

Tariff No.: U003-011

Published on 13 February 2012

UNIFIED CARRIER LICENCE
TELECOMMUNICATIONS ORDINANCE (CHAPTER 106)

Hong Kong Telecommunications (HKT) Limited

Name of Tariff:

General Terms and Conditions of PCCW mobile

Description of Tariff:

See Annex A

Effective date of tariff:

13 February 2012

Revision history:

Revision to the tariff published in U003-0005 on 26 October 2010.

PCCW mobile
General Terms and Conditions

The Service provided by PCCW mobile is subject to these General Terms and Conditions, the Special Conditions, the Service Literature and any other terms and conditions in the Application (if any). Capitalized terms in these General Terms and Conditions have the meanings given to them in Clause 13.

1. Application

- 1.1 PCCW mobile is entitled, in its discretion, to reject the Application for the Service if:
 - (a) the Customer fails to submit proof of identity and address;
 - (b) the Customer fails to satisfy the requisite creditability check;
 - (c) the porting-out of the mobile number of the Customer from another mobile operator to PCCW mobile is unsuccessful (if applicable); or
 - (d) the Customer fails to pay the stipulated price for the Mobile Device, Charges and/or deposit in full.
- 1.2 In some special occasions, a temporary Service may be provided by PCCW Mobile to the Customer pending PCCW mobile's acceptance of the Application. The provision of such temporary Service by PCCW mobile is subject to such terms and conditions as specified by PCCW mobile.
- 1.3 Notwithstanding clause 1.2, any temporary Service provided to the Customer shall not constitute an acceptance of the Application and PCCW mobile shall be entitled, in its discretion, to discontinue such temporary Service at any time.
- 1.4 Subject to payment of stipulated charges, the Customer shall be given a Customer Identity Module Card ("**SIM Card**") of PCCW mobile. The title and the intellectual property rights of the SIM Card shall at all times vest in PCCW mobile. The Customer shall refrain from doing anything to interfere with the title and the intellectual property rights of the SIM Card. Upon termination, suspension or cancellation of the Customer's subscription to the Service, the Customer shall return the SIM Card to PCCW mobile free from any defacement, damage or defect; failing which the Customer shall pay the replacement cost of such SIM Card as determined by PCCW mobile.
- 1.5 PCCW mobile, Hong Kong Telecommunications (HKT) Limited, PCCW Media Limited and other PCCW group companies may jointly provide services (including but not limited to, mobile, Netvigator Everywhere and Pocket Wi-Fi services) to the Customer.
- 1.6 If the Customer cancels the Agreement before the Service activation date, the Customer shall pay PCCW mobile the relevant Pre-activation Cancellation Charge.

2. Value Added Services

- 2.1 In addition to the Mobile Service, the Customer may apply for such VAS made available by PCCW mobile from time to time. The Application shall be made by the Customer in person, through telephone or fax depending on the application procedure specified for each particular VAS. These Terms and Conditions shall apply to the Customer's use of all VAS unless there are separate terms and conditions applicable for such VAS; in which case the Customer shall abide by such other terms and conditions applicable to that particular VAS. PCCW mobile shall be entitled at its sole discretion, to reject the Customer's Application for any VAS.
- 2.2 VAS hereunder refers, without limitation, to data services, multi-media services, optional services to be used in conjunction with the Mobile Service and such new services as may be provided by PCCW mobile from time to time.

