

GENERAL TERMS AND CONDITIONS

This document details the terms and conditions for the provision of the Services by the Company. Customer acknowledges and agrees to be bound by the following terms and conditions in relation to the provision of the Services by the Company.

1. DEFINITIONS

1.1 Unless the context says otherwise, the following words and expressions shall have the following meanings:

“Agreement” means the Application, the General Terms and Conditions herein and the Special Terms and Conditions (if any) as may be amended by the Company from time to time; if there is any inconsistency among Application, the General Terms and Condition and the Special Terms and Conditions, the Application shall prevail.

“Applicable Law” in relation to any party, action or thing means:

- a) any law, rule or regulation of the Territories or any country (or political subdivision of the country) which is applicable to a party;
- b) any obligation under any Licence held by a party in a Territory or any country (or political subdivision of the country);
- c) any lawful determination, decision, direction, guideline, statement or code of practice of a government agency in the Territories or any country (or political subdivision of the country) which is applicable to a party; or
- d) any applicable international convention or agreement.

“Application” means the valid written application form submitted by Customer to the Company requesting for the provision of Services.

“Company” means ComNet Telecom (HK) Limited, including its successors and assigns.

“Customer” means any person, firm or entity including any individual, corporation or unincorporated body who apply for or use any of the Services of the Company or to whom the Company has agreed to provide Services pursuant to the Application.

“Charges” means any applicable charges charged by the Company for the provision of Services, from time to time including, without limitation to, installation, removal or delivery charges, late charges and such other fees and charges payable by the Customer through using the Services in accordance with the Application as may be charged from time to time.

“Equipment” means the equipment (where applicable, which may be provided by the Company directly or not, and/or which may be installed at the Premises for

the use of the Services) to make available the Services to Customer.

“License”	means license or licenses issued by the Office of the Communications Authority to the Company for the provision of the relevant Services.
“Hong Kong”	means the Hong Kong Special Administrative Region of the People’s Republic of China.
“Premises”	Means any premises or place at which the Services are used from time to time.
“Services”	means the telecommunications services, including Equipment where applicable as shall be provided by the Company from time to time.
“Software”	unless otherwise specified, means any software supplied by the Company to Customer for the use or access to the Services.
“Special Terms and Conditions”	means specific terms and conditions (if any) as applicable to the relevant Services from time to time.
“Territories”	means Hong Kong and any other location where Services will be provided and/or received.
“Network”	means the public telecommunications networks and systems by which the Company makes the relevant Services available.

1.2 Heading are inserted for ease of reference only and do not affect the interpretation of the Agreement.

1.3 The masculine gender includes the feminine and neuter, and the singular number includes the plural, and vice versa.

2. PROVISION OF SERVICES

2.1 Subject to the terms and conditions contained herein, the Company will use its reasonable endeavours to provide the Services to Customer in accordance with Application. The Company will make reasonable efforts to start providing the Services on each date as requested by Customer, but shall not be liable to Customer or any third party should the Services fail to start on that date.

2.2 The Company will use due care and skill in providing the Service to Customer. Given the nature of telecommunication systems, the Company cannot promise that the Services will be continuous of fault free; or, the Equipment or device the Company provides will never be faulty.

2.3 The Company is not responsible for any acts or omissions arising from Customer's breach of the Agreement.

- 2.4 Customer acknowledges and agrees that the Company has the sole discretion to determine or vary, without notice to Customer, the means of providing the Services to Customer, including using different implementation method, technology, and route of delivery of the Services to Customer, as long as the agreed service levels is maintained.
- 2.5 The Company reserves the right to change the Service specification and conditions by posting the same on the websites as specified by the Company from time to time and such change shall take effect upon posting. In case of dispute, the Company's decision shall be final and binding.
- 2.6 Customer acknowledges and agrees that:
- (1) Customer must not use or allow the Services to be used for any purpose other than that from which he/she has subscribed;
 - (2) Customer must not use the Services in (a) any unlawful, fraudulent, improper, unauthorised, harassing, discriminatory, libelous, abusive, threatening, harmful, vulgar, obscene or otherwise objectionable manner; (b) a way to encourage conduct that could constitute a criminal offence, give rise to civil liability or otherwise violate any applicable law or regulation; (c) a way to infringe any third party's intellectual property rights; (d) a way that may be harmful or detrimental to the Company or its reputation; (e) a way that contravene any legal or regulatory requirements applicable to the Services or any instructions or guidelines as may be imposed by the Company from time to time for the use of the Services;
 - (3) when Customer provides information to the Company, the information must be complete, true and up-to-date in all respects;
 - (4) Customer must not, and must not attempt to, hack, break into, access or by other unauthorized means use, any part of the Services, data areas or servers for which Customer has not been authorized by the Company;
 - (5) Customer shall ensure that all equipment provided by itself, or on behalf of Customer, to be used in the Services, is technically compatible with the relevant Services and such equipment complies with and is used in accordance with all reasonable procedures and any Applicable Law;
 - (6) Customer will not alter, tamper, reverse engineer, repair or attempt to repair the Services, Equipment or cause, or allow, a third party to do any of these acts.
- 2.7 All requests for Services requiring installation of the Equipment at the Customer's Premises shall be subject to review and acceptance by the Company.

