

# Mobile Service Agreement

## 1 Capitalised terms are defined in this Agreement in clause 17 of these Agreement Terms.

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- 1.1 This Agreement consists of:
- (a) the Application;
  - (b) any Supplemental Agreement;
  - (c) VAS Package Menu and Service Guide (if applicable); and
  - (d) terms and conditions of this Agreement.
- 1.2 If there is an inconsistency between the parts of this Agreement, the document listed earlier in clause 1.1 prevails to the extent of the inconsistency.

## 2 Term

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- 2.1 This Agreement begins on the Commencement Date and continues until the Commitment Period for all Mobile Services have expired, unless terminated earlier in accordance with this Agreement. Some Mobile Services may have different Contract Commencement Dates as specified in the Application and/or Supplemental Agreement.
- 2.2 Prior to the expiration of any Commitment Period, we may contact and offer you a renewal Service Plan ("Renewal Offer"). If you agree with the Renewal Offer, your Mobile Service will be renewed in accordance with terms and conditions of that Renewal Offer.
- 2.3 Upon the expiration of the Commitment Period, if:
- (a) we are unable to contact you regarding a Renewal Offer;
  - (b) you have not agreed to any Renewal Offer; or
  - (c) you have not provided us any notice to terminate your Mobile Service;

We will continue to provide you with Mobile Service in accordance with your current Service Plan at the then prevailing monthly fee or any other Service Plan to be decided by us at our discretion on a monthly basis. Unless otherwise specified, any existing benefit, offer, rebate offered to you during the Commitment Period will no longer apply.

## 3 Mobile Service

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- 3.1 We agree to supply the Mobile Service to you, and you agree to acquire them from us, at the prices and on the terms of this Agreement.
- 3.2 The Mobile Service must be ordered, supplied and billed against the nominated accounts agreed between you and us.
- 3.3 We may substitute another service for a Mobile Service, by giving you prior notice, where the price of the substituted service is not greater than, and (in our reasonable opinion) the functionality is substantially the same as or better than, the Mobile Service.
- 3.4 We may at any time do all such things that are necessary to the service features provided under a Mobile Service, the SIM Card, Equipment or Mobile Equipment to ensure the quality of a Mobile Service including requiring you to use a password to access a Mobile Service.
- 3.5 You must ensure the information you provide to us is complete, true and up-to-date in all respects.
- 3.6 If you access a VAS, in addition to any other relevant Charges, you will be charged airtime for the amount of time spent using the service. If the VAS accessed is the call conference service, the originator of the conference call will be charged airtime for the time spent on the conference call according to the number of lines connected. If the VAS accessed includes Mobile Data usage or you have used Mobile Data, you will be charged for the amount of data used.
- 3.7 Depending on the Mobile Services you use, you may obtain details of your Mobile Service usage for the previous three months free of charge by logging in to [www.hkcs1.com](http://www.hkcs1.com) or [www.1010.com.hk](http://www.1010.com.hk). Alternatively, you may apply to us to obtain such details at a fee prescribed by us from time to time on our websites.
- 3.8 You agree that an Acceptable Use Policies applies to some Mobile Services and you must use the Mobile Service in a fair manner. We will consider use of the Mobile Service as unfair if you or a third party uses the Mobile Service in any way which:

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- (a) is designed to exploit, or results in the exploitation of, an acceptable usage limit of the relevant Mobile Service (as determined by us from time to time); or
- (b) causes or results in loss to us, problems to the Network or affects the storage capacity of another customer.

In such an event, we may reduce your usage to a level determined by us and/or charge you in accordance with the prevailing thereafter rate of the relevant Mobile Service or suspend or terminate the relevant Mobile Service immediately.

- 3.9 If there is a change to your registered name or Service Plan during the Commitment Period, you must pay us the Early Termination Charge and the remaining balance of any Rebate or other privileges and benefits (if any) will be forfeited.

## **4 Our Aim of Providing Continuous and Fault-Free Services**

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- 4.1 We will use due care and skill in providing the Mobile Services to you. However, given the nature of telecommunication systems (including our service's reliance on systems and services that we do not own or control), we cannot promise that our Mobile Services will be continuous or fault free.

