

Cyberport Broadband Terms and Conditions

1. Our responsibilities

"We" and "us" means Hong Kong Cyberport Management Company Limited. We will offer you (the Subscriber) to access CYBERPORT BROADBAND. You should note that we may (i) deactivate CYBERPORT BROADBAND at any time without notice to carry out system maintenance, upgrading, testing and/or repairs; (ii) limit or suspend your access to CYBERPORT BROADBAND without notice where we are of the opinion that such action is appropriate as a result of your use of CYBERPORT BROADBAND; (iii) expand, reduce and/or modify any of the Services (being any of the services which may be accessed through CYBERPORT BROADBAND, or any 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 CYBERPORT BROADBAND; 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 CYBERPORT BROADBAND by posting the details of such amendments on <http://bel-air.cyberport.hk>, such amendments to take effect 7 days after any such posting is made.

2. Your responsibilities

You or any Designated User will (i) have authority in accessing CYBERPORT BROADBAND, 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 license; (iii) not use CYBERPORT BROADBAND 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 info, access, use or attempt to hack, break into, access or use any part of CYBERPORT BROADBAND its Content and/or any data areas on our server(s) for which you have not been authorized 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 authorized; (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 CYBERPORT BROADBAND; (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 CYBERPORT BROADBAND, be deemed to have granted to us an irrevocable perpetual license to copy, distribute, publish and transmit such Content as is necessary for the operation of CYBERPORT BROADBAND, without charge, unless agreed otherwise between you and us.

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 CYBERPORT BROADBAND. However, you hereby authorize 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 CYBERPORT BROADBAND.

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 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 CYBERPORT BROADBAND to you. You agree that we may use the Personal Data for any and all of the following purposes: (a) the provision of CYBERPORT BROADBAND 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 CYBERPORT BROADBAND 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 CYBERPORT BROADBAND; (c) marketing of goods and/or services by us, our agents, Affiliates or subsidiaries, in relation to CYBERPORT BROADBAND or the Services provided by our Affiliates; (d) improving of goods and/or services in relation to the provision of CYBERPORT BROADBAND or the provision of Services by our Affiliates; (e) processing of any benefits arising out of or in connection with CYBERPORT BROADBAND; (f) enabling us to comply with our obligations to interconnect or other industry practices; (g) keeping you informed of other services we provide; (h) prevention or detection of crime; (i) disclosure as required by law; and (j) 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, security agencies, 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 CYBERPORT BROADBAND to you. On our request, you shall provide us with information relating to you and your use of CYBERPORT BROADBAND 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 license us and our authorized 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.

3. Payment

We will send you an invoice every month with a list of all Fees (being fees for Hardware (i.e. that hardware specified on the Application Form which is supplied to you to access CYBERPORT BROADBAND) purchase, Software (i.e. that software which is supplied to you to access CYBERPORT BROADBAND) license, installation, monthly subscription, Content charges and any other relevant fees and charges current from time to time) which relate to your use of CYBERPORT BROADBAND, 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 CYBERPORT BROADBAND, the Services and the Charges payable by you. 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 authorize 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. Any disputes regarding an invoice must be raised within 30 days of the date of the invoice notwithstanding. Please note that no credit or refund is available in respect of any time when CYBERPORT BROADBAND 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, reconnection fee and/or require a security deposit if your access to CYBERPORT BROADBAND 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. Hardware and Connection

You agree (i) that the provision of access to CYBERPORT BROADBAND is subject to the reconfiguration of your personal computer and the installation of the relevant Hardware and Software; (ii) to authorize us or our authorized agents to reconfigure your personal computer to allow access to CYBERPORT BROADBAND and install the relevant Hardware and Software by signing a separate CYBERPORT BROADBAND Hardware and Software Installation Authorization letter; (iii) that it will be your responsibility prior to installation or configuration of Hardware or Software in this clause 4 to back up data on your personal computer and inform us if any configuration or installation by us is likely to invalidate any support arrangements or other functions of your personal computer; (iv) to authorize us or our authorized agents to disable any Local Area Network (LAN) card installed in your personal computer in order to access CYBERPORT BROADBAND and/or install the Hardware and/or Software (which includes the removal of any defective network interface card (being the computer interface card, including but not limited to ATM25 card or Ethernet card we provide for you) and installation of a replacement network interface card); (v) that we reserve the right not to reconfigure your personal computer or install the related Hardware or Software as we deem appropriate and at our discretion; (vi) that only one single standalone connection port will be set up by us to CYBERPORT BROADBAND; (vii) not to share or connect the connection to CYBERPORT BROADBAND with any other personal computer and any device unless such sharing or connection is expressly authorized or provided by us, and in any case, not to share or connect the connection to CYBERPORT BROADBAND to a LAN, server or any other network of any form; (viii) that you will not use any other hardware in place of the Hardware supplied to you under this Agreement to access CYBERPORT BROADBAND without our written consent; (ix) that we will not be liable for any loss or damage (including loss of data) suffered by you or any other person arising directly or indirectly from our configuration or installation activities (which includes installation of a replacement network interface card) under this clause 4.

You warrant that you own the personal computer on which we conduct configuration and installation activities pursuant to this clause 4. If you do not own the personal computer you agree to obtain the consent of the relevant owner of the personal computer before we will carry out any such activities.

