

## **Hong Kong Telecommunications (HKT) Limited**

### **Terms and Conditions of Smart Living Services**

#### **1. GENERAL PROVISIONS**

- 1.1. The Service provided by the Company is subject to the terms and conditions set out below.
- 1.2. Capitalised terms in these General Conditions have the meanings given to them in Clause 17.

#### **2. SERVICE**

- 2.1 The Company agrees to provide the Service in accordance with the Agreement.
- 2.2 The Company will use its reasonable endeavours to provide the Service with care and skill from the Service Commencement Date subject to:
  - (a) the Service being available in the area where the Premises are located;
  - (b) the Customer's compliance with the Agreement and the terms and conditions set out thereunder; and
  - (c) the Customer being in compliance with the Company's credit policy requirements from time to time (including but not limited to whether the Customer owes any money for any services previously or currently provided to the Customer by the Company or any other PCCW group companies).
- 2.3 The Company does not guarantee the continuous or fault free provision of the Service and shall not be responsible for the transmission of the Service over any other telecommunications network or beyond the Network termination point.
- 2.4 The Company will determine the most appropriate means of providing the Service including the method, technology and route of delivery of the Service to the Customer. The Company is entitled to vary the method, technology and route of delivery at any time without notice to the Customer.
- 2.5 The Company, CSL Mobile Limited, PCCW Media Limited and other PCCW group companies may jointly provide services to the Customer.

#### **3. CHARGES**

- 3.1 The Customer shall pay the Company the Charges which the Company's records attribute to the Customer.
- 3.2 The Charges will be calculated by reference to data recorded or logged by the Company and not by reference to any data recorded or logged by the Customer. Records held and

call logging procedures adopted by the Company will be conclusive evidence of the usage of the Service and the Charges payable by the Customer.

- 3.3 Usage Charges for the Service will be measured using such unit of measurement as adopted by the Company for that Service from time to time.
- 3.4 The Rental in respect of the Service and any other Charges requiring advance payment (as specified by the Company in the Application and/or Service Plan) shall be paid by the Customer in advance and the first payment for such Rental and Charges will be calculated and is payable on the Service Commencement Date.
- 3.5 The Company is entitled to treat a period of less than one (1) month as one (1) full month (on a 30-day month basis) for the purpose of calculation of any Charges. If the Customer wishes to have full use of the Service for the prepaid charges which are non-refundable, the Customer should request a termination date to fall on the last day of the Customer's bill period by giving the Company at least 30 days' prior notice pursuant to Clause 13.2.
- 3.6 The Charges do not include any duties, taxes or similar imposts. The Customer shall pay for any duties, taxes or similar imposts which may from time to time be imposed on, or in relation to, the Service, any payment for the Service or the Agreement. If at any time an applicable law obliges the Customer to make a deduction, withholding or payment in respect of taxes from any payment in relation to the Service, any payment for the Service or the Agreement, the Customer shall indemnify and keep the Company fully and effectively indemnified from and against such deduction, withholding or payment by paying the Company at the time that the payment to the Company is due.
- 3.7 If the services of a third party are accessed by the Customer using the Service, the Company is entitled to require the Customer to pay to the Company the charges in respect of the services of that third party if the Company is required to pay those third party charges.
- 3.8 The Customer:
  - (a) is responsible for all Charges incurred through the use of the Service whether such use is by the Customer or a third party with or without the authority, knowledge or consent of the Customer; and
  - (b) will continue to be responsible for all Charges incurred between the time of suspension or a request for termination of the Service and the actual termination of the Service.
- 3.9 If the Company has terminated or withdrawn supply of the Service under Clause 12 or 13:
  - (a) the Company reserves the right to refuse to reconnect the Service; and

- (b) if the Company subsequently agrees to reconnect the Service, the Customer may be required to pay a re-connection fee in advance as a pre-condition to making the Service available again.
- 3.10 The Company is entitled to vary the Charges from time to time.
- 3.11 The Customer shall pay any USC to the Company:
  - (a) in the manner required in the Special Conditions or the Charges; and
  - (b) if not required by the Special Conditions or the Charges, in such manner as determined by the relevant Government Agency.
- 3.12 The Company will account to a USC Provider for all USC payments received under Clause 3.11.
- 3.13 If the Company is required to pay a USC in relation to the provision of the Service, the Company is entitled to increase the Charges by the amount of that USC.