## **5 Your Responsibility**

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- 5.1 You are responsible for:

- (a) ensuring that all Equipment connected to the Mobile Service by you, or on your behalf, is technically compatible with the relevant Mobile Service(s) and that the Equipment complies with and is used in accordance with all reasonable procedures notified by us and any Applicable Law;
- (b) ensuring that you do not alter, tamper, reverse engineer, repair or attempt to repair the Mobile Service, Equipment and / or Mobile Equipment or cause, or allow, a third party to do any of these acts;
- (c) selecting, supplying and maintaining your own facilities, Equipment and Mobile Equipment;
- (d) the content and security of any data or information which you send or receive using the Mobile Service;
- (e) ensuring that the use of the Mobile Service is for your company own use and not for resale; and
- (f) any use of the Mobile Service, by you or any third party, whether authorised or not.

- 5.2 You are responsible for any use of our Mobile Service (by you or another):

- (a) that interferes or threatens to interfere with the efficiency of our network;
- (b) to send or upload any content which is obscene, offensive, abusive, menacing, harassing or threatening in any way;
- (c) to breach another person's rights, including copyright or other intellectual property rights;
- (d) to distribute any tool that may compromise or breach any security features or harm or interfere with the normal operations of any network facility or service;
- (e) to send unsolicited commercial messages or contents;
- (f) that may be unlawful, fraudulent, improper, unauthorised, harassing, discriminatory, libellous, abusive, threatening, harmful, vulgar, obscene or otherwise objectionable manner;
- (g) that may be harmful or detrimental to us or our reputation; or
- (h) that may encourage conduct that could constitute a criminal offence, give rise to civil liability or otherwise violate any Applicable Law.

- 5.3 Your responsibility regarding Equipment and/or Mobile Equipment:

- (a) If you purchase Equipment and/or Mobile Equipment from a third party, you understand and agree that the Equipment and/or Mobile Equipment does not form part of our Mobile Service Agreement and you are responsible for any repairs to the Mobile Equipment and for ensuring the Mobile Equipment you use is compatible and can be used with any Mobile Service you have subscribed to.
- (b) If you purchase Mobile Equipment from us, you understand that the manufacturer of the Equipment and/or Mobile Equipment may provide certain warranties in relation to the Equipment and/or Mobile Equipment. During any warranty period provided by the manufacturer, we are not liable to you for any defect to, or repair of, the Equipment and/or Mobile Equipment.
- (c) Following the expiry of any warranty period provided by the manufacturer or if no warranties are given by the manufacturer, we may, at our sole discretion agree to repair or replace your Equipment and/or Mobile Equipment for such Charges and on such terms as may be set by us from time to time.

# Mobile Service Agreement

- (d) All Equipment and/or Mobile Equipment submitted for repair must be accompanied by its Sales Memo so that we or the manufacturer may verify purchase of the Equipment and/or Mobile Equipment and the warranty period. All repairs are subject to and will be provided in accordance with the terms and conditions of the Equipment and/or Mobile Equipment manufacturer's warranty.
  - (e) If we are unable to deliver all or any part of the Equipment and/or Mobile Equipment ordered due to any occurrence or circumstances beyond our control, we will have the right to cancel the order or the undelivered balance without any liability to you in respect of such cancellation.
- 5.4 Depending on your chosen Services, certain third party information or Content services provided by the Third Party Providers may also be available for access and use by you through the Services provided by us, You agree to comply with the applicable terms and conditions specified by such Third Party Providers if you choose to use their information or Content services.
- 5.5 In providing access to such third party information or Content services, you agree that we are not responsible or liable for:
- (a) the act, negligence or omission of such Third Party Providers;
  - (b) your use of the information or Content services provided by such Third Party Providers; and
  - (c) the transaction or any dispute between you and such Third Party Providers.

