

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:**

PCCW Mobile HK Limited (“**PCCW mobile**”) on behalf of Hong Kong Telecommunications (HKT) Limited (the “**Company**”) publishes the General Terms and Conditions of PCCW mobile as below.

**General Terms & Conditions of PCCW mobile**

"PCCW mobile" means PCCW Mobile HK Limited (trading as PCCW mobile). The "Customer" means the customer specified in the attached Sales and Services Agreement ("Sales Agreement"). "Mobile Service" means the mobile service specified in the Sales Agreement. These Terms and Conditions for Subscription form part of the Sales Agreement between PCCW mobile and the Customer.

**1. Application for the Mobile Service**

- 1.1 Upon application for the Mobile Service, the Customer agrees to be bound by these Terms and Conditions throughout the application process and use of the Mobile Service.
- 1.2 PCCW mobile shall not be bound to accept the Customer's application and may reject the Customer's application if:
  - (i) the Customer fails to submit proof of identity and address;
  - (ii) the Customer fails to satisfy the requisite creditability check;
  - (iii) in case of mobile number portability, the porting-out of the mobile number from another mobile operator to PCCW mobile is not successful;
  - (iv) the Customer fails to pay the stipulated handset price, charges and/or deposit in full.
- 1.3 In some special occasions, a temporary Mobile Service may be provided to the Customer pending PCCW mobile's acceptance of the Customer's application for the Mobile Service. Notwithstanding the foregoing, any service provided to the Customer in the interim period shall not constitute an acceptance of the Customer's application and PCCW mobile shall be entitled at its sole discretion, to discontinue such temporary Mobile 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 Mobile 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.

## **2. Value Added Services**

- 2.1 Apart from the Mobile Service, the Customer may apply for such value added services ("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 "Charges" means all charges relating to the provision of the Mobile Equipment and/or Service by PCCW mobile to the Customer including but not limited to connection, surcharge, flag fall, monthly service, voice airtime, data usage, mobile data, roaming, registration, infrastructure, network, co-handling, content, cancellation, reconnection, MTR/Tunnels/Mobile Service License Fee, thereafter charges and any other charge of 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.
- 3.2 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.
- 3.3 The Customer expressly acknowledges that he/she/it has been notified of these Charges and the Terms and Conditions and understands the charging mechanism of the Mobile Service and VAS (collectively referred to as "Services") before subscribing for the Services.
- 3.4 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.
- 3.5 The Customer acknowledges and agrees, that the Charges may be adjusted by PCCW mobile at any time. PCCW mobile does not warrant that the Charges will not be adjusted.
- 3.6 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 these Terms and Conditions, PCCW mobile shall be entitled to suspend, discontinue or terminate the Customer's subscription to any or all of the Services.

- 3.7 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.
- 3.8 PCCW mobile shall refund the balance of the deposits paid by the Customer after deducting all outstanding sums and an amount for loss or damage (if any) suffered by PCCW mobile.
- 3.9 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 the Hong Kong Special Administrative Region of the People's Republic of China ("Hong Kong").

#### **4. Customer's Obligations**

- 4.1 The Customer shall perform his/her/its obligations stipulated under these Terms and Conditions 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, deceptive, 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 personal 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 relevant laws of Hong Kong and any operating rules, as amended from time to time, when using the Services.
- 4.7 The Customer shall not assign, transfer or sub-license any all or any of his/her/its rights and obligations under these Terms and Conditions.
- 4.8 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 these Terms and Conditions, 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 Please note 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
  - (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, 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
  - (ii) 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 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 his/her/its remaining benefits under his/her/its current 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 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
  - (i) deactivate any of the Services, with or without notice to the Customer, to carry out system, maintenance, upgrading, testing and/or repairs;
  - (ii) 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 a particular Customer.
- 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 Save and except where the Customer is under a fixed term subscription for the Mobile Service, 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 provided that the Customer shall pay all charges as invoiced.
- 7.6 PCCW mobile may terminate the provision of the Services forthwith in the following circumstances:
  - (i) any amount due to PCCW mobile has been outstanding for more than 14 days;
  - (ii) the Customer has committed a breach of any of these Terms and Conditions or the terms and conditions for a VAS (if any); or
  - (iii) the Customer has successfully ported out his/her/its mobile number to another mobile operator.
- 7.7 Without limiting the generality of the foregoing, PCCW mobile may terminate the provision of the Services at any time without cause 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 Customer's service plan at the date of termination shall be forfeited absolutely.

## 8. **Warranty**

8.1 Save and except for the warranties expressly provided under these Terms and Conditions, 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 agrees to indemnify PCCW mobile against any action, liability, cost, claim, loss, damage, proceeding, and/or expense suffered or incurred by PCCW mobile arising from or which is related to (i) the Customer's use and/or any other person's use of any of the Services, handset and/or mobile device; and (ii) any breach or non-observance by the Customer of any of these Terms and Conditions or the terms and conditions (if any) applicable to any VAS subscribed to by the Customer.

9.2 In the event that the Customer ports in his/her/its prepaid mobile number to PCCW mobile, the Customer warrants that he/she/it 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, 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:

- (i) the use of the Services, Content, handset or mobile device by the Customer;
- (ii) any damage to or loss of data suffered by the Customer arising from his/her/its use of any of the Services, Content, handset or mobile device;
- (iii) 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;
- (iv) 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);
- (v) 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
- (vi) 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 these Terms and Conditions, PCCW mobile expressly disclaims and excludes any liability whatsoever arising directly or indirectly from PCCW mobile exercising any of its rights under these Terms and Conditions.

## **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) 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:

- (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, its agents or Affiliates, in relation to the Service and/or the goods or services of such agents or Affiliates;
- (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 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 or with obligations to third parties or the Government Agencies in relation to the Service or other telecommunications services of PCCW mobile and/or its Affiliates;
- (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.

11.3 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.

11.4 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.

11.5 On PCCW mobile's request, the Customer shall provide PCCW mobile with information relating to the Customer and his/her/its 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 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 of his/her/its obligations under these Terms and Conditions.

11.6 For further information on the obligations and policies (including your right of access and correction of personal data) of PCCW mobile under the Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong), please refer to the PCCW Privacy Policy Statement published on <http://www.pccw.com>

## 12. General

12.1 PCCW mobile reserves the right to unilaterally amend any or all these Terms and Conditions by posting the details of such amendments on [www.pccwmobile.com](http://www.pccwmobile.com); such amendments to take effect immediately upon such posting.

12.2 These Terms and Conditions shall supersede all representations and promises, whether oral or written made by PCCW mobile's staff or agents.

12.3 PCCW mobile shall have the absolute discretion to assign or sub-contract the whole or any part of its rights and obligations hereunder to any other party or parties.

12.4 These Terms and Conditions shall be construed in accordance with the laws of Hong Kong and the parties hereby submit to the non-exclusive jurisdiction of the Hong Kong courts.

12.5 If the Customer is a body corporate, the Customer warrants that the person signing this Agreement has the due authority and capacity to act on its behalf.

12.6 The English version of these Terms and Conditions shall prevail over any Chinese version (if any) which is provided for information purposes only.

12.7 If any term or condition herein becomes or is declared illegal, invalid or unenforceable for any reason, such term or condition shall be divisible from these Terms and Conditions and shall be deemed to be deleted from these Terms and Conditions.

### **Effective date of tariff:**

Already effective

### **Revision history:**

1<sup>st</sup> publication on 13 May 2010