBN to make available the Services to Subscriber which may be installed at the Premises for the use of the Services;

**"Group Companies"** means any company which is for the time being a

	holding company (ultimate or intermediary) of HKBN and/or any subsidiary of such holding company from time to time;
<b>"HKBN"</b>	means HKBN Enterprise Solutions Limited, its successors and assigns
<b>"Hong Kong"</b>	means the Hong Kong Special Administrative Region of the People's Republic of China;
<b>"Minimum Commitment Period"</b>	means the minimum period as may be stipulated from time to time that the Subscriber commits to use the Services;
<b>"Password"</b>	means any password or similar device issued or provided by HKBN to the Subscriber or chosen by the Subscriber (as may be from time to time varied by the Subscriber in the manner stipulated by HKBN or otherwise varied by HKBN), where applicable, which allow access to or hold up or delay any or all of the Services (where appropriate);
<b>"Personal Data"</b>	shall have the meaning ascribed to it by the Personal Data (Privacy) Ordinance, Cap 486 of the laws of Hong Kong;
<b>"PIN"</b>	means any login ID and/or other personal identifier(s) issued by HKBN to the Subscriber to gain access to all or any of HKBN's Services;
<b>"Premises"</b>	means any premises or place at which the Services are used from time to time;
<b>"Service" or "Services"</b>	means telecommunications services, including Equipment where applicable as shall be provided by HKBN from time to time;
<b>"Software"</b>	means any software supplied by HKBN to the Subscriber for the use or access to the Services;
<b>"Special Terms and Conditions"</b>	means specific terms and conditions (if any) as applicable to the relevant Services from time to time;
<b>"Subscriber"</b>	means any person including any individual, corporation or unincorporated body who apply for

or use any of the Services of HKBN or to whom HKBN has agreed to provide Services.

In this Agreement, reference to one gender shall include the other and the neuter and reference to singular shall include the plural and vice versa.

1. All applications for the Services shall be subject to review and acceptance by HKBN.
2. HKBN will issue invoice to the Subscriber in accordance with HKBN's normal billing cycle for the type of Services provided, by post or email or any other method as HKBN thinks appropriate. If the Subscriber opts for changing other method for receiving its invoice, the Subscriber shall notify HKBN by giving 30 days prior written notice accordingly and HKBN reserves the right to charge a handling fee for each invoice to be sent thereafter.
3. Unless otherwise provided or agreed by HKBN, an administration fee of HK\$100 or any amount as shall be determined by HKBN from time to time shall be charged to the Subscriber for each duplicate copy of statement, registration form, service installation form or any other similar documentation as may be kept by HKBN.
4. HKBN reserves the rights to charge the Subscriber a handling fee of HK\$10 or any amount as shall be determined by HKBN from time to time on each payment transaction.
5. The Subscriber shall pay HKBN the Charges detailed in each invoice in full on or before the Due Date. Questions concerning any invoice must be brought to HKBN's attention within 30 days of invoice date, otherwise, the invoice shall deem to be accepted by the Subscriber.
6. The Subscriber agrees and authorizes HKBN to debit the full amount payable under HKBN's invoice or any amount due and payable by the Subscriber to any of the Group Companies from the credit card account registered with HKBN, if any, and the Subscriber shall be responsible for renewing such authorization from time to time; or if the Subscriber opts for settling the invoice or any payment due by the Subscriber to HKBN by way of bank auto-payment, the Subscriber shall sign and submit an authorization form and do all that is necessary to authorize HKBN to debit his designated bank account. The Subscriber also agrees to abide by and agrees to the terms and conditions of any third party provider where any Services shall be provided by or through these third party providers. All payment made shall be non-refundable and non-transferable. All payment to be made shall be without any deduction or set-off. HKBN reserves the right to