3. Charges and Deposits

- 3.1 The Customer agrees to pay PCCW mobile the Charges and deposit. PCCW mobile may vary or adjust the Charges, the charging mechanism or add new Charges and further deposit as it sees fit.
- 3.2 The Customer expressly acknowledges that the Customer has been notified of these Charges and understands the charging mechanism of the Services before subscribing for the Services.
- 3.3 The Customer agrees to pay the amounts specified upon application. Except for any deposit paid by the Customer, all monies paid upon application shall not be refunded by PCCW mobile if the Customer's Application is rejected for whatever reason.
- 3.4 The Customer acknowledges and agrees, that the Charges may be adjusted by PCCW mobile at any time.
- 3.5 If the Customer fails to make payment of any deposit(s) as required by PCCW mobile to secure the due performance of the Customer's obligations under the Agreement, PCCW mobile shall be entitled to suspend, discontinue or terminate the Customer's subscription to any or all of the Services.
- 3.6 PCCW mobile shall be entitled, in addition to its other rights and remedies hereunder, to exercise the right of set-off and to deduct from the deposits paid by the Customer, any outstanding sum due to PCCW mobile at any time.
- 3.7 Upon the termination of the Agreement, PCCW mobile shall refund the balance of the deposits (without interest) paid by the Customer after deducting (a) all outstanding sums for the Services and all other amounts that the Customer owes PCCW mobile under the Agreement; and (b) all amount the Customer owes any other PCCW group company under any other contracts between the Customer and such PCCW group entity.
- 3.8 The Customer acknowledges that payment of the deposits by the Customer is not risk free and that such deposits may not be returned to the Customer in the event of PCCW mobile's liquidation. In such event, the return of such deposits shall be governed by the law of insolvency applicable in Hong Kong.

4. Customer's Obligations

- 4.1 The Customer shall perform the Customer's obligations stipulated under the Agreement in a timely manner.
- 4.2 The Customer shall not transmit or disseminate any short messages, content and/or materials via any handset or mobile device ("**Short Message**") which are obscene, immoral, indecent, fraudulent, defamatory, discriminatory, privacy-intrusive, intimidating, provocative, unlawful, in breach of confidence, liable to incite racial hatred or an infringement of any

intellectual property right. PCCW mobile shall have the right to edit or delete any Short Message at any time and in such manner as PCCW mobile thinks fit.

- 4.3 The Customer shall not send any promotional Short Messages to any party unless with the intended recipient's express prior consent. PCCW mobile shall have the right to stop the delivery or receipt by the Customer of any promotional Short Messages.
- 4.4 The Customer acknowledges and agrees that the intellectual property rights in the Services and the Content (being any still picture or other series of moving images, whether animated or otherwise, music video, music, data, information and/or other material that may be accessed through any of the Services) belong to PCCW mobile, its third party service providers and/or licensors and that nothing that it/he/she does will transfer any intellectual property rights therein to the Customer or license the Customer to exercise any intellectual property rights therein.
- 4.5 The Services are intended for the Customer's use only. The Customer shall not resell or distribute the Services in whatever form to any third party.
- 4.6 The Customer shall abide by all Applicable Law, the Acceptable Use Policies and any operating rules, as amended from time to time, when using the Services.
- 4.7 The Customer acknowledges that except for Content which is supplied by PCCW mobile as principal, it is not PCCW mobile's policy to exercise any editorial control over or to edit or amend any Content or Short Messages before it is transmitted or made available through any of the Services.

5. Billing and Payment

- 5.1 Different service plans will have different billing arrangements. The Customer shall make full payment of all bills before their stipulated due dates. Failure to do so shall entitle PCCW mobile to suspend, discontinue or terminate the Customer's subscription to any or all of the Services.
- 5.2 Except in the event of manifest error on the part of PCCW mobile or as otherwise expressly provided in the Agreement, all payments made to PCCW mobile shall not be refunded to the Customer in any event.
- 5.3 PCCW mobile reserves the right to issue interim bills (in such appropriate format) to the Customer at such intervals as PCCW mobile thinks fit.
- 5.4 Payment made by post, by electronic means or through the Internet shall be at the risk of the Customer. The Customer's obligation to pay shall not be discharged until actual payment has been received by PCCW mobile.
- 5.5 Fees payable by the Customer to PCCW mobile shall be calculated by reference to data recorded or logged by PCCW mobile and not by reference to any data recorded or logged by the Customer. Records held and logging procedures adopted by PCCW mobile will be conclusive evidence of the actual usage of the Services by the Customer and the charges payable by the Customer.
- 5.6 In the event of termination of Services by the Customer, PCCW mobile reserves the right to charge the Customer in the last bill for service charges for a full month or the entire bill cycle irrespective of the date of termination and without pro-rata adjustment. The Customer shall settle the amount as invoiced in full.
- 5.7 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.
- 5.8 The Customer acknowledges and agrees that no credit or refund is available in respect of any time when any Service is 'down' or suspended.
- 5.9 If the Customer has not paid any invoice by the due date, PCCW mobile reserves the right to (a) charge interest on any outstanding amount at an interest rate equal to 2% per annum above the prime lending rate of The Hongkong and Shanghai Banking Corporation Limited as current from time to time until the invoice has been paid in full and to charge a handling fee, collection agency fee, reconnection fee and/or require a security deposit if the Customer's access to any Service is suspended or terminated before payment is made; and (b) at any time without notice to the Customer combine or consolidate all or any of the Customer's accounts so as to set-off, transfer or apply any sum or sums standing to the credit of PCCW mobile in or towards satisfaction of any of the outstanding sums of the Customer owed to PCCW mobile whether or not such accounts have been terminated or suspended.

