

Tariff No.: U025-004

Published on 26 October 2010

Unified Carrier Licence
Telecommunications Ordinance (Chapter 106)

Hong Kong Telecommunications (HKT) Limited (the 'Company')

Name of Tariff:

Special Conditions of Business Broadband Services

Description of Tariff:

See Annex A.

Effective date of tariff:

26 October 2010

Revision history:

Revision to the Special Conditions of Business Broadband Services published in F050-0049 on 1 April 2010

SPECIAL CONDITIONS (“SPECIAL CONDITIONS”) FOR BUSINESS NETVIGATOR SERVICE (“BNS”)

The Special Conditions for the **BNS** are additional to the General Conditions of Services of Hong Kong Telecommunications (HKT) Limited (“**General Conditions**”) posted at <http://www.pccw.com>. Any capitalised terms not defined in the Special Conditions will have the meaning given to it in the General Conditions.

1. The Company’s responsibilities

- 1.1 The Company will provide the Customer the **BNS** pursuant to the Special Conditions and is entitled to:
- (i) deactivate the **BNS** at any time without notice to carry out system maintenance, upgrading, testing and/or repairs;
 - (ii) limit or suspend the Customer’s access to the **BNS** without notice where the Company is of the opinion that such action is appropriate as a result of the Customer’s use of the **BNS**;
 - (iii) without limiting the generality of sub-clause (ii) above, suspend and/or terminate the **BNS** without notice to the Customer where the Company is of the opinion that the **BNS** is used for spamming activities or sending commercial electronic messages not in accordance with the applicable laws;
 - (iv) expand, reduce, replace and/or modify any of the **BNS** or services (which may be accessed through the **BNS** or supplied by the Company together with the **BNS**) (in whole or in part), or any Content; and
 - (v) amend the amount of any fees, introduce new fees and/or amend the terms and conditions of the Agreement, and/or amend any operating rules which govern the Customer’s use of the **BNS** by:
 - (a) posting the details of such amendments on www.biz.netvigator.com; and/or
 - (b) sending the Customer a notification of such amendments via post or such other means as determined by the Company,
 such amendments to take effect 7 days after any such posting on www.biz.netvigator.com is made and/or on the date as specified in such notification.

2. The Customer’s responsibilities

- 2.1 The Customer will:
- (i) be responsible for the use of the **BNS** by any Network User;
 - (ii) not copy, distribute, publish, transmit or otherwise exploit any Content unless the Customer owns that Content or possess an appropriate licence;
 - (iii) not use or permit any Network User to use the **BNS** to publish, distribute, transmit or initiate to transmit, circulate, send, cause to be sent or attempt to send any unsolicited information, message or content (whether they are for advertising or promotional purpose or otherwise) or any commercial electronic messages without the consent of the recipient or otherwise not in accordance with the applicable laws and regulations 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 the **BNS**, the Content and/or any Storage Space on the Company’s server(s) for which the Customer has not been authorised by the Company;
 - (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 the Customer has not been authorised; and
 - (vi) not store or upload any kind of tools, software, address-harvesting software, harvested-address lists or materials in any Storage Space assigned by the Company to the Customer in the Company’s server(s) that can be used, in the Company’s sole opinion, for hacking or any other illegal, fraudulent, deceptive or improper purpose;
 - (vii) ensure that each of the Network Users comply with the Special Conditions;
 - (viii) abide by all relevant laws and regulations of Hong Kong as amended from time to time, when using the **BNS**;
 - (ix) subject to any other terms contained in the Agreement, not assign, transfer or sub-license all or any part of the Customer’s rights or obligations under the Special Conditions;
 - (x) in relation to any Content which the Customer uploads to the **BNS**, be deemed to have granted to the Company an irrevocable perpetual licence to copy, distribute, publish and transmit such Content as is necessary for the operation of the **BNS**, without charge, unless agreed otherwise between the Customer and the Company;

- (xi) not to resell, or license any of the **BNS** to a third or an unspecified party without prior written approval from the Company; and
- (xii) be liable to pay for any damage or loss of Network Equipment provided as listed in the URL <http://www.biz.netvigator.com> to facilitate the use of the **BNS**.