- use any account balance to set-off against any or all payment due by the Subscriber to the Group Companies.
7. In case of disputes over any usage of the Services or the Charges, HKBN's decision based on its usage records and those of any third party in providing the Services shall be final and binding on the Subscriber.
  8. HKBN may impose a credit limit for the account of the Subscriber as determined by HKBN from time to time at its sole discretion. Should any Charges exceed such credit limit, HKBN shall be entitled to suspend or terminate the provision of the Services in whole or in part to the Subscriber and/or to charge all outstanding Charges against the credit card account registered with HKBN, if applicable. Notwithstanding the suspension of the Services, the Subscriber is still liable to pay the Charges current from time to time for the Services suspension period until the end of the Minimum Commitment Period or any liquidated damages as stipulated in the Services (if applicable).
  9. If the Subscriber has not fully settled any invoice by the Due Date, HKBN reserves the right to charge interest on any outstanding amount at 2.5% per month until the invoice has been paid in full by the Subscriber and to charge a reconnection fee and handling fee if the Subscriber's access to HKBN is suspended or terminated as a result of payment not having been made. Subscriber acknowledges that HKBN may invoice the Subscriber on behalf of a third party service provider or Group Companies. HKBN shall be entitled to employ any person, debt collection agency and/or institution to collect any or all sums owed by the Subscriber to HKBN under this Agreement and in so doing, HKBN may and is hereby authorized to disclose to such person, agency and/or institution any or all information available in relation to the Subscriber and HKBN shall not be liable or responsible for any default, negligence, act, conduct, misconduct and/or deeds of such person, agency and/or institution. The Subscriber agrees that any such person or agency and/or institution may utilise such information in the course of any business carried on by such person, agency and/or institution. The Subscriber shall be obliged to indemnify HKBN for all losses, damages, expenses incurred by HKBN in employing such person, debt collection agency or institution.
  10. Except for Content which is produced by HKBN, it is not HKBN's policy to exercise any editorial control over or edit or amend any Content before it is transmitted or made available through the Services. However, HKBN shall have the right to amend, block or delete any

Content which is transmitted or otherwise made available by the Subscriber where any such Content is, in HKBN's sole opinion defamatory, in breach of copyright, improper, annoying, likely to be offensive, illegal or otherwise not appropriate to be accessed by or through the Services.

11. The copyright and all other intellectual properties and other rights in the Software are either owned by or licensed to HKBN. HKBN hereby grants to the Subscriber a non-exclusive and non-transferable license for the Subscriber to use the Software on the Premises in accordance with this Agreement and the Software license which accompanies the Software but not further or otherwise. Except to the extent permitted by law, the Subscriber shall not alter, modify, adapt or translate the Software nor decompile, disassemble or reverse engineer the same nor attempt to do any such thing.
12. The Subscriber agrees to keep the PIN and/or Password confidential and be responsible for any and all use of the Services using the Subscriber's PIN and/or Password, if applicable. If the Subscriber believes that his PIN or Password has been lost or stolen, the Subscriber should immediately notify HKBN and the Subscriber shall be liable for all Charges and cost incurred until the Services is being suspended by HKBN.
13. The Subscriber shall at all times fully comply with all legal and regulatory requirements applicable to the use of the Services and observe all instructions or guidelines as may be imposed by HKBN from time to time. The Subscriber further undertakes not to use or allow others to use the Services (a) for any purpose which HKBN considers improper, immoral, defamatory, fraudulent or otherwise unlawful; (b) in a manner which constitutes an infringement of rights of any person (including but not limited to rights of copyright or confidentiality) or a violation or infringement of any duty or obligation in contract, tort or otherwise, to any third party; (c) which interferes with, impedes or impairs the use or operation of, or do anything likely or interfere with, impede or impair the use or operation of Services provided by HKBN; or (d) for purposes not authorized by HKBN. In particular, the Subscriber shall not hack, break into, access or use or attempt to hack, break into, access or use any part of the Services, any content and/or any data on HKBN server(s) or telecommunications network, for which the Subscriber has not been authorized by HKBN.
14. HKBN reserves the right at all times to suspend all or any of the Services without notice whether or not to carry out system maintenance,



upgrading, testing and/or repairs or otherwise as it deems appropriate.

No credit or refund is available when all or any of the Services is down or suspended in any manner whatsoever.