6. Change of Service Plan

- 6.1 Any change in the Service Plan by the Customer is subject to the prior consent of PCCW mobile. PCCW mobile may impose additional conditions for such change of Service Plan.
- 6.2 The Customer acknowledges and agrees that certain of the Customer's remaining benefits under the Customer's existing Service Plan cannot be carried forward to the new service plan.
- 6.3 The Customer shall ascertain the details in relation to the change of the Service Plan from PCCW mobile in advance.

7. Suspension and Termination

- 7.1 Any suspension of any Service by the Customer is subject to the prior consent of PCCW mobile. PCCW mobile may impose additional conditions in relation to such suspension.
- 7.2 PCCW mobile may (a) deactivate any of the Services, with or without notice to the Customer, to carry out system maintenance, upgrading, testing and/or repairs; (b) limit or suspend the Customer's access to any of the Services with or without notice to the Customer where PCCW mobile is of the opinion that such action is appropriate as a result of the Customer's use of any of the Services; (iii) take any steps or omit to take any steps, with or without notice to the Customer, for any reason PCCW mobile deems relevant to the management or the operation of any of the Services and PCCW mobile's business, that may expand, reduce, modify, suspend, limit, make inaccessible or adversely affect any of the Services, or any Content.
- 7.3 PCCW mobile shall be entitled to suspend any or all of the Services if it is to PCCW mobile's financial interest to suspend such Service(s) to particular customer(s).

- 7.4 PCCW mobile may, upon discovery of suspected or inchoate, fraudulent, deceptive, unlawful or improper use of the Services by any party, suspend any or all of the Services to prevent such conduct from taking place.
- 7.5 The Customer may terminate the Customer's subscription to any or all of the Services at any time upon giving 30 days' notice to PCCW mobile. If the Customer terminates any Services during the Commitment Period (for reasons other than the breach of the Agreement by PCCW mobile after the Customer has given 30 days' notice of breach to PCCW mobile and PCCW mobile has failed to remedy the same), the Customer shall pay PCCW mobile the relevant Early Termination Charges for the terminated Services.
- 7.6 PCCW mobile may terminate the Services and/or the Agreement forthwith in the following circumstances:
- (a) the Customer has failed to pay any amount due to PCCW mobile under the Agreement 14 days after the due date for payment;
 - (b) the Customer has committed any other breach of the Agreement and fails to remedy the breach within 14 days from receiving the relevant notice of breach sent by PCCW mobile; or
 - (c) the Customer has successfully ported out his mobile number to another mobile operator.
- If PCCW mobile terminates the Services and/or the Agreement in accordance with Clause 7.6(a) or (b) within the Commitment Period, the Customer shall pay PCCW mobile the relevant Early Termination Charges.
- 7.7 Without limiting the generality of the foregoing, PCCW mobile may terminate the provision of the Services at any time without cause and without liability to the Customer by giving not less than 30 days' notice to the Customer.
- 7.8 Termination hereunder shall not affect PCCW mobile's right of action against the Customer for any antecedent breach or liability incurred prior to the date of termination nor shall it affect the coming into force or the continuance in force of any provision contained herein which is expressly or by implication intended to come into or continue in force on or after such termination. All remaining benefits (whether monetary or non-monetary) under the existing Service Plan at the date of termination shall be forfeited absolutely.
- 7.9 Prior to the expiration of the existing Commitment Period for the existing Service Plan, PCCW mobile is entitled to contact and offer a renewal Service Plan to the Customer ("Renewal Offer"). If the Customer agrees to renew the existing Service Plan in accordance with such renewal Service Plan, the existing Service Plan shall be renewed accordingly.
- 7.10 If (a) PCCW mobile is unable to contact the Customer regarding the renewal; or (b) the Customer fails to respond to and/or confirm the Renewal Offer, the existing Service Plan shall, subject to Clauses 7.11 and 7.12, be extended for successive one (1) month's periods ("Monthly Renewal Periods") on the same terms and conditions until the Customer gives at least 30 days' prior written notice of termination (or such other period as specified by PCCW mobile in the Application) to PCCW mobile.
- 7.11 Unless otherwise specified and/or notified by PCCW mobile, all the free gifts, free products, free Service (including free VAS), waiver, discount or rebate offered by PCCW mobile during the existing Commitment Period in relation to the existing Service Plan shall not be offered by PCCW mobile during the Monthly Renewal Periods.
- 7.12 Notwithstanding Clauses 7.9 and 7.10, PCCW mobile is entitled to exclude the application of Clauses 7.9 and 7.10 to certain Services expressly identified by PCCW mobile in the Application.