#### **4. INVOICING AND PAYMENT**

- 4.1 Subject to Clause 4.2, the Company will issue a monthly or quarterly invoice (as applicable) to the Customer.
- 4.2 The Company reserves the right to:
  - (a) vary the billing frequency at any time without prior notification;
  - (b) issue an interim invoice for the accrued Charges, which will become immediately due and payable;
  - (c) re-issue any invoice if any error is subsequently discovered; and
  - (d) bill the Customer through a billing agent or any of its Affiliates.
- 4.3 Processing and verification procedures (including delays in receipt of billing information for interconnected calls) may mean that not all of the Service used during the period covered by an invoice can be included in that invoice. The Company is entitled to include the Charges for such usage in any subsequent invoice.
- 4.4 The Customer shall pay each invoice in full on or before the Due Date without set-off or counter claim and free and clear of any withholding or deduction and in the manner specified in the invoice or if no such manner is specified in the invoice by cash, cheque, direct debit or other method permitted by the Company.
- 4.5 If a cheque or payment by direct debit is dishonoured or cancelled, the Customer shall pay to the Company any:
  - (a) resulting bank or other charges incurred by the Company; and
  - (b) associated administration charge imposed by the Company.

- 4.6 If a payment due by the Customer to the Company under the Agreement is not received by the Due Date the Customer shall pay interest in respect of the overdue amount calculated daily from the Due Date until the date of payment at an interest rate equal to 2% above the Hong Kong Dollar best lending rate of The Hongkong and Shanghai Banking Corporation Limited as current from time to time. The Company may also impose additional charges to cover its reasonable costs and expenses incurred in recovering outstanding amounts due under this Agreement (including the cost and expenses of engaging a debt recovery agent or instituting legal proceedings).
- 4.7 Subject to Clause 3.2, all enquiries concerning any invoice shall be made to the Company within 15 days of the relevant invoice date, otherwise the invoice will be deemed to be accepted by the Customer.
- 4.8 The Company is entitled to set-off any amount owed by the Customer to the Company against any amount owed by the Company to the Customer under or in relation to the Agreement.

## **5. SECURITY DEPOSIT**

- 5.1 At any time before or during the provision of the Service, the Company is entitled to require the Customer to provide the Security Deposit for the Charges to be incurred in relation to provision of the Service. The amount of the Security Deposit shall be any amount required by the Company. The Company is entitled to in its absolute discretion vary its requirement for the Security Deposit under this Clause 5.1 at any time.
- 5.2 Subject to Clause 5.3, the Company is entitled to hold the Security Deposit free of interest payable to the Customer until:
- (a) termination of the Agreement under Clause 13; and
  - (b) all of the Customer's liabilities to the Company in respect of the Service are discharged, whichever is later.
- 5.3 Without prejudice to any other rights and remedies available to the Company under the Agreement or otherwise, the Company shall be entitled to apply the Security Deposit in whole or in part to satisfy any amount due by the Customer to the Company.
- 5.4 The provision of the Security Deposit by the Customer shall not relieve the Customer from its obligation to pay any Charges to the Company as they become due and payable, nor does it enable the Customer to make allowance by way of set-off, deduction or withholding from any such amount. The provision of the Security Deposit by the Customer shall not affect any right of the Company to suspend, cancel or terminate the Agreement for the Customer's non-payment of any Charges under the Agreement.

## **6. USE OF THE SERVICE**

6.1 The Customer shall:

- (a) use the Service and shall ensure that third parties use each Customer Service in accordance with the Agreement, the Acceptable Use Policies and all Applicable Laws;
- (b) not use the Service or the Network in any manner that would cause the Company to be in breach of any Applicable Law;
- (c) not be directly or indirectly involved in any Unauthorised Activity or in the use by a third party of the Service or the Customer Service for or in connection with any Unauthorised Activity;
- (d) promptly notify the Company of any Unauthorised Activity in relation to the Service, a Customer Service or the Network of which the Customer becomes aware;
- (e) comply with:
  - (i) any applicable privacy or data protection laws (including the Personal Data (Privacy) Ordinance) and all guidelines issued by the Office of the Privacy Commissioner for Personal Data; and
  - (ii) any privacy procedures or policies stipulated by the Company from time to time;
- (f) co-operate with the Company in establishing procedures to eliminate or reduce Unauthorised Activities and the opportunity for Unauthorised Activities;
- (g) provide such information to the Company as is available to the Customer which may be of assistance to the Company in identifying and preventing Unauthorised Activities;
- (h) not use the Service, and shall ensure that third parties do not use any Customer Service:
  - (i) for any improper or immoral purpose or for the purpose of sending any unsolicited advertising material or any material of an obscene or indecent nature;
  - (ii) in any manner which is unauthorised, fraudulent, unlawful or illegal, whether under any Applicable Law or otherwise; or
  - (iii) in a manner which constitutes an infringement by the Customer or the Company of the rights of any person (including but not limited to Intellectual Property Rights and rights of confidentiality) or a violation or infringement of any duty or obligation in contract, tort or otherwise, to any third party;
- (i) not, and shall ensure that third parties do not, either by act or omission, interfere with or impede or impair use of, or operation of, or do anything likely to interfere with or impede the use of, or operation of, the Service or the Network or any telecommunications or other service or network of a third party;
- (j) not take or allow any other person to take any unauthorised action in relation to the Network or the Service;
- (k) promptly notify the Company of any fault in the Service or deterioration in the quality of the Service; and
- (l) comply with directions given by the Company from time to time in relation to:

- (i) modifications required to any apparatus at the Premises or other action necessary to be taken to eliminate any interference, impediment or impairment to the Service or the Network; or
  - (ii) any use of the Service that is reasonable or prudent to ensure that the Customer complies with this Clause 6.1.
- 6.2 In promoting or supplying any Customer Service or making any public statement in relation to the Service or any Customer Service, the Customer shall not make any representation that:
  - (a) the Customer Service is supplied using the Network;
  - (b) passes off or misrepresents that the Customer Service is provided in whole or in part by the Company; or
  - (c) the Customer is authorized to act for or on behalf of the Company.

## **7. PROVISION OF INFORMATION**

- 7.1 If the Company requests Personal Data from the Customer, the Customer may decline to provide that Personal Data but in that event the Company may decline to provide the Service to the Customer.
- 7.2 Unless the Customer informs the Company otherwise when making the Application or at any time thereafter, the Customer is deemed to have consented that its name, address, business and telephone and/or fax number(s) be included in printed directories and directory enquiry services and be disclosed to a third party for related purposes.
- 7.3 The Customer agrees that the Company may use the Personal Data for the purposes stated in the HKT Privacy Policy Statement published on <http://www.hkt.com>, including the following, and any purpose directly related to them:
  - (a) provision of the Service to the Customer (including the transfer of such Personal Data to other telecommunications network providers or third parties as necessary for the provision of the Service and goods and services supplied in connection with the Service);
  - (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 Service;
  - (c) marketing by the Company of its goods and/or services (including related goods and/or services of its agents or Affiliates);
  - (d) business planning and improving goods and/or services in relation to provisioning of the Service or other services of the Company and/or its Affiliates (including telecommunications service);
  - (e) processing of any benefits arising out of or in connection with the Service;

- (f) analysing, verifying and/or checking of the Customer's credit, payment and/or status in relation to provision of the Service or other services of the Company and/or its Affiliates (including telecommunications service);
- (g) processing of any payment instructions, direct debit facilities and/or credit facilities in relation to provisioning of the Service or other services of the Company and/or its Affiliates or requested by the Customer (including telecommunications service);
- (h) enabling the daily operation of the Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Service or other services of the Company and/or its Affiliates (including telecommunications service);
- (i) enabling the Company to comply with its obligations to interconnect, with other industry practices, or with obligations to third parties or the Government Agencies in relation to the Service or other services of the Company and/or its Affiliates (including telecommunications service);
- (j) keeping the Customer informed of the Service or other services of the Company and/or its Affiliates;
- (k) prevention or detection of crime;
- (l) disclosure as permitted or required by law; and
- (m) any other purposes as may be agreed to by the parties.

7.4 The Customer agrees that the Personal Data may be disclosed and transferred in Hong Kong or to/in places outside Hong Kong to the Company's Affiliates, agents, contractors, telecommunications operators, any other third parties (including, collection agencies, credit reference agencies, security agencies, credit providers or other financial institutions and any of the Company's actual or proposed assignees or transferees) for such person to use, disclose, hold, process, retain or transfer such Personal Data for the purposes listed in Clause 7.3.

7.5 The Customer shall, as soon as practicable, notify the Company of any change of address or any other particulars provided to the Company which may affect the provision of the Service to the Customer.

7.6 Upon request by the Company, the Customer shall provide the Company with information relating to the Customer and its use of the Service reasonably required by the Company:

- (a) to assist the Company in complying with its obligations under any Applicable Law and to report to any Government Agency regarding compliance with those obligations; and
- (b) to assess whether or not the Customer has complied, is complying and will be able to continue to comply with all its obligations under the Agreement.

- 7.7 If the Customer has not complied with Clause 7.6 within two (2) Business Days, the Customer licenses the Company and its authorised representatives, during the term of the Agreement and for three (3) months after its termination, to enter the premises owned or occupied by the Customer during business hours, after giving reasonable notice, for the purpose of obtaining any information requested under Clause 7.6.
- 7.8 For further information on the obligations and policies (including your right to access and correct personal data) of the Company under the Personal Data (Privacy) Ordinance, the Customer may refer to the HKT Privacy Policy Statement published on <http://www.hkt.com>.

## **8. SERVICE ADDRESSING INFORMATION**

- 8.1 The Customer acknowledges that the telephone or service numbers or other network addressing information assigned by the Company to the Customer are governed by numbering plans and guidelines issued by the Communications Authority and that the Customer has no title, goodwill or interest in any number assigned to the Customer.
- 8.2 If the Company withdraws or changes any number or network addressing information assigned to the Customer, the Company will use reasonable endeavour to give the Customer such prior notice as may be reasonably practicable in the circumstances, unless the withdrawal arises out of the termination or suspension of the Service in accordance with the Agreement.