15. HKBN shall have the right to send, deliver, distribute or display advertisements, messages or other information in such form and manner as it shall deem appropriate on the screen or to the media through which the Subscriber access the Services from time to time.
16. The Subscriber may be required at its own costs to install Equipment, Software or reconfigure the Subscriber's computer equipment or other equipment or devices in order to obtain access to the Services. Unless otherwise provided, the Equipment is and will at all times remain the property of HKBN and the Subscriber will not acquire any rights or title in them. The Subscriber shall notify HKBN immediately of any damage, fault, theft or loss of the Equipment or any part thereof. The Subscriber shall also cause the Equipment to be used and operated in a proper manner, and shall not alter, tamper with or attempt to repair the Equipment in any way except by HKBN's authorized representatives or agents.
17. The Subscriber shall ensure that HKBN, its representatives and agents have safe access to the Premises at all reasonable times to install, inspect, maintain, repair, remove or recover the Equipment or to do anything that is reasonably necessary for the provision of Services under this Agreement. While the Equipment is in the Subscriber's custody or control, the Subscriber will be liable to HKBN for any loss or damages to the Equipment.
18. HKBN may require the Subscriber to maintain a deposit with HKBN as security for the discharge of obligations and liabilities of payment by the Subscriber relating to the provision of the Services and/or the installation of Equipment or Software under this Agreement. The amount of the deposit shall be determined by HKBN at its sole discretion. Without prejudice to any other rights or remedies that HKBN may have against the Subscriber, HKBN reserves the right to apply and set-off the deposit against any outstanding Charges or for any loss or damages suffered or sustained by HKBN as a result of any non-performance or non-observance by the Subscriber of any provisions of this Agreement or under any of the Subscriber's other account under HKBN or the Group Companies. Upon termination of this Agreement, HKBN shall return any remaining balance of deposit without interest within 3 months from the date of termination.
19. The Subscriber shall not use the Services to circulate, publish, transmit,

distribute any unsolicited advertising or promotional information or any Content that is seditious, obscene, defamatory, indecent, threatening, offensive, liable to incite racial hatred, discriminatory, menacing or in breach of confidence or any applicable law and regulation; or which infringes the privacy of an individual; or may cause HKBN to breach any applicable law or regulation.

20. HKBN exercises no control and shall not accept any liability whatsoever over the Content passing through the Services. HKBN makes no warranties of any kind including without limitation to fitness for purpose, quality standard or continuity, whether expressed or implied, for the Services it is providing and in particular disclaims any responsibility for the accuracy or quality of information obtained through its Services. HKBN will not be responsible for any damage in relation to the Services including loss of data, voice or other information resulting from delays, non-deliveries, mis-deliveries, or service interruptions.
21. The Subscriber hereby agrees to indemnify and to keep HKBN fully and effectively indemnified against any action, liability, cost, claim, loss, damage, proceeding, expense suffered or incurred by HKBN arising from directly or indirectly related to the Subscriber's use and any other person's use of the Services where such person was able to access the Services by using the Subscriber's PIN and/or Password, including but not limited to claims for defamation, infringement of copyright or any other intellectual property rights; and/or any breach or non-observance of any provision hereunder by the Subscriber or any other person where such person was able to access the Services by using the Subscriber's PIN and/or Password.
22. To the extent permitted by law, HKBN and any third party service provider of the Services shall under no circumstances be liable whether or not in contract, tort, statute or otherwise (including without limitation to negligence, breach of contract, defamation, or intellectual property right infringement) for any cost, claim, special, direct, indirect or consequential loss or damage (including without limitation, loss of revenue, loss of profit, or any consequential loss whatsoever) suffered, sustained or incurred by the Subscriber or any person (directly or indirectly) from or out of or relating to the Services.
23. To the extent permitted by law, HKBN, its Group Companies and any third party service provider of the Services, together with their respective directors, employees or agents expressly disclaim any liability for: i) any damage to or loss of data, voice or other information arising from the



Subscriber's use of the Services, Software or Equipment; ii) any claim based on contract, tort, or otherwise for any direct or indirect loss of revenue, profits or any consequential loss whether of an economic nature or any such loss which the Subscriber suffers as a result of any error, inaccuracy or computer virus in or introduced into the Subscriber's computer system or other devices by, through or in connection with the use of the Services, Software or Equipment; iii) any claim relating to the Services and/or any Content, Software or Equipment supplied, provided, sold or made available by or through the Services (or any failure or delay to so supply, provide, sell or make available); iv) any disruption or suspension or degradation of the Services or any part thereof; and v) any damage which is attributable to an event or circumstance beyond HKBN's control ("Force Majeure Event"). A Force Majeure Event includes but is not limited to acts of God, war, civil disobedience, explosion, fire, flood, governmental action, legislation not in force at the time of this Agreement, restraints imposed by government or any other regulatory authorities, labour disputes, trade disputes or delays of third parties over which HKBN has no control.