8. Warranty

- 8.1 Save and except for the warranties expressly provided under the Agreement, PCCW mobile provides no warranty (express or implied) as to the title, fitness for a particular purpose, quality, merchantability and durability of the handset, mobile device and the Services provided to the Customer, any obligation to maintain confidentiality of information (although PCCW mobile's current practice is to maintain confidentiality) or the results to be obtained from the use of the handset, mobile device, the Content or the Services.
- 8.2 PCCW mobile makes no warranty as to the quality and availability of any of the Services, its network and customer service. PCCW mobile accepts no responsibility and the Customer shall not hold PCCW mobile liable for any failure, interruption, delay, suspension or error on the part of PCCW mobile including without limitation, in relation to the Services, the Content, its network, customer service and after-sale service.
- 8.3 The limited warranty of the handsets or mobile devices shall be provided by the manufacturers directly in accordance with each manufacturer's standing warranty policies. PCCW mobile assumes no responsibility in providing any repair and maintenance service to the Customer.
- 8.4 All product liability relating to the handset, mobile device, equipment and accessories ("**Equipment**") sold, supplied and/or provided by PCCW mobile shall rest with the respective manufacturers solely in any event. PCCW mobile makes no warranty as to the safety and suitability of the Equipment. The Customer shall read and get familiar with the user handbook / user manual (or equivalent) released by the respective manufacturers prior to using or operating the Equipment and shall not contravene any instruction, guidance or restriction therein specified. The Customer expressly acknowledges and agrees that PCCW mobile's role is merely a distributor of the Equipment and that the Customer shall not make any claim against PCCW mobile or hold PCCW mobile liable for any product liability either in contract law or tort law.
- 8.5 PCCW mobile will use its best commercial endeavours to provide the Services to the Customer without abnormal interruption.

9. Indemnity

- 9.1 The Customer shall indemnify and hold PCCW mobile, its employees, representatives, sub-contractors and agents harmless against any Loss (including Consequential Loss) which PCCW mobile suffers or incurs arising out of, relating to or in connection with the Services and customer service, including but not limited to the Loss resulting, directly or indirectly, from:
- (a) any act or omission (whether or not negligent) of the Customer or any third party;
 - (b) any Claim by any person relating to the supply of the Services or its use by the Customer or any other person or any delay or failure to provide the Services by PCCW mobile;
 - (c) a breach by the Customer of the Agreement;
 - (d) any Unauthorized Activity by the Customer or any third party to whom the Services are provided;
 - (e) any Claim by any person or liability of PCCW mobile under any Applicable Law in relation to the supply of the Services and any content transmitted using the Services (including any Claim for infringement of any intellectual property right including copyright or any right in any trade mark or design); or
 - (f) any Claim arising directly

or indirectly out of or relating to the use of the Services to carry material of obscene, indecent or defamatory nature; other than to the extent that it is the result of the wilful breach by PCCW mobile.