## **9. PERSONAL IDENTIFICATION NUMBER**

- 9.1 The Company may allocate a PIN to the Customer and may, at any time, vary the PIN allocated to the Customer. The Company will notify the Customer of a change in the PIN allocated to the Customer where it is reasonably practicable to do so.
- 9.2 Each PIN issued to the Customer is confidential and personal to the Customer and the Customer is responsible for the security of its PIN.
- 9.3 The Customer undertakes to use its PIN in accordance with the reasonable directions given to it by the Company from time to time. The Customer shall notify the Company immediately if the Customer has grounds for believing that any person has discovered or is making use of its PIN without its knowledge or consent, and the Company will allocate a new PIN to the Customer.
- 9.4 If (a) the Service is suspended, withdrawn, restricted or terminated; or (b) the Agreement is terminated, the Company is entitled to withdraw the PIN.

## **10. ACCESS TO PREMISES**

- 10.1 The Customer shall, and shall ensure that third parties using Customer Service shall:



- (a) ensure that the Company, its employees, representatives, sub-contractors and agents have access to the Premises at all reasonable times to:
  - (i) install, inspect, maintain, repair, replace, remove or recover the equipment prior to, during or after provision of the Service;
  - (ii) inspect any other equipment used in connection with the Service;
  - (iii) to determine whether or not the Customer or any third parties using the Customer Service is/are engaging in any Unauthorised Activity in relation to use of the Service; and
  - (iv) inspect any apparatus, devices, appliances machinery, meters, transformers or fittings which the Company considers is, or may be, causing or likely to cause any interference, impediment or impairment to the Service or the Network; and
- (b) provide safe access to the Premises and safe conditions for the Company, its employees, representatives, sub-contractors and agents while on the Premises.

## **11. LIMITATION OF LIABILITY**

### **11.1 To the extent permitted by law:**

- (a) the Company shall not be liable for any Consequential Loss; and
- (b) conditions and warranties implied by law are excluded.

### **11.2 To the extent permitted by law, the Company's liability under the Agreement or for or in relation to**

- (a) any breach of Clause 2 is limited, at its election, to supplying the Service again or paying the cost of supplying the Service again; and
- (b) any damage to property is limited, at its election, to the repair or replacement of that property or paying the cost of repair or replacement of the damaged property.

### **11.3 In addition to the limitations under Clauses 11.1 and 11.2 and to the extent permitted by law, the Company's liability arising out of or relating to or in connection with the Agreement is limited to:**

- (a) HK\$1,000,000 for any one incident or series of events arising from a single incident or common cause; and
- (b) an aggregate amount of HK\$2,000,000 for all liabilities arising out of or relating to or in connection with the Agreement.

### **11.4 The Customer shall indemnify and keep the Company, its employees, representatives, sub-contractors and agents fully and effectively indemnified against any Loss (including Consequential Loss) which the Company suffers or incurs arising out of or relating to or in connection with the Agreement, 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 supply of the Service or its use by the Customer or any other person or any delay or failure to provide the Service by the Company;
- (c) a breach by the Customer of the Agreement;
- (d) any Unauthorised Activity by the Customer or any third party to whom a Customer Service is provided;
- (e) any Claim by any person or liability of the Company under any Applicable Law in relation to
  - (i) the supply of the Service; and
  - (ii) any content transmitted using the Service including any Claim for infringement of any Intellectual Property Right;
- (f) any Claim arising, directly or indirectly, out of or relating to or in connection with the use of the Service to carry material of obscene, indecent or defamatory nature; or
- (g) the Company's access to the Premises, other than to the extent that it is the result of the wilful breach of the Agreement by the Company.

11.5 The Customer shall in any contracts in relation to any Customer Service ensure that it excludes to the fullest extent possible the liability of the Company.

11.6 Nothing in the Agreement excludes or restricts a party's liability for (a) death or personal injury resulting from its negligence; or (b) fraud of that party.

## **12. SUSPENSION OR WITHDRAWAL OF THE SERVICE**

12.1 Without prejudice to any other rights and remedies available to the Company under the Agreement or otherwise, the Company is entitled to suspend, withdraw or restrict all or part of the Service at any time until further notice to the Customer if:

- (a) the Company has grounds for terminating the Service under Clause 13;
- (b) the Company suspects that Unauthorised Activities have occurred or are occurring in relation to the Service;
- (c) the provision of the Service would cause the Company to be in breach of any Applicable Law;
- (d) the Company has a specific right to suspend the Service under the Special Conditions; or
- (e) in the reasonable opinion of the Company, it is necessary to suspend the Service in order for the Company to:
  - (i) carry out planned testing, maintenance, repair or upgrading of any equipment or facility forming part of the Network and the Company has

given the Customer as much notice as is reasonably practicable in the circumstances (which notice may be oral if subsequently confirmed in writing); or

- (ii) protect the integrity of the Network, or to carry out unplanned testing, maintenance, repair or upgrading of any equipment or facility forming part of the Network.