## **6 Charges and Payment**

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- 6.1 This Agreement sets out the Charges you must pay us for the Mobile Service.
- 6.2 Unless otherwise provided in another part of this Agreement, the calculation of the Charges payable by you will start from the date the Mobile Service is made available to you by us. Some Charges, such as the price of the Mobile Equipment and costs associated with the SIM Card are payable by you upon the signing of this Agreement. Sometimes you have to pay Charges in advance. Unless otherwise stated in the Application, Charges payable on a monthly basis, such as Charges for a VAS, will be charged on a full-month basis even if the usage is less than a complete month. If you wish to have a full use of Service for the prepaid charges which are non-refundable, you should choose a termination date which falls on the last day of your bill period by giving us at least 30 days' prior notice.
- 6.3 Except where Charges are payable in advance, Mobile Service will ordinarily be charged in arrears on a single monthly invoice. Payment for Charges is due on the date specified in the bill issued through the bill formats chosen by you. We may issue interim bills or more than one bill per month to you and there is no time limit on when we may bill you for Charges. All payments must be settled in Hong Kong dollars and by a method as described in the bill. We may direct you to pay an entity other than us when settling a bill.
- 6.4 We are required by law to ensure that our bill systems are accurate and reliable and we are committed to complying with these requirements. Our records are sufficient proof that a Charge is payable unless they are shown to be incorrect. You must raise any enquiry or dispute concerning your bill to us within thirty (30) days from the billing date, however nothing in this clause relieves you from paying the bill on or before the payment due date. If any Charge is not queried before this time, then the bill is deemed correct and accepted by you.
- 6.5 If you do not pay any amount due under this Agreement on time, we may:
- (a) on 7 days notice, decrease or withdraw any discounted pricing for those Mobile Service until all unpaid amounts are paid;
  - (b) charge you interest (calculated on a daily basis) at the rate equal to 2% above the Hong Kong Dollar best lending rate of the Hong Kong and Shanghai Banking Corporation Limited on the outstanding Charges until payment of the Charges is made in full; and
  - (c) ask a debt-collection agency to collect the payment on our behalf. If we do so, you will have to pay us an extra amount for breaking the Contract. This will not be more than the reasonable costs we have to pay the agency, who will add the amount to your debt on our behalf (this will depend on the amount you owe us).
- 6.6 Where you have more than one account with us:

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- (a) we may transfer any credit balance under any of the accounts to settle the outstanding Charges under any other account or vice versa; and/or
  - (b) we may transfer any outstanding Charges under one account to any other account; and/or
  - (c) we may issue a consolidated invoice or separate invoices for the various accounts of you.
- 6.7 You will be liable for all Charges for the Mobile Service provided to you, whether or not used by you or the User, or another person with or without your knowledge or consent and irrespective of whether the use or transmission of the Mobile Service was successful.
- 6.8 We may apply a credit limit from time to time for Charges incurred by you and may suspend access to the Mobile Service, in whole or in part, if the limit is exceeded.
- 6.9 We can bill you through a billing agent or any HKT group companies.
- 6.10 Depending on the SIM Card you use, our Bills are available in the following formats:
- (a) Email Bill – a bill sent by email in PDF/HTML format to your Email Bill email address. If you register for Email Bill, you may also receive an SMS Bill and may no longer receive a Paper Bill.
  - (b) Paper Bill – a bill sent by post in paper format to your billing address at a Charge prescribed by us from time to time on our websites.
  - (c) Online Bill – a bill you may view online by logging in to “My Account” on [www.hkcs1.com](http://www.hkcs1.com) or [www.1010.com.hk](http://www.1010.com.hk).
  - (d) SMS Bill- a bill summary sent by SMS to your registered mobile number.
- 6.11 We will use our best endeavours to deliver your bill to the email address or billing address nominated by you to receive it.
- 6.12 To help us ensure you can continue to receive your Bill, it is your responsibility to:
- (a) notify us if your email address or billing address changes;
  - (b) check your junk email folder to see if your Email Bill has been delivered there instead of your inbox; and
  - (c) contact us if you do not receive your Email Bill, Paper Bill or SMS Bill.