24. HKBN shall be entitled to forthwith suspend access to the Service without notice to the Subscriber if (a) in the reasonable opinion of HKBN there is or has been fraudulent or unauthorised use and access to the Services; (b) in the reasonable opinion of HKBN, there is any misuse of the Service by the Subscriber or any other user authorised by the Subscriber; (c) the Subscriber is in breach of any of his/her obligation under the Agreement; (d) HKBN is obliged to comply with an order, instruction or request of the Office of the Communications Authority or other competent government authority; or (e) the Subscriber fails to pay in full any charges or other sum whatsoever payable by the Subscriber to HKBN when due. HKBN may immediately terminate this Agreement and/or the provision of the Services without notice and without limiting any other remedies available to HKBN if any of the following events should occur: i) any outstanding Charges payable by the Subscriber remains unpaid 30 days after the Due Date; ii) the Subscriber becomes or is threatened to be the subject of bankruptcy, winding up or receivership proceedings; iii) the Subscriber permits outstanding Charges to exceed the credit limit established from time to time by HKBN; iv) the Subscriber is in breach of any terms of this Agreement; v) HKBN suspects fraud or misuse of the Services or any unauthorized activity in relation to the use of the Services by any

- person, regardless of whether the Subscriber consented to or had knowledge of such fraud, misuse of unauthorized activity; vi) HKBN is prohibited from providing the Services under any applicable law or regulation; or vii) any of the information provided by the Subscriber to HKBN in applying for the Services is found to be false, inaccurate or misleading.
25. Without limiting the exclusions or limitations of liability herein, HKBN shall not be liable to the Subscriber nor to any third party for any loss or damages whatsoever resulting from or in connection with termination of this Agreement under clause 24.
  26. If the Agreement is terminated howsoever before the Minimum Commitment Period has expired, the Subscriber shall pay HKBN the Cancellation Charge upon termination.
  27. Unless otherwise provided, both HKBN and the Subscriber may terminate this Agreement by giving 30 days prior written notice to the other.
  28. Upon the termination of this Agreement: i) all Charges for use of the Services up to and including the date of termination and all other amounts owing by the Subscriber to HKBN will become immediately due and payable; ii) the Subscriber shall cease to use the Equipment and Services; and iii) all licenses and other rights and privileges granted to the Subscriber including without limitation to any e-mail services shall be terminated immediately.
  29. Any termination 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 hereof which is expressly or by implications intended to come into or continue in force on or after such termination.
  30. This Agreement constitutes the entire agreement and understanding between the parties and supersedes all prior arrangements or understandings, whether oral or written, between the parties relating to the subject matter hereof.
  31. All personal data supplied to HKBN for the provision of the Services shall be subject to its Privacy Policy Statement as may be amended from time to time, a copy of which shall be available upon request.
  32. The Subscriber shall notify HKBN in writing of any changes of his personal data for the purpose of enabling HKBN to provide or continue to provide the Services to the Subscriber.
  33. HKBN reserves the right to vary, delete, modify or add to the terms of this Agreement and the tariff, amount of deposit, credit limit and the Services from time to time and such variation and/or addition shall

become effective when published or displayed or notified to the Subscriber in any manner as HKBN shall think appropriate, irrespective of whether the Subscriber has actual notice or knowledge thereof.

34. The Subscriber shall not assign or otherwise deal with its rights and obligations under this Agreement, whether in whole or in part without the written consent of HKBN.
35. HKBN may assign this Agreement or appoint any third party, including the Group Companies, to provide the Services to the Subscriber on its behalf or to perform any of HKBN's obligations under this Agreement.
36. If any provision of this Agreement is determined to be illegal, unenforceable or invalid in whole or in part for any reason, it shall be severed from this Agreement and shall not affect the enforceability of the remaining provisions of this Agreement.
37. No failure or delay on the part of HKBN to exercise any right, power or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise by HKBN of any right, power or remedy. The right, power and remedy provided herein are cumulative and are not exclusive of any right, power or remedy provided by law.
38. These Conditions shall be subject to the relevant Special Terms and Conditions and if there is any inconsistency between them, such Special Terms and Conditions shall prevail to the extent of such inconsistency.
39. Any provisions of this Agreement which by its nature extend beyond termination shall survive such termination.
40. In the course of providing the Services, HKBN may need to record verbal instructions received from the Subscriber and/or any verbal communication between the Subscriber and HKBN in relation to the Services.
41. This Agreement shall be construed in accordance with the laws of Hong Kong.
42. In the event of any discrepancy between the English and Chinese version of this Agreement, the English version shall prevail. In case of dispute, HKBN reserves the right of final decision on the interpretation of this Agreement.