- 12.2 If any Service is suspended, withdrawn or restricted under Clause 12.1(e), the Company will use reasonable endeavours to ensure that there is minimum disruption to the Service.
- 12.3 Without limiting the exclusions or limitations of liability in Clause 11, the Company shall not be liable to the Customer nor any third person for any Loss arising out of or relating to or in connection with the suspension, withdrawal or restriction of the Service under this Clause 12.
- 12.4 The exercise of the Company's right to suspend, withdraw or restrict the Service under this Clause is without prejudice to any other rights, powers and remedies available to the Company under the Agreement or otherwise and does not constitute a waiver of the Company's right to subsequently terminate the Agreement.

### **13. TERM AND TERMINATION**

- 13.1 Unless otherwise terminated earlier in accordance with Clause 13 or extended in accordance with Clause 13.9, the Agreement shall take effect on the Commencement Date and shall continue until the expiration date of the relevant Service Plan. Upon such expiration, the Agreement will automatically renew on a month-to-month basis on the same terms and conditions (save for the Charges) and the Customer agrees to continue to subscribe the relevant Service and to pay the monthly charges therefor based on the prevailing monthly rate or tariff price for that Service as published or specified by the Company (at its sole discretion) from time to time, whether in its website(s), invoice(s), notice(s) or otherwise and the Service shall be deemed accepted by the Customer unless terminated by either party upon giving not less than 30 days' prior written notice to the other party.
- 13.2 Subject to Clause 13.4, either the Company or the Customer is entitled to terminate the Agreement by giving the other at least 30 days' prior written notice.
- 13.3 Without prejudice to any other rights and remedies available to the Company under the Agreement or otherwise, the Company is entitled to immediately terminate the Service (in whole or in part) or the Agreement (in whole or in part) without prior notice if:
  - (a) the Customer is in material breach of the Agreement (including the failure to:
    - (i) pay any amounts owing in accordance with the Agreement;
    - (ii) provide the Security Deposit in accordance with Clause 5;

- (iii) comply with any of its obligations under Clause 6; or
- (iv) comply with any obligation that is identified as a material obligation in the Special Conditions);
- (b) the Company suspects fraud or misuse of the Service or an Unauthorised Activity in relation to use of the Service or the Customer Service by any person, regardless of whether the Customer consented to or had knowledge of such fraud, misuse or Unauthorised Activity;
- (c) the Company is named as a defendant or threatened with suit in any action or proceeding in which it is alleged that the Service has been used to carry defamatory material;
- (d) the Customer uses the Service or a third party uses the Service or the Customer Service:
  - (i) for any improper purpose or for the purpose of sending any unsolicited advertising material or any material of an obscene or indecent nature;
  - (ii) in any manner which is unauthorised, fraudulent, unlawful or illegal, whether under any Applicable Law or otherwise;
  - (iii) in a manner which constitutes an infringement by the Customer or the Company of the rights of any person (including but not limited to Intellectual Property Rights and rights of confidentiality) or a violation or infringement of any duty or obligation in contract, tort or otherwise, to any third party;
- (e) in the case of a Customer that is an individual, the Customer dies;
- (f) in the case of a Customer that is a legal entity (including a partnership) that Customer becomes or there is evidence to show that the Customer is likely to become insolvent or bankrupt, subject to a winding up proceeding, has a receiver appointed, is dissolved or in the process of dissolution, makes any arrangement for the benefit of creditors, or initiates or becomes or there is evidence to show that the Customer is likely to become subject to any other form of insolvency proceeding;
- (g) the Company is prohibited from supplying the Service under any Applicable Law;
- (h) the Service has been removed from the tariff schedule of the Company;
- (i) any of the information provided by the Customer to the Company in applying for the Service is found to be false, inaccurate or misleading in a material respect;
- (j) any Force Majeure Event referred to in Clause 16.2 continues for a consecutive period of more than 90 days;
- (k) the Company has a specific right to terminate the Service under the Special Conditions; or
- (l) the Customer has had amounts outstanding on any service or equipment provided to the Customer by the Company or an Affiliate of the Company, under the Agreement, for a period of 30 days or more; or
- (m) there is evidence to show that the Customer is or will be unable to pay its debts as and when they fall due.

13.4 If the Agreement is terminated before the expiration of the Commitment Period (where applicable) by:

- (a) the Customer under Clause 13.2; or
- (b) the Company under Clause 13.3 (other than under Clause 13.3(g) or 13.3(j)),

the Customer shall, on termination, pay the Company the Cancellation Charge and any other termination Charges as specified by the Company in the Application and/or Special Conditions.