2.2 The Customer agrees and acknowledges that:

- (i) no unused 'free usage hours' of access time (where applicable) may be carried forward to the following month; and
- (ii) except for the Content which is supplied by the Company, it is not the Company's policy to exercise any editorial control over or to edit or amend any Content before it is transmitted or made available through the **BNS**.

2.3 Notwithstanding anything contained in clause 2.2 above, the Customer hereby authorises the Company to amend or delete any Content which is uploaded or otherwise provided by the Customer where any such Content is, in the Company's sole opinion, defamatory, in breach of copyright, illegal or otherwise not appropriate to be accessed by or through using the **BNS**.

2.4 The Customer agrees to indemnify the Company against any action, liability, cost, claim, loss, damage, proceeding, and/or expense suffered or incurred by the Company arising from or which is related to:-

- (i) any Network Users' use of the **BNS**; and
- (ii) any breach or non-observance of any term of the Agreement by any Network Users.

2.5 The Customer acknowledges and agrees that the Company is entitled to check the Customer's Storage Space as assigned by the Company to the Customer in the Company's server(s) if required to do so by law or if in good faith the Company reasonably believes that such checking is necessary to:

- (i) enforce the terms of the Agreement;
- (ii) respond to claim(s) by third parties that any Network User's use of the **BNS** violates the rights of third parties, is illegal or improper; or
- (iii) protect the rights, property or safety of the **BNS**, its users, other websites and the public.

2.6 (If applicable) the **BNS** is provided at the installation address specified in the Application, where there are sufficient service coverage and necessary resources available. Such coverage of service and availability of resources shall be solely determined by the Company. Should the Customer during the Commitment Period (as specified in the Application) request the Company to re-locate the **BNS** to a location where neither service coverage nor necessary resources are available for provisioning of the **BNS**:

- (i) the Customer's relocation request shall constitute a breach of the Special Conditions;
- (ii) the Company shall have no obligations to comply with the Customer's relocation request; and
- (iii) the **BNS** shall be deemed to be early terminated by the Customer and the Customer shall be subject to the liabilities under clause 9.4 of the Special Conditions without prejudice to the Company's other rights.

2.7 The Customer shall assess the suitability of the **BNS** and its associated software for the Customer's own computer system and network. The Customer acknowledges that it has not relied on the Company and the Company shall not be liable in respect of such assessment by the Customer.

2.8 (Where applicable) in relation to any login account(s) (login ID and password) and access rights to the **BNS** provided by the Company, the Customer shall use the login account(s) properly and keep the account(s) confidential. The Customer shall be solely responsible and remain liable for all losses, damages, claims, costs and expenses arising from any improper use, abuse or improper disclosure of the account(s).

3. Charges and Payment

3.1 We will send the Customer an invoice every month with a list of all Charges (including but not limited to fees for the Equipment specified in the delivery note, Installation Fees, monthly fees, Software licence fees, Rental, storage, usage connectivity, PNETS charges and any other relevant fees and charges current from time to time) which relate to the use of the **BNS** by any Network Users and/or any Content. The Company may provide the Customer with an extra copy of the invoice if the Customer pay the additional handling charge set out in the relevant Application.

- 3.2 The Customer agrees to pay the full amount of such invoice by the payment method selected by the Customer on the Application, such payment to be made before the due date for payment as specified on the invoice.
- 3.3 If the Customer elects to pay by credit card(s) or auto-payment, the Customer hereby authorises the Company to (as the case may be) auto-debit, charge the Customer's credit or charge (credit) 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 the Customer is not the cardholder, the Customer hereby agrees to procure such authorisation from the cardholder).
- 3.4 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 the **BNS** is terminated, unavailable or suspended.
- 3.5 If the Customer has not paid any invoice by the due date, we reserve the right to:-
- (i) charge interest on any outstanding amount in accordance with clause 4.6 of the General Conditions until the invoice has been paid in full;
 - (ii) charge a handling fee, collection agency fee, reconnection fee and/or require a security deposit;
 - (iii) withhold providing the **BNS** until full payment of the Charges and notwithstanding the suspension of the **BNS**, the Customer is still liable to pay the monthly subscription fee, Software licence, storage, Content, PNETS charges and any other relevant fees and charges current from time to time for the service suspension period until the date of the termination of the **BNS** or the resumption of the **BNS** (as the case may be); and
 - (iv) transfer any amount that is owing to the Customer or due from the Customer under any of the Customer's accounts, if the Customer has more than one account with the Company, so as to settle any outstanding amount due to the Company under any of the Customer's accounts whether they have been terminated or suspended.