3. PAYMENT OF CHARGES

- 3.1 Customer agrees to pay the Company all Charges relating to the provision of the Services by the Company to Customer (including amounts billed by the Company for and on behalf of another

person) as may be specified by the Company from time to time. The Company may vary the Charges and introduce new Charges as it thinks fit at any time without notice.

- 3.2 Payment for Charges is due on the date specified in the invoice issued through any medium by the Company. All payments must be settled in Hong Kong dollars and by a method as described in the invoice.
- 3.3 Payment made by post, by electronic means or through Internet shall be at the risk of Customer. Customer's obligation to pay will not be discharged until the payment is received by the Company.
- 3.4 Enquiries or disputes concerning any invoice must be made to the Company on or before the payment due date stated in the invoice, however nothing in this clause relieves Customer from paying the invoice on or before the payment due date. If any Charge is not queried before the due date, then the invoice is deemed correct and accepted by Customer.
- 3.5 In the event of any dispute between the Company and Customer relating to any Charges billed by the Company, the books and records of the Company are conclusive evidence of all such Charges incurred by Customer.
- 3.6 Time is of the essence in this Agreement in respect of the obligations of Customer to pay money. If Customer fails to pay the Charges by the due date, the Company will be entitled to charge overdue amount to the Customer's credit account registered or otherwise with the Company or charge interest on all sums outstanding at the rate of 2% per month on a daily basis from the date the payment was due to the date full payment is received by the Company and charge Customer a collection agent fee and handling fee as the Company thinks fit.
- 3.7 Where Customer has more than one account with the Company, the Company may transfer any credit balance under any of the accounts to settle the outstanding Charges under any other account.
- 3.8 Customer will be liable for all Charges for the Services provided to Customer, whether or not used by Customer, or another person with or without Customer's knowledge or consent and irrespective of whether the transmission of the Services was successful.
- 3.9 The Company may apply a credit limit from time to time for Charges incurred by Customer and may suspend access to the Services, in whole or in part, if the limit is exceeded.

4. DEPOSIT

- 4.1 Customer agrees that the Company may, at any time, require Customer to provide a security deposit to the Company. The amount of any deposit will be solely determined by the Company. The Company reserves the right to increase the amount of the deposit from time to time.

- 4.2 Subject to clause 4.1, a deposit will only be refunded to Customer by the Company without interest after the termination of the Agreement and the settlement by Customer of all outstanding Charges payable or any claims brought by the Company in respect of a breach by Customer of any of the terms and conditions of the Agreement.
- 4.3 Customer acknowledges that any deposit paid by him or any Charges paid in advance is at his risk and in the event that the Company goes into liquidation, any deposit or prepayment may not be refunded or reimbursed to Customer. Customer's right to obtain a refund of any deposit or upfront payment will be subject to the relevant laws and regulations governing liquidation of companies in Hong Kong.

5. TERMINATION AND SUSPENSION

- 5.1 The Company may terminate the Agreement immediately or temporarily suspend the Services at any time without notice if:
- (1) any Charges or sums payable by Customer under the Agreement remain unpaid after becoming due;
 - (2) Customer dies or becomes insolvent or appears reasonably likely to become so;
 - (3) the Charges for the use of the Services exceed the credit limit set by the Company from time to time;
 - (4) the Company's credit checks reveal that Customer has a poor credit history;
 - (5) Customer commits a breach, or the Company reasonably believes that Customer is likely to commit a breach, of any of the terms and conditions of the Agreement;
 - (6) Customer or any other person uses the Services in contravention of clause 2.4(2) or for any illegal or improper purpose;
 - (7) any of the information provided by Customer to the Company is found to be false or misleading;
 - (8) any of the telecommunications or other licenses held by the Company or third party network provider are terminated, revoked, expired or not renewed;
 - (9) the Company reasonably believes that it is necessary to suspend the Services to:
 - (i) comply with an order, instruction, determination or direction of a government or regulatory authority or third party network provider;
 - (ii) carry out emergency or scheduled maintenance, repair or upgrading of the Services, any equipment, facility or any part of the Company's network or third party network provider;