- 9.2 In the event that the Customer ports in his prepaid mobile number to PCCW mobile, the Customer warrants that the Customer is the legitimate user of the said prepaid mobile number and agrees to fully indemnify PCCW mobile against all losses, damages, liabilities, actions, demands, claims, proceedings, costs and expenses sustained by PCCW mobile as a result of the Customer's breach of this warranty.

10. Limitation of Liability

- 10.1 To the extent permitted by law, (a) PCCW mobile shall not be liable for any Consequential Loss; and (b) PCCW mobile's aggregate liability to the Customer shall in any event not exceed the total fees paid by the Customer to PCCW mobile for the immediately preceding 12 months prior to any incident giving rise to such liability.
- 10.2 PCCW mobile expressly disclaims all responsibilities and liabilities for or arising from: (a) the use of the Services, Content, handset or mobile device by the Customer; (b) any damage to or loss of data suffered by the Customer arising from his use of any of the Services, Content, handset or mobile device; (c) 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; (d) any claim relating to any Services, Content, handset or mobile device supplied, provided, sold or made available by PCCW mobile (or any failure or delay to so supply, provide, sell or make available); (e) any injury, disease, seizure or loss of consciousness suffered by the Customer or any person arising whether directly or indirectly from accessing and using the Services or playing any computer games through the Services; and (f) any disruption or suspension of the Services or any part thereof which is attributable to an event or circumstance beyond PCCW mobile's reasonable control.
- 10.3 In the event that the provision of the Services is undertaken by PCCW mobile's contractors, sub-contractors, service providers or agents (collectively referred to as "**Independent Service Providers**"), PCCW mobile disclaims for itself and on behalf of the Independent Service Providers all responsibilities or liabilities arising from the acts, default, neglect, omission and mistakes committed by the Independent Service Providers. In consideration of the services (including information and content services) provided by the Independent Service Providers to the Customer, it is expressly acknowledged and agreed by the Customer that PCCW mobile has the requisite authority to make the disclaimer on behalf of the Independent Service Providers and that this clause 10.3 shall be extended to protect the Independent Service Providers and shall be relied upon by the Independent Service Providers as if they were parties to the contract with the Customer.
- 10.4 Without limitation to any other provision in the Agreement, PCCW mobile expressly disclaims and excludes any liability whatsoever arising directly or indirectly from PCCW mobile exercising any of its rights under the Agreement.
- 10.5 Nothing in the Agreement excludes or restricts a party's liability for death or personal injury resulting from the negligence or fraud of that party.
- 10.6 Notwithstanding any other provision in the Agreement, PCCW mobile shall not be liable for any failure to fulfill an obligation under the Agreement if such a fulfillment is delayed, prevented, restricted or interfered with for any reason as a result of a Force Majeure Event provided that PCCW mobile has used its reasonable endeavours to mitigate the effect of the Force Majeure Event and to carry its obligations in any other way reasonably practicable.