4. Software Licence

- 4.1 The Company hereby grants to the Customer a non-exclusive and non-transferable licence for the Customer to store, run and use the Software on the Customer's computer for the purpose of enabling the Customer to reconfigure the Customer's Computer Equipment in accordance with clause 5 of the Special Conditions and otherwise in accordance with the terms and conditions of the Agreement and the licence which accompanies the Software but not further. Except to the extent permitted by law, the Customer 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. Equipment

- 5.1 The Customer agrees:
- (i) that the provision of access to the **BNS** is subject to the reconfiguration of the Customer Equipment and the installation of the relevant Equipment and Software;
 - (ii) to authorise the Company or the Company's authorised agents to reconfigure the Customer Equipment to allow access to the **BNS** and install the relevant Equipment and Software;
 - (iii) that it will be the Customer's responsibility prior to installation or (re-)configuration of the Equipment or Software in this clause 5 to back up data on the Customer Equipment and inform the Company if any configuration or installation by the Company is likely to invalidate any support arrangements or other functions of the Customer Equipment;
 - (iv) that the Company reserves the right not to reconfigure the Customer Equipment or install the related Equipment or Software as the Company deems appropriate and at the Company's discretion;
 - (v) that the Customer will not use any other equipment in place of the Equipment supplied to the Customer under the Agreement to gain access to the **BNS** without the Company's prior written consent;
 - (vi) that we will not be liable for any loss or damage (including loss of data, profits, goodwill, bargain, opportunity or anticipated savings) suffered by the Customer or any other person arising directly

- and/or indirectly from the Company's configuration or installation activities (which includes removal and installation of Equipment and /or Software) under this clause 5; and
- (vii) it is the Customer's responsibility to install Software and reconfigure the Customer Equipment to gain access to the **BNS**.

5.2 The Customer further warrants that the Customer owns the Customer Equipment on which the Company conducts configuration and installation activities pursuant to clause 5.1 of the Special Conditions. If the Customer does not own the Customer Equipment the Customer agrees to obtain the consent of the relevant owner of the Customer Equipment before the Company will carry out any such activities. The configuration and installation activities pursuant to this clause 5 and the provision of the **BNS** under the Special Conditions are both subject to the capability of the Customer Equipment to gain access to the **BNS**.

6. Equipment Warranty

6.1 The Customer agrees that:

- (i) with respect to any Equipment , upon termination of the **BNS** the Customer will make such Equipment available for removal or return it to the Company in the same condition as originally installed, fair wear and tear excepted or the Customer shall indemnify the Company for all charges for restoration of such Equipment to such condition. If the Customer does not return such Equipment or make it available for removal by the Company, the Customer shall be liable for its then current market value. The title of such Equipment will remain with the Company. The Customer will, however be liable for repair charges or the replacement cost of such Equipment if it is damaged or lost due to any Network User's acts, omissions, theft, negligence, intentional acts, or any other cases. The Customer shall not part with possession or control of such Equipment and the Customer will not permit anyone other than the Company to carry out any repairs or maintenance to such Equipment. If any such Equipment which proves to be defective under normal use due to defective materials, design and/or workmanship, the Company shall, at the Company's option, either repair or replace the same or the defect part(s) thereof;
- (ii) with respect to any Equipment or Software, unless otherwise agreed by the Company, no warranty will be given by the Company whatsoever or by any other party save and except the warranty (if any) given by manufacturer(s) or vendor(s) of the Equipment or Software concerned;
- (iii) this warranty does not include labour costs (except the Company's standard installation costs) nor any on-site maintenance;
- (iv) for the avoidance of doubt, this warranty does not apply to the Access Kit (where applicable) to facilitate the use of BNS; and
- (v) this warranty does not survive termination of the **BNS**.