- (iii) reduce or prevent fraud, interference with, damage to, or degradation of the Services;
 - (10) the Networks or the Equipments fail or require modification; or
 - (11) the Company or third party network provider ceases to provide any of the Services.
- 5.2 Termination or suspension of the Services shall not affect the Company's rights, or claims or other remedies available to the Company and suspension of the Services does not constitute a waiver of the Company's right to terminate this Agreement thereafter.
- 5.3 If Customer has maintained more than one account with the Company for receiving the Services from the Company and fails to pay any Charges by the payment due date for any of the account or Services, the Company may immediately suspend any Service in respect of any or all of the accounts.
- 5.4 Either the Company or Customer may at any time terminate the Agreement without cause by giving to the other party 7 days' prior written notice. If Customer notifies the Company in accordance with this clause 5.4, they must immediately pay the Company all amounts payable up to the date of termination.
- 5.5 Customer shall remain liable for all Charges during the period of suspension unless, in the Company's discretion, the Company decides otherwise.
- 5.6 Customer will remain liable for all Charges prior to such disconnection. The Company reserves the right to charge for reconnection and require revised terms and conditions including the terms of payment.

6. LIMITATION OF LIABILITY AND INDEMNITY

- 6.1 The Company does not guarantee the provision of continuous or fault-free Services. The Company makes no warranty or representations or statements in respect of, or accepts no responsibility for, the accuracy, timeliness, completeness or correctness of any Services so provided nor is any warranty or undertaking given that any traffic requested pursuant to the Services will be delivered to or received by Customer on time or at all.
- 6.2 Customer shall not hold the Company or any third party network provider responsible for any loss or damage whatsoever suffered or incurred by Customer or any other person using or accessing the Services, or as a result of using any such Services not having been received on time or at all.
- 6.3 The Services are provided "as is" with no warranties whatsoever. Save and except for any liability of the Company which cannot be excluded by law, all express or implied warranties, representations or statements relating to the subject matter of this Agreement which are not contained in this Agreement are excluded. The Company excludes all liability or responsibility for any cost, claim, damage or loss to Customer or to any person whether direct or indirect of any kind including

revenue, loss or profits or any consequential loss in contract, tort, under any statute or otherwise (including negligence) resulting from any interruption or failure of the Company's network or third party network provider or for any failure or delay or mistake in the provisioning of the Services or arising out of or in any way related to this Agreement (including any loss to Customer arising from a suspension of Services).

6.4 The aggregate liability of the Company to Customer under or in connection with this Agreement which is not excluded by clause 6.3, whether based on contract, tort (including negligence), statute, breach of warranty or any other legal or equitable ground is limited to:

- (1) the sum of the Charges paid by Customer in the 12 month period prior to the accrual of such liability;
- (2) the sum of the Charges paid by Customer for the period that this Agreement has been in force prior to the accrual of such liability, if the period is less than 12 months; or
- (3) HK\$100,000, whichever is the lower.

6.5 The Company will not be liable to Customer or any other person for any loss or damage resulting from a delay or failure to perform this Agreement either in whole or in part where such delay or failure is due to causes beyond the Company's reasonable control, or which is not occasioned by its fault or negligence, including acts or omissions of third parties (including telecommunications network operators and equipment suppliers), shortage of components, war, the threat of imminent war, riots or other acts of civil disobedience, insurrection, acts of God, restraints imposed by governments or any other supranational legal authority, industrial or trade disputes, the advent of the year 2000, fires, explosions, storms, floods, lightening, earthquakes and other natural calamities.

6.6 Customer indemnifies the Company from and against all claims, actions, proceedings or demands in respect of loss or damage of any kind (whether to person or property) incurred by the Company arising out of or in connection with a breach of this Agreement by Customer or relating to the use or attempted use by any person (including Customer) of the Services.

6.7 Nothing in this Agreement in any way excludes or restricts a party's liability for death or personal injury resulting from the negligence of that party.

6.8 Any claim by Customer against the Company arising out of the Agreement must be notified in writing to the Company within 3 months of the incident giving rise to such claim failing which Customer will be deemed to have waived the Customer's rights in respect of such claim.

7. SUPPLY AND USE OF PERSONAL DATA

Personal Data (Privacy) Policy listed in the following website (<https://www.comnet-telecom.com.hk/us/personal-privacy-statement>) forms part of this Agreement.