13.5 The Cancellation Charge is an agreed reasonable pre-estimate of the anticipated losses and damages suffered by the Company if the Agreement is terminated in accordance with Clause 13.4 before the expiration of the Commitment Period.

13.6 Upon the expiration or termination of the Agreement:

- (a) all the Charges for use of the Service up to and including on the date of termination and all other amounts owing by the Customer to the Company will become immediately due and payable;
- (b) the Customer shall cease to use the Service; and
- (c) the Company is authorised to access the Premises at reasonable times for the purpose of terminating the Service.

13.7 Without limiting the exclusions or limitations of liability in Clause 11, the Company shall not be liable to the Customer nor to any third party for any Loss arising out of or relating to or in connection with the termination of the Agreement under this Clause 13.

13.8 Prior to the expiration of the existing Agreement, the Company is entitled to contact and offer a renewal Service Plan to the Customer ("Renewal Offer"). If the Customer agrees to renew the existing Agreement in accordance with such renewal Service Plan, the existing Agreement shall be renewed accordingly.

13.9 If (a) the Company 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 Agreement shall, subject to Clauses 13.10 and 13.11, be extended for successive one (1) month periods ("Monthly Renewal Periods") on the same terms and conditions (save for the Charges) and the Customer agrees to continue to subscribe the relevant Service and to pay the monthly charges therefor based on the prevailing monthly rate or tariff price for that Service as published or specified by the Company (at its sole discretion) from time to time, whether in its website(s), invoice(s), notice(s) or otherwise and the Service shall be deemed accepted by the Customer during the Monthly Renewal Periods until the Customer gives at least 30 days' prior notice of termination (or any other period as specified by the Company in the Application) to the Company.

13.10 Unless otherwise specified and/or notified by the Company, all the free gifts, free products, free services, waiver, discount or rebate offered by the Company during the existing Agreement shall not be offered by the Company during the Monthly Renewal Periods.

13.11 Notwithstanding Clauses 13.8 and 13.9, the Company is entitled to exclude the application of Clauses 13.8 and 13.9 to certain Services expressly identified by the Company in the Application.

#### **14. CONFIDENTIALITY AND INTELLECTUAL PROPERTY RIGHTS**

14.1 The Customer shall keep confidential and shall not disclose to any person any confidential information of the Company without the prior written consent of the Company unless the disclosure is required by the Applicable Law.

14.2 The Company shall not under the Agreement or as a result of the provision of the Service:

- (a) assign any Intellectual Property Right of the Company or any third party to the Customer; or
- (b) grant any licence to the Customer in respect of any Intellectual Property Right of the Company or any third party, unless otherwise specified in the Special Conditions.

#### **15. COMMUNICATIONS**

15.1 When the Company needs to contact or give notice, consent or other communication to the Customer, the Company will use the Premises, the Customer's registered office address, billing address, correspondence address, email address, facsimile number, mobile number, fixed phone number and/or other contacting details that the Customer provided the Company for contacting the Customer. The Company may also contact the Customer by such other means as designated by the Company at its discretion (such as in the form of a letter, bill insert or message, email message, statement on the Company's or its Affiliates' website, pamphlet available at the Company's or its Affiliates' shops, their respective franchisee's or agent's retail outlets, advertisement placed in a Hong Kong daily newspaper).

15.2 The notice or communication sent by the Company shall be treated as received by the Customer (a) 24 hours after posting (seven (7) days after posting, if posted to or from a place outside Hong Kong), if sent by letter; (b) at the time of delivery, if delivered in person; (c) immediately upon faxing if sent by facsimile and the transmission report indicates that the facsimile transmission was successful; (d) immediately upon sending the email, if sent by email; (e) in the case of a notice or communication sent by electronic means, immediately after being transmitted by the Company or posted on the Company's or its Affiliates' websites; and (f) when the first edition of the newspaper is

available for purchase or when the pamphlets are available in those shops or retail outlets, in the case of a newspaper advertisement or pamphlet.

- 15.3 If the Customer needs to contact the Company, please use the address on the Customer's last bill or any other postal address, email address or phone number the Company has given to the Customer for that purpose.