6.2 The Customer shall indemnify and hold the Company harmless from and against any and all claims, actions, demands, costs, damages, liabilities, losses and expenses that may be caused or suffered by the Company or its Affiliate when the Equipment is in the Customer's control custody or possession.

7. General Warranties & Liability

7.1 To the extent permitted by law, the Company disclaims any representation or warranty whether express or implied as to the title, fitness for a particular purpose, merchantability, accuracy or standard of quality of the **BNS**, the Software, the Equipment and/or any Content, that the **BNS** will be uninterrupted or error free, any obligation to maintain the confidentiality of information (although the Company's current practice is to maintain such confidentiality), the results to be obtained from use of the **BNS** and/or any Content unless otherwise specifically mentioned in the Special Conditions.

7.2 The Customer agrees that the Company's liability under the Special Conditions shall in any event not exceed the total Charges paid by the Customer to the Company for the immediately preceding twelve months prior to any incident giving rise to a claim. In the absence of the Company's negligence or deliberate act, and to the extent permitted by law, the Company expressly disclaims any liability for:

- (i) any damage to or loss of data suffered by the Customer arising from use of the **BNS**, the Software, the Equipment and/or any Content by any Network Users;
- (ii) any claim based in contract, tort, or otherwise for any indirect, special, economic, collateral, incidental, consequential or punitive loss or damage, suffered, sustained or incurred by the Customer or any person arising out of or relating to use of or inability to use the **BNS**, the

Software, the Equipment, any Content, IP Address and/or Domain Name by any Network Users. For the purposes of the Special Conditions, indirect or consequential loss or damage includes, without limitation, loss of revenue, profit, anticipated savings, customers or business, loss, corruption or damage to data, voice or other information, loss of goodwill, loss of bargain, loss of opportunities, loss of use or value of any equipment and software, any third party claims, and, all associated and incidental costs and expenses;

- (iii) any claim relating to any Content or services supplied, provided, sold or made available by or through the **BNS** (or any failure or delay to so supply, provide, sell or make available);
- (iv) any injury, disease, seizure or loss of consciousness suffered by the Customer or any person who gains access to the **BNS**, arising whether directly or indirectly from accessing and using the **BNS**, any associated services or playing any computer games through the **BNS**; and
- (v) any withdrawal, disruption, suspension or termination of the **BNS**, IP Address and/or Domain Name or any part thereof which is attributable to an event or circumstance beyond the Company's reasonable control. Under all circumstances, the Customer agrees and acknowledges that the Company shall not be subject to any liability or responsibility for any costs, actions, claims, proceedings, demands, damages, liabilities, losses and expenses caused to the Customer or any third party in relation to any of the Equipment and/or Software resulting from any reason or cause whatsoever.

8. IP Address and Domain Name

- 8.1 This clause 8 is applicable to **the BNS** subscription with an Internet Protocol Address ("**IP Address**") and/or a domain name(s) ("**Domain Name**"). Any IP Address that is assigned to the Customer for the Customer's use by the Company under the Agreement is neither owned by the Customer nor by the Company. Such IP Address is allocated to the Company by regional registries so that the Company can assign the same to the Company's customers for their use only and the Company's customers shall have no other rights or any title thereto. Any Domain Name that is assigned to the Customer for the Customer's use by the Company under the Agreement is not owned by the Customer and may or may not be owned by the Company and the Customer shall have no other rights or any title thereto.
- 8.2 The Customer agrees that the Company shall have the right in its sole discretion to suspend or withdraw from any further use of any such IP Address and/or (where applicable) Domain Name or take necessary actions at any time with or without notice to the Customer, and without liability or compensation to the Customer or any person or entity whatsoever and the Customer shall have no claim whatsoever against the Company if the Company is of the opinion that such IP Address and/or Domain Name belongs to a third party or infringes a third party's rights or is in contravention of any applicable law.
- 8.3 Upon withdrawal or suspension of any use of IP Address and/or Domain Name, or termination of the **BNS** or the Agreement the Customer shall:-
- (i) stop using such IP Address and/or Domain Name immediately;
 - (ii) remove such IP Address set up from the relevant Customer Equipment; and
 - (iii) withdraw from any further use of such IP Address and/or (where applicable) Domain Name whatsoever.
- 8.4 If the Customer uses or continues using any of such IP Address and/or Domain Name after we have exercised the Company's right to suspend or withdraw such IP Address and/or (where applicable) Domain Name or upon termination of the **BNS** or the Agreement, the Customer shall keep the Company fully indemnified as to any costs, actions, claims, proceedings, demands, damages, liabilities, losses and expenses that may be caused to or suffered by the Company or its Affiliates as a result thereof.