11. Provision of Information

- 11.1 If PCCW mobile requests personal data from the Customer that constitutes Personal Data (meaning Personal Data as defined in the Personal Data (Privacy) Ordinance, account information including data set out in the Sales Agreement and any other customer information obtained from the Customer or from another source), the Customer may decline to provide the Personal Data but in that event PCCW mobile may decline to provide any of the Services to the Customer.
- 11.2 The Customer agrees that PCCW mobile may use the Personal Data for any and all of the following purposes, or any purpose directly related to them: (a) the provision of the Services to the Customer (including the transfer of such Personal Data to other telecommunications network providers or third parties as necessary for the provision of any of the Services and/or the transfer of such Personal Data to Affiliates (meaning any other entity which directly or indirectly controls PCCW mobile, is controlled by PCCW mobile, or is under common control with PCCW mobile) as necessary for the provision of Services by PCCW mobile); (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 the Services; (c) marketing of goods and/or services by PCCW mobile in relation to the Services and/or the goods and services of such agents, Affiliates and/or subsidiaries; (d) business planning and improving of goods and/or services in relation to the provision of the Services and/or other goods and services of PCCW mobile and/or its Affiliates; (e) processing of any benefits arising out of or in connection with any of the Services and/or other goods and services of PCCW mobile and/or its Affiliates; (f) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of any of the Services and/or other goods and services of PCCW mobile and/or its Affiliates; (g) processing of any payment instructions, direct debit facilities and/or credit facilities in relation to the provision of the Services and/or other goods and services of PCCW mobile and/or its Affiliates or requested by the Customer; (h) enabling the daily operation of the Customer's accounts with PCCW mobile and/or its Affiliates and/or the collection of amounts outstanding from the Customer (which may include disclosing the Customer's Personal Data to debt collection agencies) in relation to any of the Services, Content and/or other goods and services provided by PCCW mobile and/or its Affiliates; (i) enabling PCCW mobile to comply with its obligations to interconnect or other industry practices; (j) keeping the Customer informed of the Services and/or other goods and services of PCCW mobile and/or its Affiliates; (k) prevention or detection of crime; (l) disclosure as required or permitted by law; and (m) any other purposes as may be agreed to by the parties. The Customer agrees that the Personal Data may be disclosed and transferred in Hong Kong or to/in places outside Hong Kong to PCCW mobile's Affiliates, agents, contractors, other telecommunications operators or any other third parties (including collection agencies, credit reference agencies, security agencies, credit providers or other financial institutions and any of PCCW mobile's actual or proposed assignees or transferees of PCCW mobile's rights with respect to the Customer) for such person to use, disclose, hold,

process, retain or transfer such Personal Data for the purposes listed in this Clause 11.2, or any other purposes incidental thereto.

- 11.3 The Customer shall, as soon as practicable, notify PCCW mobile of any changes of address or any other particulars provided to PCCW mobile which may affect the provision of any of the Services to the Customer. On PCCW mobile's request, the Customer shall provide PCCW mobile with information relating to the Customer and the Customer's use of the Services reasonably required by PCCW mobile: (a) to assist PCCW mobile in complying with PCCW mobile's obligations under any applicable law; (b) to report to any government agency regarding compliance with those obligations; and (c) to assess whether or not the Customer has complied, is complying and will be able to continue to comply with all of his obligations under the Agreement.

12. General

- 12.1 PCCW mobile is entitled to unilaterally vary, amend, delete or add to any or all the Agreement (including these General Terms and Conditions) by posting the details of such amendments on www.pccwmobile.com; such amendments to take effect immediately upon such posting.
- 12.2 Unless otherwise required by the Special Conditions, these General Terms and Conditions shall supersede all representations, promises and previous agreements, whether oral or written made by PCCW mobile's staff or agents in relation to the Services and embodies the entire agreement between the parties in relation to the Services. The parties do not rely on any representations or warranties in relation to the Services except as expressly provided in the Agreement.
- 12.3 The Customer shall not assign, novate, convey, license, transfer or otherwise dispose of any or all of the Customer's rights, duties and/or obligations under the Agreement
- 12.4 PCCW mobile is entitled to at any time (with or without notice) assign, novate, sub-contract, transfer or otherwise dispose of any or all of its rights, duties, and/or obligations under the Agreement without the consent of the Customer.
- 12.5 If there is any inconsistency between these General Terms and Conditions, the Special Conditions, the Application and the Service Literature, the inconsistency will be resolved in the following descending order of preference:
- (a) the Special Conditions;
 - (b) these General Terms and Conditions;
 - (c) the Application; and
 - (d) the Service Literature.
- 12.6 If the Customer includes any requirements, information and/or any terms and conditions in the Application other than those as expressly provided for by PCCW mobile in the Application, it will not form part of the Agreement.
- 12.7 These General Terms and Conditions, the Special Conditions, the Application and Service Literature and the description of the Services may be translated by PCCW mobile into Chinese. The English version of these General Terms and Conditions, the Special Conditions, the Application and Service Literature and the description of the Services shall prevail over any Chinese versions for all purposes.
- 12.8 The rights, powers and remedies of a party under the Agreement are cumulative and are not exclusive of any other right, power and remedy available to the party at law, or in equity.
- 12.9 Any failure, delay, relaxation or indulgence by a party in exercising any power, right or remedy conferred on that party by the Agreement does not operate as a waiver of that power, right or remedy unless expressed in writing to be a waiver.
- 12.10 Each of the provisions of the Agreement is severable and distinct from the others, and if one or more of such provisions is or becomes invalid, illegal or unenforceable, such invalid, illegal or unenforceable provisions shall be deleted from the Agreement and no longer incorporated herein, but, the other provisions shall continue to be effective and binding on the parties.
- 12.11 Time shall be of the essence in all respects for the Customer to perform its duties and obligations under the Agreement.
- 12.12 The Agreement is governed by and construed in accordance with the laws of Hong Kong. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Hong Kong.