## **16. GENERAL**

- 16.1 The Company is entitled to vary, amend, delete or add to any or all of the terms and conditions of the Agreement at any time. Such amendments will be effective immediately (unless the Company advises otherwise) and incorporated into the Agreement. The Customer is responsible for checking the terms and conditions of the Agreement periodically for changes. The continued use of the Services by the Customer will be deemed acceptable of the amendments to the terms and conditions of the Agreement.
- 16.2 Notwithstanding any other provision of the Agreement, the Company shall not be liable for any delay and/or failure to fulfill an obligation under the Agreement if such a fulfilment is delayed, prevented, restricted or interfered with for any reason as a result of a Force Majeure Event provided that the Company has used its reasonable endeavours to mitigate the effect of the Force Majeure Event and to carry out its obligations under the Agreement in any other way reasonably practicable.
- 16.3 The Customer shall not assign, novate, convey, license, transfer or otherwise dispose of any or all of its rights, duties and/or obligations under the Agreement without the prior written consent of the Company.
- 16.4 The Company 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 to a third party or appoint a third party to perform any or all of the Company's duties or obligations, or exercise any of the Company's rights, under the Agreement.
- 16.5 Unless otherwise required by the Special Conditions, the Agreement supersedes all previous agreements in relation to the Service and embodies the entire agreement between the parties in relation to the Service. In entering into the Agreement, the parties do not rely on any representations or warranties in relation to the Service except as expressly provided in the Agreement.
- 16.6 If there is any inconsistency between the General Conditions, the Special Conditions, the Application and the Service Literature, the inconsistency will be resolved in the following descending order of preference: (a) the Application; (b) the Service Literature; (c) the Special Conditions ; and (d) the General Conditions .

- 16.7 If the Customer includes any requirement, information and/or any terms and conditions in the Application other than as expressly provided for by the Company in the Application, it will not form part of the Agreement.
- 16.8 The General Conditions, Special Conditions, Application, Service Literature and the description of the Service may be translated by the Company into Chinese. The English version of the General Conditions, Special Conditions, Application, Service Literature and the description of the Service shall prevail over any Chinese versions for all purposes.
- 16.9 The rights, powers and remedies of a party under the Agreement are cumulative and are not exclusive of any other rights, powers and remedies available to the party at law or in equity.
- 16.10 Save for CSL Mobile Limited, PCCW Media Limited and other PCCW group companies, no other person who is not a party to the Agreement has any right under the Contracts (Rights of Third Parties) Ordinance to enforce any term and condition and/ or benefit of the Agreement.
- 16.11 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.
- 16.12 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.
- 16.13 Time shall be of the essence in all respects for the Customer to perform its duties and obligations under the Agreement.
- 16.14 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.

## **17. DEFINITIONS AND INTERPRETATION**

- 17.1 In the Agreement, the following words have the meanings given to them unless the context otherwise requires:
- (a) **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.
  - (b) **Acceptable Use Policies** means the Acceptable Use Policies (applicable to Hong Kong Telecommunications (HKT) Limited General Conditions of Service) which can be found at <http://www.hkt.com/Terms+of+use>.



- (c) **Agreement** means the agreement between the Company and the Customer in respect of the Service provided by the Company to the Customer under a Service Plan (comprising the General Conditions, the Application, the description of the Service (including the Term Plan and Service Plan, if any), the Charges and where applicable, the Special Conditions and Service Literature as amended by the Company from time to time).
- (d) **Applicable Law** means (a) any law, rule or regulation of Hong Kong applicable to the Service, the Customer's use of the Service or the provision of any Customer Service to any person; (b) obligations under any telecommunications licence held by the Company, the Customer or any person to whom the Customer provides Customer Service; (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.
- (e) **Application** means a written application and, where expressly allowed by the Company, a nonwritten application made by the Customer to the Company requesting provision of the Service to the Customer.
- (f) **Business Day** means a day other than a Saturday, Sunday or a public holiday or a day on which a tropical cyclone warning signal of No. 8 or above or a "black" rainstorm warning signal is hoisted or remains hoisted in Hong Kong at any time between 9:00 a.m. to 12:00 noon.
- (g) **Cancellation Charge** means, in relation to the termination of the Agreement under Clause 13.4, (a) the cancellation charge for the Service and any other devices provided by the Company as set out in the Charge, Application, Special Conditions and/or Term Plan (as the case may be); or (b) the monthly Rental payable for the remainder of the Commitment Period if no such charge is specified in the Charge, the Application, Special Conditions and/or the Term Plan.
- (h) **Charges** means the charges (including the Rental) payable by the Customer to the Company in respect of the provision of the Service and/or device by the Company and as published, specified or issued by the Company from time to time.
- (i) **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.
- (j) **Commencement Date** means the date of acceptance by the Company of the Application or such other date agreed by the parties.
- (k) **Commitment Period** means the commitment period for the Service (a) as specified in the Application, Term Plan or Special Conditions; or (b) a period of three (3) months from the Service Commencement Date if no such commitment period is specified in the Application, Term Plan or Special Conditions.
- (l) **Communications Authority** means (a) the Telecommunications Authority of Hong Kong before 1 April 2012; and (b) the Communications Authority of Hong Kong on or after 1 April 2012.
- (m) **Company** means Hong Kong Telecommunications (HKT) Limited.