9. Term and Termination

- 9.1 The Term Plan of the **BNS** shall be for the period specified as the "Commitment Period" in the Application unless earlier terminated in accordance with the Agreement. Upon expiry of the Commitment Period, the Agreement shall be renewed or extended in accordance with the Application and the General Conditions.

- 9.2 The Company is entitled to terminate the **BNS** at anytime on the giving of at least one calendar month's notice to the Customer or immediately by notice to the Customer if the Customer breaches any term of the Agreement.
- 9.3 Subject to clause 9.4 below, the Customer may terminate the **BNS** or any associated services at any time by giving at least one calendar month prior written notice to the Company.
- 9.4 If the **BNS** or any associated service is terminated by the Company as a result of the Customer's breach of the Agreement or if the **BNS** or any associated service is terminated by the Customer before the expiry of the Commitment Period, the Customer shall pay to the Company immediately upon demand, all accrued charges, the early Cancellation Charge being the total monthly charges (at the then prevailing tariff) for access to the **BNS** payable from the date of early termination to the date of the expiry of such Commitment Period and any other sum payable in such event as specified in the Application. The Customer acknowledges that the early Cancellation Charge payable by the Customer represents a genuine pre-estimate of the loss that the Company will suffer arising from the provision of resources and staffing and is not a penalty. Such payment is without prejudice to any other rights and remedies that the Company may have against the Customer by reason of the early termination.
- 9.5 If in the Company's reasonable opinion, the capability of the Customer Equipment or the implementation environment with regard to the Equipment or Software installation is not suitable for gaining access to the **BNS** or the Customer Equipment is incompatible with the Network, the Company is entitled to terminate the **BNS** and the associated services with immediate effect by giving written notice to the Customer without any liability.

10. Effect of Termination

- 10.1 Upon the date of termination of the **BNS**:
- (i) all licences, rights and privileges granted to the Customer under the terms of the Special Conditions shall cease; and
 - (ii) the Customer will not be entitled to a refund of any Fees unless:
 - (a) there is a credit balance of at least HK\$30.00 in the Customer's account, and
 - (b) such credit balance represents a pre-payment of a monthly subscription fee made by the Customer.
- 10.2 Any termination of the **BNS** 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 the Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.

11. General

- 11.1 The English version of the Special Conditions shall prevail over any Chinese version which is provided for information purposes only.
- 11.2 If any term or condition of the Special Conditions becomes or is declared illegal, invalid or unenforceable for any reason, such term or condition shall be divisible from the Special Conditions and shall be deemed to be deleted from the Special Conditions.
- 11.3 The Special Conditions shall be governed by the laws of Hong Kong and the parties hereby submit to the exclusive jurisdiction of the courts of Hong Kong.

12. Definitions

In the Special Conditions:

“**Application**” means the Application for the **BNS**.

“**Access Kit**” means the software tool contained in a CD and is provided to the Customer for using the **BNS**.

“**Content**” means 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 the **BNS** or other service provider(s) or via any other means.

“**Customer Equipment**” means all hardware and consumables owned by the Customer or licensed or leased to the Customer by a third party, including but not limited the router, personal computer, hub or switch and other equipment used in relation to a service.

“**Installation Fees**” means the installations fees of the **BNS** as specified in the Application.

“**Network User(s)**” means the Customer, any of the Customer’s employees, contractors, agents or any other persons who use the **BNS** (whether or not authorized) on the network which is the subject of the Special Conditions.

“**PNET**” means Public Non-Exclusive Telecommunications Service.

“**Software**” means the software provided by the Company to the Customer in relation to the **BNS** or any associated services provided under the Agreement.

“**Storage Space**” means the computer data storage or memory, which includes computer components, devices, and recording media.