

Tariff No.: U025-001

Published on 16 August 2010

FIXED CARRIER LICENCE
TELECOMMUNICATIONS ORDINANCE (CHAPTER 106)

Hong Kong Telecommunications (HKT) Limited (“the Company”)

Name of Tariff:

Special Conditions of eye2 Communication Package

Description of Tariff:

Please see attached Special Conditions for eye2 Communication Package (updated 16 August 2010)

Effective date of tariff:

16 August 2010

Revision history:

Revision to the tariff published in F050-0030 on 9 June 2009

Special Conditions for eye2 Communication Package ("Special Conditions")

1. Definitions

- 1.1 The following words have the meanings given to them in this clause unless the context otherwise requires:

Broadcast Message means a Commercial Electronic Message broadcast to the Customer's eye2 Device.

Charges means the charges payable by the Customer to the Company in respect of the Service provided by the Company to the Customer under the Agreement.

Commercial Electronic Message means an electronic Message the purpose, or one of the purposes, of which is to (a) offer to supply goods, services, facilities, land or an interest in land; (b) offer to provide a business opportunity or an investment opportunity; (c) advertise or promote goods, services, facilities, land or an interest in land; (d) advertise or promote a business opportunity or an investment opportunity; (e) advertise or promote a supplier, or a prospective supplier, of goods, services, facilities, land or an interest in land; or (f) advertise or promote a provider, or a prospective provider, of a business opportunity or an investment opportunity, in the course of or in the furtherance of any business.

Content means all textual, graphical, musical, audio, video, audio-video material or facility, including, without limitation, films, music, music videos, still and moving images, pictures, data and control interface.

eye2 Communication Package means the package under which the Service is offered to the Customers through various Service Plans.

eye2 Device means the eye2 device (including the WiFi tablet, lithium polymer rechargeable battery, charging dock (if applicable) and AC-DC power adaptor) for access of the Services.

General Conditions means the Company's General Conditions of Service as amended by the Company from time to time.

Information Service means any news, data, information, entertainment, finance, payment, text, photograph, diagram, symbol, video, online commerce transaction, game, sports, music, graphic, download, facility or other service of a Content or information or data nature in whatever language, form or medium made available by the Information Service Provider to the Customer and/or any authorized users that can be accessed by or through the Service, subject to additional terms and conditions as may be specified by the Information Service Provider from time to time.

Information Service Provider means the Company, its Affiliate or a third party, including without limitation a Merchant, who provides the Information Service.

Installation Address means the address in Hong Kong specified by the Customer in

the Application or Service relocation request and which address is approved by the Company at its sole discretion for the Service Provisioning Equipment installation.

Merchant means a person who sells goods or services and from whom the Customer considers buying, proposes to, or actually, buys the goods or services using the Service.

Message means email, SMS, image or data transmission, Commercial Electronic Message, other messages or communications in whatever language, form or medium, in broadcast or non-broadcast means.

Modem means the standard modem, Wi-Fi modem, bridge or router equipment (for appropriate Service Plan(s) only) provided by the Company to the Customer for use with the Service.

PIN means a personal identity number issued by the Company or the Information Service Provider (as the case may be) to the Customer that allows the Customer or any authorised user to (a) subscribe for; and (b) have confidential access to the Service.

Porting means the process which enables the Customer to retain his allocated telephone number when changing his subscription for the Service from a third party telecommunications operator to the Company or vice versa.

Service means the telecommunications service, the Information Service (including without limitation the now TV service and MOOV on eye2), VAS (for appropriate Service Plan only) and any other services mentioned in the Agreement (if any), as accessed via the eye2 Device.

Service Provisioning Equipment means the eye2 Device, Modem, Equipment (if any) and any other accessory equipment and apparatus (if any) provided by the Company which are necessary for the provision of the Service.

SMS means the service which allows a short message (including a multi-media message service) to be transmitted between persons using the Network or the Network and any third party telecommunications operator's network (if applicable).

VAS means a value added service offered by the Company from time to time on such additional terms and conditions as may be specified, at its discretion, by the Company.

1.2 All capitalized terms used herein and not otherwise defined in the Special Conditions shall have the same meanings ascribed to them in the General Conditions.

2. **Provision of Service**

2.1 The Service shall be made available only at designated premises in Hong Kong as may be specified by the Company from time to time.

2.2 The Company will provide the Service to the Customer through service plan(s) ("**Service Plan(s)**") as offered. Subject to clauses 2.2 to 2.4 of the General

Conditions, the provision of the Service and the manner in relation to such provision shall be subject to the sole discretion of the Company and/or its Affiliates.