- (n) **Consequential Loss** means 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).
- (o) **Contracts (Rights of Third Parties) Ordinance** means the Contracts (Rights of Third Parties) Ordinance (Chapter 623, the Laws of Hong Kong).
- (p) **Customer** means any person including any individual, Government Agency, organisation, corporation or unincorporated body which has applied to the Company for the Service by way of the Application.
- (q) **Customer Service** means a telecommunications and other service(s), if any, supplied by the Customer to any third party using the Service.
- (r) **Due Date** means the date specified in the relevant invoice, or if no such date is specified, the date which is 15 days from the date of the invoice.
- (s) **Force Majeure Event** means anything outside the reasonable control of the Company including but not limited to, industrial disputes of any kind, war declared or undeclared, act of terrorism, blockade, disturbance, a natural disaster (such as lightning, earthquake, storm, flood, explosion or meteor), epidemic, law or any power lawfully exercised by a Government Agency, any change in any Applicable Law, inability or delay in granting governmental or other approvals, consents, permits, licenses or authorities, or telecommunications network outage or degradation which the Company cannot reasonably control.
- (t) **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 Communications Authority.
- (u) **Hong Kong** means the Hong Kong Special Administrative Region of the People's Republic of China.
- (v) **Intellectual Property Right** means any patent right, design right, copyright, database right, trademark or trade name (whether or not registered), and any pending applications relating to the foregoing, web site address, trade secrets, know-how, and all other intellectual property rights which may exist in any part of the world.
- (w) **Licence** means a licence issued by a Government Agency to the Company from time to time authorising the Company to provide the Service.
- (x) **Loss** includes loss (including, loss of revenue), damage, cost, expense, fine, Claim, demand, liability and charge.
- (y) **Monthly Renewal Periods** has the same meaning assigned to it in Clause 13.9.
- (z) **My HKT** means a customer account management service for designated customers (such as bill viewing, checking service plan / appointment details and online customer enquiries) provided and managed by HKT CSP Limited, a subsidiary of

HKT Limited, under the terms and conditions of My HKT (which can be viewed at [www.cs.hkt.com](http://www.cs.hkt.com)).

- (aa) **Network** means the telecommunications network owned or operated by the Company in accordance with the Licence including all facilities and associated equipment used in, or in connection with, that network.
- (bb) **PCCW** means PCCW Limited and its subsidiaries (including but not limited to HKT Limited and its subsidiaries).
- (cc) **Personal Data** means personal data as defined in the Personal Data (Privacy) Ordinance, account information including data set out in the Application and any other Customer information obtained from the Customer, the Network or from another source.
- (dd) **Personal Data (Privacy) Ordinance** means the Personal Data (Privacy) Ordinance (Chapter 486, the Laws of Hong Kong).
- (ee) **PIN** means a Personal Identification Number issued by the Company to the Customer to allow the Customer sole and confidential access to the Service.
- (ff) **Premises** mean any premises or place from which the Service is used from time to time.
- (gg) **Rental** means the periodical Charges payable by the Customer to the Company in respect of the Service.
- (hh) **Renewal Offer** has the same meaning assigned to it in Clause 13.8.
- (ii) **Security Deposit** means the security deposit payable by the Customer to the Company for the provision of the Service under Clause 5.
- (jj) **Service** or **Services** means the telecommunications or other services, including device, My HKT and The Club where applicable, provided by the Company to the Customer and identified in the Application.
- (kk) **Service Commencement Date** means the date the Company informs the Customer that the Service is made available to the Customer.
- (ll) **Service Literature** means any service guide, brochure, tariff schedule, customer guide, code of practice, device description, instructions or manual issued by the Company from time to time in connection with the provision of the Service.
- (mm) **Service Plan** means the Service plan (whether for a fixed term, a service plan with Commitment Period or otherwise) of the Company for subscription by the Customer in accordance with the Agreement.
- (nn) **Special Conditions** means the special conditions specifically applicable to the Service published or issued by the Company from time to time.
- (oo) **Term Plan** means a fixed-term Service Plan of the Company with the Commitment Period for subscription by the Customer in accordance with the Agreement.
- (pp) **The Club** means a member loyalty program for designated customers of PCCW provided and managed by Club HKT Limited, a subsidiary of HKT Limited, under the terms and conditions of The Club (which can be viewed at [www.theclub.com.hk](http://www.theclub.com.hk)).
- (qq) **Unauthorised Activity** means:

- (i) any act or omission in relation to the Service or the Customer Service that is in breach of any Applicable Law;
  - (ii) any translation, alteration, modification or deletion (whether through the use of any translation system or device or in any other manner whatsoever) of the addressing information (including the number, code or signal) assigned to each call at the time that call is originated; or
  - (iii) any activity identified as an unauthorised activity in the Special Conditions.
- (rr) **USC** means any universal service contribution that the Communications Authority determines is to be paid by the Company, the Customer or a user of the Customer Service in relation to the Service or the Customer Service.
- (ss) **USC Provider** means a person to whom a USC is to be paid as determined by the applicable Government Agency.

17.2 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, 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.