## **7 Deposit**

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- 7.1 We may, at any time, require you to provide a deposit to us. The amount of any deposit will be solely determined by us.
- 7.2 We may, without prejudice to any other rights or remedies under this Agreement, deduct from any deposit:
- (a) the amount of any outstanding Charges payable under this or any other agreement or another service provider within the HKT Group Companies; and
  - (b) any amount for any loss or damage incurred or sustained by us as a result of your breach of any terms or conditions of this Agreement or any other agreement made between you and us.
- 7.3 Subject to clauses 7.2 and 7.4, we will refund to you any unused portion of your deposit without interest after the termination of this Agreement and after you settle all outstanding Charges payable under this Agreement or any other agreements or any claims brought by us in respect of your breach of any of the terms or conditions of this Agreement or any other agreements.
- 7.4 You agree that:
- (a) if you terminate this Agreement in accordance with clause 13.4(a) and the person identified as the User of the Mobile Service and/or Mobile Equipment or another person becomes the new registered customer, any deposit held by us need not be refunded to you and may be used for the benefit of the new registered customer; and
  - (b) you will be responsible for collecting any of the deposit from the new registered customer.

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7.5 You acknowledge that any deposit paid by you or any Charges paid in advance is at your own risk and in the event that we go into liquidation, any deposit or prepayment may not be refunded or reimbursed to you.

## **8 SIM Card, Equipment and Mobile Equipment we provide to you**

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8.1 The SIM Card, Equipment and any Mobile Equipment we supply or provide to you on loan for a Mobile Service remains at all times our property.

8.2 We may in our sole discretion replace free of charge for you any SIM Card, Equipment or Mobile Equipment we supply or provide to you on loan that is damaged due to normal wear and tear. We will charge you a replacement or repair fee for a SIM Card or Mobile Equipment we supply or provide to you on loan as prescribed by us from time to time, if it is:

- (a) damaged due to misuse, negligence or wilful damage on your part; or
- (b) lost by, or stolen from, you.

8.3 You must contact us to arrange for your Mobile Service to be suspended if your SIM Card, Equipment or Mobile Equipment has been lost or stolen.

8.4 You are responsible for all Charges connected with the lost or stolen Mobile Equipment, Equipment and/or SIM Card until we disconnect all Mobile Services to the lost or stolen Mobile Equipment, Equipment and/or SIM Card, following your report of the loss or theft in accordance with clause 8.3, but you are still required to pay all monthly Charges.

## **9 IDD and Roaming Service**

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9.1 The Automatic Roaming Service is available where we have a roaming arrangement with a telecommunications carrier in the relevant country or place.

9.2 For those countries where an Automatic Roaming Service is unavailable, if we offer an alternative roaming service for a particular country, you may apply for such an alternative roaming service on such additional terms as we may specify from time to time.

9.3 In order to provide IDD and roaming services to you, we enter into arrangements with other service providers hence Charges for such services are subject to change from time to time without notice. We recommend that you check on our websites for the latest applicable Charges before you use such services.

## **10 VAS**

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10.1 We or a Third Party Provider may make a VAS available to you, provided that you:

- (a) satisfy the eligibility requirements for the VAS (if any) specified by us from time to time; and
- (b) follow the instructions given by us under VAS Package Menu and Service Guide Optional Services Application and Optional Services Service Guide or, our website or when we provide any password to you.

10.2 The rules, terms and conditions and eligibility requirements may vary according to the particular VAS and will be available from us from time to time on our websites or VAS Package Menu and Service Guide or Optional Services Application and Optional Services Service Guide.

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10.3 You acknowledge and agree that:

- (a) you may be able to upload and send your own content or information via or using a VAS and by doing so you grant to us a royalty free, perpetual, irrevocable, transferable and world-wide licence to store, transmit, sub-licence or otherwise deal with any content or information you upload;
- (b) any views expressed as part of a VAS are not necessarily those of ours;
- (c) you are responsible for any disclosure of a password to any other person and must bear the risks of a password being used by unauthorised persons or for unauthorised purposes; and
- (d) you release us from all liability in connection with any VAS, including any failure to provide the VAS or loss suffered from using the VAS.

10.4 We are not party to and are not otherwise involved in any manner in:

- (a) any verification or authentication of any payment details provided by you to us when you access a VAS;
- (b) the provision of any credit to, or any payment collection function to or from, you or any other person;
- (c) any arrangement for payment of any bill, or the settlement of any account between you and any third party;
- (d) any transaction between you and a Merchant or Third Party Provider;
- (e) any underlying transaction between a Merchant, Third Party Provider and that Merchant's preferred credit provider or banker (if any);
- (f) any dispute between you, a Merchant, Third Party Provider or a Merchant's preferred credit provider or banker (if any); and
- (g) any dispute between a Merchant, Third Party Provider and any person to or from whom data is transferred pursuant to this Agreement.