8. OWNERSHIP OF INTELLECTUAL PROPERTY AND RESTRICTIONS

- 8.1 Intellectual Property Rights. Customer acknowledges and agrees that the Services and its application or use contain confidential and propriety information and technology of the Company and/or its licensors and embody trade secrets and intellectual property of the Company and its licensors protected under any local copyright and other laws, and by international treaty provisions. Customer's rights in the Services and Application are limited to those license rights expressly granted under this Agreement, and the Company and/or its licensors retain all rights not expressly granted herein. Without limiting the foregoing, and with respect to the Service and Application, the Company and/or its licensors retain all right, title, and interest in to: (i) all software and firmware code (source and object), functionality, technology, system or network architecture, databases, tools, reports, user interfaces, URLs and domain names and all modifications thereto; (ii) all trademarks (including logos, slogans, trade names, service marks); (iii) all trade secrets, ideas, inventions, patents, copyrights and other intellectual property rights with respect thereto; (iv) all evaluations, comments, ideas and suggestions made by Customer, even if those are incorporated into subsequent versions; and (v) any modifications or derivative works developed from or to any of the foregoing, specifically including any customizations, modifications or alterations to the Services for Customer's use (collectively "Intellectual Property Rights"). Customer agrees to treat, protect and maintain the Intellectual Property Rights as strictly confidential and shall not disclose the Intellectual Property Rights to any third party. Further, no right, title or interest to any trademarks, service marks or trade names of the Company is granted by these terms and conditions. In no event shall Customer alter or remove any copyright notice, trademark notice, and/or proprietary legend set forth on or contained within the Services. The Company's licensors are intended third party beneficiaries of the provisions of these terms and conditions relating to the licensor intellectual property that has been incorporated into the Services.
- 8.2 Restrictions on Use. Customer agrees not to modify, alter or create derivative works based upon all or part of the Intellectual Property Rights and, to the maximum extent permitted by law, agree not to reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Intellectual Property Rights. Customer agrees not to use the Intellectual Property Rights for any purpose other than as provided herein, or to exceed the capacity of any seat, server or similar volume or usage restrictions. Customer agrees not to make any copies of any software comprising any portion of the Intellectual Property Rights, except that where any software is furnished to Customer via a disk or similar media or made available for download, Customer may retain a single copy only for disaster recovery or archival purposes. Customer shall not resell, rent, lease, distribute, host as a service, make available for timesharing, provide on a service bureau basis or otherwise make available for the benefit of third parties (whether for a fee or otherwise) the Service or any Intellectual Property Rights, in whole or in part. Customer shall notify its employees and agents who may have access to the Services of the restrictions contained in this Agreement and shall ensure their compliance with these restrictions.

9. **GENERAL**

- 9.1 Unless otherwise specified herein, the Company reserves the rights to vary any of the terms and conditions of this Agreement from time to time without notice. In addition, the provision of the Services pursuant to this Agreement by the Company are subject to the Applicable Laws, regulations, government policies or rules of any competent jurisdictions, including Hong Kong. Notwithstanding anything contained herein, in case of any change of the said laws, regulations, government policies or rules, the Company shall be entitled to vary any terms and conditions of this Agreement without notice in order to comply with the same.
- 9.2 The Company shall be entitled to assign or otherwise dispose of any of its rights or obligations under this Agreement to any other party without the prior written consent of Customer. Customer must not assign or otherwise dispose of any of its rights or obligations under this Agreement to any other party without the prior written consent of the Company.
- 9.3 This Agreement will be governed by and construed in accordance with the laws of Hong Kong and the parties must submit to the non-exclusive jurisdiction of the courts of Hong Kong Special Administrative Region, in the event of a dispute.
- 9.4 The parties are and shall be independent contractors, and nothing herein shall be deemed to cause this Agreement to create an agency, partnership, employment relationship or joint venture between the parties.
- 9.5 Neither a failure or delay to, nor a single or partial, exercise of any right, power or remedy under this Agreement, by either party will operate as a waiver. Unless expressly stated, the rights, powers and remedies provided under this Agreement are cumulative and are not exclusive of any rights, powers or remedies by law.
- 9.6 If any part or any provision of this Agreement is or becomes invalid, illegal or unenforceable, that part or provision shall be ineffective to the extent of such invalidity, illegality or unenforceability only, without in any way affecting the validity, legality or enforceability of the remaining parts of the said provision or the remaining provisions of this Agreement.
- 9.7 Save for the Company group companies, no other person who is not a party to this Agreement has any right under the Contracts (Rights of Third Parties) Ordinance to enforce any terms and conditions and/or benefit of this Agreement.
- 9.8 This Agreement supersedes all prior agreements, arrangements and undertakings between the Parties and constitutes the entire understanding and agreement between the parties relating to the subject matter.