13. Definitions and Interpretation

- 13.1 In the Agreement the following words have the meanings given to them in this clause unless the context otherwise requires:

"Affiliate" means, in relation to an entity, any other entity which directly or indirectly controls, is controlled by, or is under common control with, such entity.

"Agreement" means the agreement between PCCW mobile and the Customer in respect of the Services comprising these General Terms and Conditions, the Application and the description of the Services (including the Service Plan), the Charges and where applicable, Special Conditions and Service Literature as may be amended by PCCW mobile from time to time.

"Acceptable Use Policies" means the Acceptable Use Policies of PCCW mobile which can be found at www2.pccwmobile.com/portal/gen/WEB/footer/acceptableuse.

"Applicable Law" means (a) any law, rule or regulation of Hong Kong applicable to the Service, the Customer's use of the Service; (b) obligations under any telecommunications licence held by PCCW mobile, the Customer or any person to whom the Customer provides Customer Services; (c) any lawful determination, decision or direction of a Government Agency in Hong Kong applicable to the Service or the Customer's use of the Service; and (d) any applicable international convention or agreement.

"Application" means, in relation to the Service, a written application and, where expressly allowed by PCCW mobile, a non-written application made by the Customer to PCCW mobile requesting provision of the Services to the Customer.

"Charges" means the charges relating to the provision of the Mobile Equipment and/or Service by PCCW mobile to the Customer as published, issued or specified by PCCW mobile from time to time (including but not limited to the Monthly Fee, MTR/Tunnels/Mobile Service License Fee, Early Termination Charge, surcharges, and any charges or fees charged by PCCW mobile relating to connection, reconnection, flag fall, voice airtime, data usage, mobile data, roaming, registration, infrastructure, network, co-handling, content, cancellation of Services and any other charge or fee (including amounts billed by PCCW mobile for and on behalf of a third party) as may be specified by PCCW mobile from time to time).

"Claim" means any claim or cause of action in respect of the Agreement, including but not limited to, in contract (including a breach of warranty), in tort (including misrepresentation or negligence) or under statute.

"Commitment Period" means, in relation to each Service Plan or the Services, the commitment period or Fixed Term as specified by PCCW mobile in the Application; or if no such period is specified, the period of three (3) months, commencing from the Service Commencement Date.

"Consequential Loss" means, in relation to a party, any consequential, indirect, special, punitive, economic, incidental or collateral Loss (including, the loss of profits, goodwill, bargain or opportunities; or the loss or corruption of data; or the loss of anticipated savings or business, whether caused by negligence or otherwise and whether arising out of or relating to or in connection with the Agreement, the Service, or any failure to supply or delay in supplying the Service).

"Customer" means any person, including any individual, Government Agency, organization, corporation or unincorporated body which has applied to PCCW mobile for the Services by way of an Application.

"Early Termination Charge" means the charge as specified in the Application and payable by the Customer upon the early termination of any Service Plan or Services during the Commitment Period (if any) by the Customer.