## 11 Message

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11.1 You are prohibited from sending unsolicited promotional Message to any other person except in accordance with this clause and any Applicable Law.

11.2 You agree that if you intend to send a Message of a promotional or similar nature to another person then you must obtain the express written consent of the recipient to receive the promotional Message prior to sending the Message to that recipient. If required by us, you must produce the express written consent received from the recipient.

11.3 If we receive a complaint from a recipient, governmental or regulatory authority about you sending unsolicited Message, then we may (in any order):

- (a) notify you verbally or in writing of the complaint received;
- (b) require you to respond to the complaint received and you must respond to us within three working days of receiving a notification; and
- (c) block you from sending Message or suspend your Mobile Services until the matter has been resolved.

## 12 User

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12.1 Unless otherwise agreed in the Application, by inserting a name other than yours in the User section of the Application, you authorise the User to:

- (a) use the Mobile Service;
- (b) make changes to the Mobile Service including, changing any Service Plan, VAS package, billing address and/or payment method, as long as the changes do not derogate any right or benefit of you under the Agreement;
- (c) report the loss of Mobile Equipment; or
- (d) request a copy of the bill or Mobile Service usage records.

# Mobile Service Agreement

## 13 Termination or Suspension of Mobile Service

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13.1 We may without notice limit, cancel, terminate or suspend the provision of Mobile Service to you at any time:

- (a) in the event of an emergency or in order to provide resources to emergency and other essential services;
- (b) if the supply or use of a Mobile Service is or is to become unlawful;
- (c) if in our reasonable opinion the provision of a Mobile Service is liable to cause death or personal injury or damage to property; or
- (d) if you or User die .

13.2 We may limit, cancel, terminate or suspend the provision of a Mobile Service at any time by notice to you:

- (a) if you do not pay any amounts due for that Mobile Service on time;
- (b) if the Charges for the use of the Mobile Service exceed the credit limit or the use of the Mobile Services exceeds the usage limit set by us from time to time or is inconsistent with any Acceptable Use Policies as may from time to time be determined by us;
- (c) if there are technical difficulties or it is not feasible to provide the Mobile Service;
- (d) if a third party supplier ceases to provide those things which are necessary for us to provide the Mobile Service to you;
- (e) if your use of a Mobile Service interferes with the efficiency of our network and you fail to rectify the situation;
- (f) if you or any other person uses the Mobile Equipment or Mobile Service in contravention of this Agreement or for any illegal or improper purpose, or you act in a way, which in our reasonable opinion, cause a nuisance or harassment to us or other customers;
- (g) if you commit a breach, or we reasonably believe you are likely to commit a breach, of any of the terms and conditions of this Agreement;
- (h) if we reasonably believe it is necessary to suspend a Mobile Service to:
  - (i) comply with an order, instruction, determination, statement, direction or similar pronouncement of a government or regulatory authority;
  - (ii) carry out scheduled maintenance, repair or upgrading of a Mobile Service, or any equipment, facility or any part of the Network;
  - (iii) render any repair service to your Mobile Equipment;
  - (iv) reduce or prevent fraud or interference with a Mobile Service; or
  - (v) resolve a complaint as described in clause 11.3;
- (i) if we cease to provide all or part of the Mobile Services; or
- (j) if an administrator, receiver, liquidator or provisional liquidator is appointed to you, or you resolve to enter into any settlement, moratorium or similar arrangement for the benefit of your creditors, or you are unable to pay your debts when they are due.

13.3 Where provision of a Mobile Service has been cancelled, terminated or suspended under clause 13.2(a), we may require you to pay a re-connection charge when the Service is re-connected.

13.4 This Agreement or a VAS may be terminated without cause:

- (a) by you giving to us 30 days' prior written notice or payment in lieu of notice to that effect. If you notify us in accordance with this clause 13.4(a), you must immediately pay us all Charges payable up to the date of termination; or
- (b) by us by giving to you 30 days' prior written notice.