The configuration and installation activities pursuant to this clause 4 and the provision of Services under this Agreement are both subject to your personal computer meeting Basic Requirement for configuration as specified on the Application Form.

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 CYBERPORT BROADBAND, the Software, the Hardware, the Services and/or any Content, that CYBERPORT BROADBAND 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 CYBERPORT BROADBAND, 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.

In the absence of our negligence or deliberate act, we expressly disclaim any liability for (i) any damage to or loss of data suffered by you arising from your use of CYBERPORT BROADBAND, the Software, the Hardware, the Service 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 CYBERPORT BROADBAND (or any failure or delay to so supply, provide, sell or make available); (iv) any disruption or suspension of CYBERPORT BROADBAND or any part thereof which is attributable to an event or circumstance beyond our reasonable control.

6. The use of Service

(i) Subscriber shall be responsible for all Charges for the provision of the Service by CYBERPORT BROADBAND unless the Service is terminated in accordance with the terms herein. (ii) Unless otherwise provided, Subscriber agrees to subscribe the Service for a minimum period as stipulated by CYBERPORT BROADBAND in the relevant subscription form or any other documents ("Minimum Contract Period"). If the Service is terminated for whatever reason during the Minimum Contract Period, Subscriber shall pay a liquidated damages HK\$1,000 or monthly service fee for the remainder of the Minimum Contract Period (whichever is higher) to CYBERPORT BROADBAND.

7. 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 written notice to us. This Agreement is automatically terminated if (i) you do not sign the Hardware and Software installation authorization letter in accordance with clause 4; or (ii) the installation of the Hardware or Software does not occur for any reason.

8. Effect of Termination

Upon the date of termination of this Agreement all licenses, right and privileges granted to you under the terms of this Agreement shall cease. 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.

9. 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 (if any) 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.

Special Terms and Conditions of Broadband Access Terminal Service ("the Service"):

1. You acknowledge the SMATV service will only be made available on television with the use of a Set Top Box and/or other accessing devices as may be designated by us. If you select to use the SMATV service with a Set Top Box, you agree to be bound by these Special Terms and Conditions.
2. These Special Terms and Conditions shall be subject to the Cyberport Broadband Terms and Conditions.
3. The Broadband Access Terminal and the accessory equipment thereof shall be collectively referred to as "the Equipment".
4. You shall pay the Rental Charges, Deposit and the other charges as applicable from time to time for the use of the Equipment. Unless the Equipment is sold by us to you, the Equipment shall at all times remain our property.
5. The rental of the Equipment shall be terminated upon the termination of the Service and/or CYBERPORT BROADBAND. We reserve the right to terminate the rental of the Equipment to you at any time and for whatever reasons.
6. Should you re-install the Service after termination of the same, we will charge an installation fee of HK\$1,500 or any other amount as we shall deem appropriate from time to time.
7. For any on-site service or on-site maintenance service beyond normal maintenance carried out by us in relation to the Equipment and/or the Service herein, we will charge a service fee of HK\$500 or any other amount as we shall deem appropriate from time to time.
8. You shall return the Equipment to us in good working conditions upon termination of the Service. We may impose additional charges if any Equipment are not returned to us upon termination of the Service or in case of any loss of or damage to the Equipment or any part thereof. We will either debit such amount directly from the credit card account registered by you with us (if applicable) or treat it as a debt payable by you without further notice. Should you request us to perform on-site service at the Premises for collecting the Equipment, we will try to make the arrangement within 2 weeks upon receipt of your written notice and will charge you for HK\$500 per visit.
9. We shall provide basic installation by connecting the Broadband Access Terminal with your television only but not otherwise.
10. You must not open up or tamper with the Equipment or use it for anything we do not in writing authorize. You are responsible for any damage to the Equipment while they are in your custody.
11. The Equipment must be used only at the service address at which they are installed by us. The Broadband Access Terminal must not be connected to more than one television receiver or to any other equipment. You must not use the Equipment in a hotel, pub, club, office, retail premises or similar premises. A relocation fee will be charged for any use of the Equipment away from the original service address. You acknowledge any request to relocate the service address outside our network coverage shall be deemed to be a termination of the Service requested by you.
12. Relocation of wall plate shall be subject to a surcharge in accordance with the applicable fees from time to time.
13. If the Equipment is lost, stolen or damaged, you must inform us immediately. We may charge you the cost of replacing such lost, stolen or damaged Equipment.
14. We will not be liable to you for: i) any fault in other equipment you use; ii) any fault in the Equipment whether or not caused by your tampering with it, your negligence or failure to follow our instructions; and iii) your use of Equipment with any decoding apparatus we do not authorize.
15. To the extent permitted by law, we and third party supplier/service provider shall not be liable whether or not in contract, tort, statute or otherwise for any cost, claim, special, direct, indirect or consequential loss or damage suffered, sustained or incurred by you or any person from or out of or relating to the Service and/or the Equipment.
16. You shall comply with all directions as may be given by us from time to time in relation to the settings or configuration of any apparatus in the Premises or any other place under your control or take such other action as necessary to eliminate any interference, impediment or impairment to the Service or the network.
17. You shall not permit or cause the Equipment to be repaired, serviced or otherwise attended to except by an authorized representative or agent of us.
18. You shall permit us or our agent to inspect, test and maintain the Equipment at all reasonable times and on reasonable notice.
19. We may assign any IP address to you for the Service as we shall deem appropriate from time to time.