- 2.3 The Customer shall purchase the eye2 Device from the Company for access of the Service under certain Service Plans as designated by the Company.
- 2.4 Without limiting the generality of clause 11 of the General Conditions, the Customer agrees: (a) to authorize the Company, its employees, authorized representatives, agents or contractors to install the Service Provisioning Equipment; (b) that the Company reserves the right, at its sole discretion, not to install any Service Provisioning Equipment as the Company deems appropriate; (c) that the installation of the Service Provisioning Equipment may not occur due to technical or other reasons; (d) that the Customer shall not use any other hardware in place of the Service Provisioning Equipment to access or use the Service without the Company's prior written consent; (e) that the Company, its employees, authorized representatives, agents or contractors will not be liable for any loss or damage suffered or incurred by the Customer or any other person arising out of or relating to the installation activities mentioned in this clause 2.4 directly or indirectly; (f) not to sell, assign, lease, rent, license, mortgage, charge, pledge, encumber, dispose of, transfer or part with the possession or control of any Service Provisioning Equipment (save for the eye2 Device and the Modem if and when owned by the Customer); (g) to keep the Service Provisioning Equipment in clean and good working condition; (h) to keep the service cable away from any smoking activities or any equipment that is likely to overheat or leave behind any kindling material and to handle the service cable at all times with care; (i) not to alter or remove any labels, serial numbers or other markings which are on the Service Provisioning Equipment when delivered; (j) not to tamper with, avoid or remove any integrated circuit, component, anti-copying device or protection facility contained in the Service Provisioning Equipment; (k) not to tamper with, modify, adapt, sell, reverse engineer, decompile or disassemble the Service Provisioning Equipment, the service cable or the socket at all times; (l) not to connect a service cable and/or any Service Provisioning Equipment to more than one and/or to any device unless such connection or device is expressly authorized in writing or provided by the Company; (m) not to permit anyone other than the Company, its employees, authorized representatives, agents or contractors to repair or maintain the Service Provisioning Equipment; (n) that the Customer may be required to pay a security deposit for the Service Provisioning Equipment at the prevailing rate set by the Company; (o) that the Company and/or its suppliers retain the intellectual property rights in all the Service Provisioning Equipment (whether it is rented or purchased by the Customer or provide free of charge by the Company) and the right to modify or impose restrictions on the use of any Service Provisioning Equipment without prior notice; and (p) that the Company reserves the right to repossess any Service Provisioning Equipment (except for the eye2 Device), or terminate or suspend the use thereof, at any time without prior notice for the purposes of compliances with the Applicable Law, licence conditions, the Company's obligations with third parties or threat of legal action, or if the Company reasonably believes that such repossession, termination or suspension may be required to enable the Company to comply with the foregoing.
- 2.5 The Company may change, delay, suspend, terminate or cancel the Service (in whole or in part), and/or any Service Plan (in whole or in part) with or without notice to the

Customer.

3. **Service Provisioning Equipment**

- 3.1 The Modem may, at the Company's sole discretion, be provided on a rental or free basis or be sold to the Customer. The Customer shall not cause any damage (including cosmetic damage) to the faceplate and any parts of the Modem.
- 3.2 The Company reserves the right to add, exchange or remove the Service Provisioning Equipment (except for the eye2 Device) of the Customer if it sees fit with or without notice to the Customer. The Customer acknowledges that the Company and/or its Affiliates may provide the Service by using any equipment which has been installed at the Premises for provision of other service(s), if applicable. The Customer shall pay for any rental or charges at the Company's standard rates if installation of a new set of Service Provisioning Equipment for the provision of the Service is subsequently required, whether in the Premises or in any other location.
- 3.3 The Company reserves its right to either provide on-site repair and maintenance services to the Modem for free or with charge (at the Company's sole discretion) except for cases which the Modem is lost, destroyed or damaged by the Customer and/or any users (whether authorised or not) as a result of the act, omission, default or negligence of the Customer and such users (in such cases the Customer shall pay the cost of the Modem at the prevailing rate charged by the Company as demanded).
- 3.4 In the event of malfunctioning, breakdown or damage to and of the Modem, the Company shall not be liable to repair or replace the Modem or any part thereof if such malfunctioning, breakdown or damage arises from or is occasioned by (a) fair wear and tear; (b) any misuse, negligence, willful damage, or damage on the part of the Customer, his family members, any invitees or licensees of the Customer, users (whether authorised or not) of the Service, the agents or employees of the Customer; (c) any breach of the terms herein; (d) any accident beyond the control of the Company; (e) a Force Majeure event; or (f) any use of the Modem outside Hong Kong. The Company may, at its sole discretion, repair or replace the Modem or any part thereof for a fee at the prevailing rate charged by the Company or any other amount as the Company shall deem appropriate.
- 3.5 The Customer agrees to continue to pay the Rentals and/or any other applicable charges for the Service during the period the Modem is being repaired and/or in the custody of the Company, its authorised agent or contractor.
- 3.6 The Customer agrees not to alter any set up of the Service Provisioning Equipment as installed by the Company and the Company shall charge the Customer for a fee at the prevailing rate for any repair or replacement of the Service Provisioning Equipment or restoring the original set up necessary due to any alteration.
- 3.7 If the Service Provisioning Equipment is provided free of charge or on a rental basis to the Customer, upon termination of the Service, the Customer shall return the Service Provisioning Equipment to the Company in clean and good working condition to the designated address immediately upon the Service termination. If: (a) the Customer does not agree to return the Service Provisioning Equipment; (b) the