13.5 If for any reason this Application or a Supplemental Agreement expires or terminates or a Mobile Service is terminated:

- (a) you must pay us all outstanding bills by the due date and within 30 days of request for payment, all other amounts outstanding as at the date of, or arising as a result of, expiry or termination (including any Early Termination Charges); and
- (b) all rights that a party has accrued before expiry or termination continue.

13.6 If:

- (a) you terminate this Agreement before the expiry of any Commitment Period; or
  - (b) we terminate this Agreement under clause 13.4,
- the remaining balance of any Rebate or benefit will be absolutely forfeited to us. In addition, if demanded by us, you must pay all outstanding Charges and Early Termination Charge or the monthly service fee for the remaining months of the Commitment Period, whichever is higher, to us immediately.

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- 13.7 Notwithstanding any provision of this Agreement, if you are receiving benefits under any promotion whether relating to Mobile Equipment or a Mobile Service, or are receiving a Rebate under any existing arrangement between you and us whether under this Agreement or otherwise ("Existing Benefit"), the Commitment Period associated with any new Mobile Service or Mobile Equipment will commence immediately upon the expiry of the Existing Benefit. For the avoidance of doubt, any acquisition by you of a Mobile Service or Mobile Equipment is effective immediately upon agreement by you of the offer made by us irrespective of the time when the Mobile Service or Mobile Equipment will be provided. If you terminate any Mobile Service or Mobile Equipment before the Mobile Service or Mobile Equipment is provided to you but you have received benefits associated with the same, we have the right to deduct or cancel (at our discretion) the benefits or deduct the value of the benefits (as determined by us) from any of your accounts or seek reimbursement of the benefit from you.
- 13.8 If for any reason this Agreement expires or terminates, clauses 5 (Your Responsibility), 13.5 (Termination) and 15 (Limitation of Liability) continue in full force and effect.

## 14 Privacy and Personal Data

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- 14.1 We collect, process, disclose, retain or use your Personal Data in accordance with the HKT Privacy Policy Statement which can be found at [www.hkt.com/legal/privacy.html](http://www.hkt.com/legal/privacy.html).
- 14.2 If we request Personal Data of User, Service Plan User or yourself from you, you may refuse to provide the Personal Data. However, we may decline to provide the Service to you.
- 14.3 Unless you tell us otherwise, you agree that your name, address (in part) and phone number(s) for the local line Services may be included in printed directories (if we choose to publish such directories) and directory enquiry services and be disclosed to a third party for related purposes.
- 14.4 You will, as soon as possible, tell us of any change of address or any other particulars provided to us which may affect our provision of Service to you.

## 15 Limitation of Liability

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- 15.1 We accept responsibility if you are injured or die as a result of our negligence in the provision of the Service. We will not exclude or limit this responsibility.
- 15.2 We also accept responsibility for loss or damage to your physical property arising from our negligence. We will only pay you up to HK\$1 million for this loss or damage.
- 15.3 Notwithstanding of otherwise stated, we will not be liable to pay you compensation for any consequential, indirect, special, punitive, economic, incidental, collateral or financial loss (including any loss of profits, goodwill, bargain or opportunities, or any loss or corruption of data, or any loss or anticipated savings or business, whether caused by negligence or otherwise and whether arising out of or in relation to or in connection with the Contract, the Service, the Mobile Service, or any failure to supply or delay in supplying the Service or Mobile Service). We will not be liable to you for any losses and damages that you may suffer if you have used the Service, Mobile Service, Equipment and or Mobile Equipment we provide for commercial purposes.
- 15.4 Except as described in Clauses 15.1 and 15.2 and to such extent permissible by law, we will not pay more than the Contract Value in compensation (even if we have been negligent) for all our liabilities under the Contract for the Mobile Service, Service, Equipment, Mobile Equipment and any other goods we supplied or provided.

## 16 General

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### Entire Agreement

- 16.1 This Agreement constitutes the entire Agreement about the Mobile Service between you and us.



# Mobile Service Agreement

## Governing law

16.2 This Agreement is governed by the laws of Hong Kong Special Administrative Region of the People's Republic of China ("Hong Kong"). The parties submit to the exclusive jurisdiction of the courts of Hong Kong and the courts of appeal from them for determining any dispute concerning this Agreement.