"Fixed Term" means the fixed term or Commitment Period for the Services as specified by PCCW mobile in the Application.

"Force Majeure Event" means anything outside the reasonable control of PCCW mobile including but not limited to industrial disputes of any kind, war declared or undeclared, blockade, disturbance, a natural disaster such as lightning, earthquake, storm, flood, explosion or meteor, law or any power lawfully exercised by a Government Agency, any change in Applicable Law, inability or delay in granting governmental or other approvals, consents, permits, licenses or authorities, or telecommunications network outage or degradation which PCCW mobile cannot reasonably control.

"Government Agency" means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world and includes the Telecommunications Authority.

"Hong Kong" means the Hong Kong Special Administrative Region of the People's Republic of China.

"Licence" means a licence issued by a Government Agency to PCCW mobile from time to time authorising PCCW mobile to provide the Service.

"Loss" includes loss (including, loss of revenue), damage, cost, expense, fine, Claim, demand, liability and charge.

"MMS" means multimedia messaging service enabling the Customer to send and receive multimedia and entertainment content such as video, picture, text page and ringtone via a compatible mobile device.

"MNP" means mobile number portability enabling a person to port-in or port-out his mobile number to/from a mobile service provider.

"Mobile Service" means the mobile service packaged under a Service Plan and provided by PCCW mobile to the Customer.

"Monthly Fee" means in relation to a Service Plan, the basic monthly Charge for the packaged Mobile Services. Monthly Fee excludes the Charges in relation to any additional or VAS consumed by the Customer.

"Monthly Renewal Periods" has the same meaning assigned to it in Clause 7.10.

"PCCW mobile" means PCCW Mobile HK Limited.

"Pre-activation Cancellation Charge" means the pre-activation cancellation charge payable by the Customer to PCCW mobile as specified in the Application.

"Renewal Offer" has the same meaning assigned to it in Clause 7.9.

"Services" means, the service provided by PCCW mobile to the Customer under the Agreement (including but not limited to the services provided under the Service Plan, Mobile Service, VAS, after-sale service and any other customer services specified by PCCW mobile).

"Service Commencement Date" means, in relation to a Service Plan, renewal service plan or a Service, the date which PCCW mobile makes such Service Plan, renewal service plan or a Service available to the Customer.

"Service Literature" means any service guide, brochure, tariff schedule, customer guide, code of practice, device description, instruction, manual or policy issued by PCCW mobile or its Affiliate(s) from time to time in connection with the provision of the Services.

"Service Plan" means the service plan including its renewal service plan (whether for a Fixed Term or otherwise) of PCCW mobile and subscribed by the Customer in accordance with the Agreement.

"Short Message/SMS" means short messages in text form sent and/or received by the Customer via a compatible handset and/or mobile device.

"Special Conditions" means the special conditions specifically applicable to each Service published or issued by PCCW mobile from time to time (including those additional terms and conditions specified in the Application).

"Telecommunications Authority" means the Telecommunications Authority of Hong Kong.

"Unauthorized Activity" means: (a) any act or omission in relation to the Services that is in breach of any Applicable Law; (b) any activity identified as an unauthorized activity or prohibited in the Special Conditions.

"Value Added Service" or "VAS" means the value added services (including any additional or ad hoc value added services) provided by PCCW mobile in conjunction with the Mobile Service.

13.2 In the Agreement, unless the context otherwise requires:

- (a) a word importing the singular includes the plural and vice versa;
- (b) a word importing a gender includes any gender;
- (c) a reference to a person includes a natural person, any company, partnership, joint venture, association, corporation, authority or other legal entity;
- (d) a covenant or agreement on the part of two or more persons binds them jointly and severally;
- (e) a reference to a party includes its successors and permitted assigns;
- (f) a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing it and a reference to a statute includes all regulations, proclamations, Telecommunications Ordinance and by-laws issued under that statute;
- (g) a reference to a document includes any amendment or supplement to, or replacement or notation of, that document;
- (h) a reference to the words, "includes", "including" or "example" are references without limitation;
- (i) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day; and
- (j) headings are for convenience only and do not affect the interpretation of the Agreement.