## Interpretation

16.3 In this Agreement:

- (a) a reference to this Agreement includes all its parts described in clause 1.1, and includes any amendment to or replacement of them;
- (b) a reference to a statute, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) a reference to a party includes a reference to the party's executors, administrators, successors and assigns;
- (d) the singular includes the plural, and vice versa; and
- (e) "includes", "including", "for example", "such as" and similar terms are not words of limitation.

## Variations

16.4 We may at any time vary any of the terms and conditions of this Agreement by giving written or electronic notice (if such variation is unfavourable to you, we will give 30 days notice) to you to that effect. For the avoidance of doubt, notice or other communication may be given by us to you in the form of a letter, bill insert or message, email message, statement on our website, pamphlet available at our shop, our franchisee or agent retail outlet, message on the screen of Mobile Equipment, advertisement placed in a Hong Kong daily newspaper or any other method as determined as adequate by us. Such notice or communication will be deemed to have been received by you:

- (a) in the case of a posted letter, 24 hours after posting;
- (b) in the case of a notice or communication sent by electronic means, immediately after being transmitted by us or posted on our websites; and
- (c) in the case of a newspaper advertisement or pamphlet, when the first edition of the newspaper is available for purchase or when the notice is available in the shop or retail outlet.

## Severability

16.5 If any clause or part of any clause is held by a court to be invalid or unenforceable, that clause or part of a clause is to be regarded as having been deleted from this Agreement and this Agreement otherwise remains in full force and effect.

## Waiver of rights

16.6 A condition of this Agreement, or a right created by it, may only be waived by a party by giving notice and the failure to exercise or any delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy.

16.7 A waiver of a breach of this Agreement does not waive any other breach.

16.8 You warrant that you have not relied on any representations or warranties by us other than those in this Agreement.

## Assignment

16.9 You must not assign or otherwise dispose of any of your rights or obligations under this Agreement (including the Number allocated by us to you) to any other party without the prior written consent of us. We may assign any or all of our rights or obligations under this Agreement to any third party at any time without your consent.

## 17 Definitions

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In this Agreement unless otherwise indicated:

**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.

# Mobile Service Agreement

**Acceptable Use Policies** means the Acceptable Use Policies of you and us in respect of the Services comprising of the Agreement, the Application and the description of the Services (including the Service Plan), the Charges and where applicable, Supplementary Agreement as may be amended by us from time to time.

**Applicable Law** in relation to any person, action or thing means:

- (a) any law, rule or regulation of Hong Kong or any country (or political subdivision of the country) which is applicable to a party;
- (b) any obligation under any licence held by us in Hong Kong or any country (or political subdivision of the country);
- (c) any lawful determination, decision, direction, guideline, statement or code of practice in Hong Kong or any country (or political subdivision of the country) which is applicable to a party; or
- (d) any applicable international convention or agreement.

**Application** means the Application overleaf, attached or above, or any other paper or electronic application mechanism and includes any Supplemental Agreement.

**Automatic Roaming Service** means the service supplied by us on such additional terms and conditions as specified by us from time to time, which allows you to use your Mobile Equipment, Number and SIM Card to make and receive calls or use any other services as may be provided by us (or third parties on behalf of us) from time to time outside Hong Kong and have the calls billed to your account.

**Bill** means a bill sent to you in the format you have chosen and includes an Email Bill, SMS Bill, Paper Bill and Online Bill.

**Business Day** means any day other than a Saturday, Sunday or a day which is a public holiday in Hong Kong.

**Charges** means all charges or fees relating to the provision of the Mobile Equipment and/or Mobile Service by us to you including connection, surcharge, flag fall, monthly service, voice airtime, Mobile Data usage, VAS, roaming, registration, co-handling, Content, cancellation, reconnection, Mobile Service Licence and Administration Fee, thereafter charges and any other charge or fee (including amounts billed by us for and on behalf of a third party) as may be specified by us from time to time on our websites or any other method described in clause 16.4 of this Agreement.

**Commencement Date** means the date set out in the Application.

**Commitment Period** means the minimum fixed term for the subscription of a Mobile Service as set out in any document which forms part of this Agreement.

**Commitment Rate within Commitment Period Effective Date** means the target date on which the Monthly Rate within Commitment Period becomes effective and the Mobile Service and any Value Added Services under your Mobile Service Application will commence.

**Content** means any data, information, images, graphics, video or audio content, applications, downloadable files or other multimedia content that can be accessed using the Mobile Services.

**Contract** means the contract between you and us in respect of the Service provided by us to you which is made up of the Application, terms and conditions of this Agreement, any Supplemental Agreement, VAS Package Menu and Service Guide (if applicable), as amended by us from time to time.

**Contract Value** means in relation to (a) the Services with a Commitment Period as subscribed by you, the total Monthly or Rental Charges for the Commitment Period payable by you to us under the Contract; or (b) the Services without a Commitment Period as subscribed by you, the total Monthly or Rental Charges payable by you to us for the period from the Commencement Date to the date immediately preceding any incident giving rise to your claim.

**Early Termination Charge** means Early Termination Charge for a Mobile Service (if any) set out or referred to in the Application for that Mobile Service.

**Equipment** means the equipment and or Mobile Equipment (if any) provided by us to make available the Service to you which excludes any equipment and/or mobile equipment belonging to you or any third party.

**IDD** means International Direct Dial Service.

**Mobile Service License and Administration Fee or MTR/Tunnels/Mobile License/Administration Fee** means all fees payable from time to time to the Hong Kong Government and other third parties including Operators, tunnel operators and railway companies and other administrative costs in connection with the use of the Mobile Services and, where applicable, Mobile Equipment in the manner specified by us from time to time.

# Mobile Service Agreement

**Merchant** means a third party who sells goods or services and from whom you consider purchasing, proposes to, or does, purchase goods or services using a Mobile Service.

**Message** means SMS, email, image or data transmission, other messages or communications, in whatever medium or context.

**Mobile Data** means any data or information transmitted to or received from the Network and/or roaming partner network for data services.

**Mobile Equipment** means a mobile radio telephone, other wireless device, access device or equipment to be used with a Mobile Service and includes a wireless or access device accessory.

**Mobile Service** means a mobile radio telephone and Mobile Data service or Mobile Data Service which you have applied for pursuant to this Agreement or the Application and any telecommunication service (whether a mobile radio telephone service or not) supplied to you from time to time and includes a VAS.

**Network** means our radio telecommunications network.

**Number** means a telephone number allocated by us to you for use with a Mobile Service.

**Operator** means a person holding a valid and operational unified carrier licence, mobile carrier licence, fixed carrier licence, fixed telecommunications network services licence, public radio communication service licence, services-based operator licence or mobile virtual network operator licence in Hong Kong other than us.

**Personal Data** has the same meaning given to it in the Personal Data (Privacy) Ordinance (Chapter 486, the Laws of Hong Kong).

**Rebate** means a rebate as described in the Application or as otherwise agreed by you and us from time to time.

**Representative** means any person acting for or on behalf of a party including any director, officer, employee, agent, contractor or professional adviser of that Party.

**Service** means the Mobile Service, Telecommunications Service, including Equipment, Mobile Equipment and or any other goods where applicable, provided by us or HKT group to you and identified in the Application or other relevant documents.

**Service Plan** means the service plan subscribed by you as specified on the Application or any subsequent change as agreed by us.

**Service Plan User** means the person identified as such on the Application.

**SIM Card** means a subscriber identity module card and includes a USIM card.

**SMS** means the service which allows a short message (including a multi-media message service) or a VAS to be transmitted between persons using the Network or the Network and an Operator's network.

**Subsidy** means Early Termination Charge.

**Taxes** means a tax, levy, duty, charge, deduction or withholding, however described, imposed by law or a government agency, together with any related interest, penalty, fine or other charge.

**Third Party Provider** means any third party provider which provides information or Content service which is available for your access and use through the Service we provide.

**User** means the person identified as such on the Application.

**"Value Added Service" or "VAS"** means the value added services (including any additional or ad hoc value added services) provided by us or Third Party Provider from time to time on such additional terms and conditions as may be specified by us and or Third Party Provider from time to time under VAS Package Menu and Service Guide or our website in conjunction with the Service.

**We / Us** means CSL Mobile Limited (香港移動通訊有限公司), or the relevant HKT service providers for your chosen Services as set out in the Application.

**You** means the person identified as the 'Registered Name' on the Application.