Customer fails to return the Service Provisioning Equipment as directed by the Company; or (c) there is any loss or damage to the Service Provisioning Equipment (including any cosmetic damage to the faceplate of the Modem) for whatever reasons, the Customer shall be liable to the Company for a fee at the prevailing rate charged by the Company or as set out in the Application. Should the Customer request the Company to perform on-site service at the Installation Address for collecting the Service Provisioning Equipment, the Company, its authorised agent or contractor will use its reasonable endeavours to make the necessary arrangement within reasonable time upon receipt of the Customer's prior written notice and will charge the Customer at the prevailing rate charged by the Company or any other amount as the Company shall deem appropriate from time to time.

4. **Number Portability**

- 4.1 Upon subscription of the relevant Service Plan, the Company will provide a new telephone number ("**Telephone Number**") to the Customer unless the Customer opts for Porting his existing telephone number for fixed line services ("**Existing Number**") for use with the Service. If the Customer opts for Porting his Existing Number for use with the Service, the Customer authorises the Company to process the application for Porting the Existing Number. The Customer acknowledges and agrees that the Company excludes all liability to the Customer and any third party arising out of or in connection with the Porting, whether in contract, tort, statutory and/or otherwise and including direct and/or indirect loss or damage incurred or suffered by the Customer or any third party.
- 4.2 If the Customer terminates the relevant Service Plan as a result of the failure for the Existing Number to be ported to the Company (except solely due to the default of the Company), all payments made by the Customer for the Service shall not be transferable or refundable. The Customer may be required to pay an order cancellation fee to be specified by the Company from time to time or the liquidated damages as stipulated under the relevant Service Plan (whichever is higher) and all promotional offers, discounts or rebates provided in conjunction with the Service Plan will be terminated immediately.
- 4.3 The Customer acknowledges and agrees that he shall not assign, transfer or otherwise dispose of the Telephone Number provided by the Company without the prior written consent of the Company.
- 4.4 Upon the termination of the Service, the Company shall have the right to assign the Telephone Number previously provided to the Customer to any other customers (except where the Telephone Number is successfully ported to other fixed network operators before such termination) with or without notice to the Customer.

5. **Warranties**

- 5.1 Any other express or implied warranties, representations or statements relating to the subject matter of the Agreement which are not contained in the Agreement are excluded to the fullest extent permissible by law. Without limiting the generality of the first sentence of this clause, the Company specifically disclaims any and all representation or warranty, whether express or implied: (a) as to the title, fitness for a

particular purpose, merchantability, non-infringement, accuracy or standard of quality of the Service, Information Service, VAS, Content, and/or Service Provisioning Equipment; (b) that the Service or any other services provided will be continuous, uninterrupted or error free; and (c) as to any obligation to maintain the confidentiality (although the Company's current position is to maintain such confidentiality) of the Customer's information, the results to be obtained from use of the Service, Information Service, VAS, Content and/or the Service Provisioning Equipment.

5.2 The Customer accepts and acknowledges that the Service and Service Provisioning Equipment are provided on an "as is" and/or "as available" basis (as the case may be).

6. Use of Information Service

6.1 The Company (including as a carrier for another Information Service Provider) may make an Information Service available to the Customer, provided that the Customer:

- (a) satisfies the eligibility requirements for the Information Service (if any) specified by the Company from time to time;
- (b) follows the instructions given by the Company when it provides any PIN (if any) to the Customer; and
- (c) agrees to be bound by any additional terms and conditions as may be specified by the Company and/or the Information Service Provider (as the case may be) for use of the Information Service.

The terms and conditions, rules and eligibility requirements may be different for different Information Services and subject to amendment from time to time. The aforesaid terms and conditions, rules and requirements will be made available by the Company and/or the relevant Information Service Provider to the Customer as appropriate.

6.2 It is a condition of access to the Information Service that the Customer acknowledges and agrees that:

- (a) the Information Service is made available only for the Customer's private viewing, use and access at the Installation Address. The Customer shall not, and shall not authorize or permit any other person to, show, play, use, access or view the Information Service for any public or commercial purposes and/or within any public place or on any device in any place outside the Installation Address. Without limiting the preceding sentence of this sub-clause (a), the Customer shall not resell or charge, and shall not authorize or permit or cause any other person to resell or charge, for the use of or access to the Information Service or for access to any premises where the Information Service is viewed and/or played;
- (b) the Customer shall comply with such additional terms and conditions for the Customer's use of the Information Service as specified by the Information Service Provider;
- (c) the Customer shall pay for the prevailing service charge applicable for particular Information Service accessible via the Service to the Company and/or to the Company as agent for the Information Service Provider. If the amount paid by the Customer is less than the invoiced amount, the Customer

- agrees that the amount paid by the Customer shall be used for the settlement for the Charges, Rentals and/or other fees charged by the Company first;
- (d) the Company and/or the Information Service Provider may with or without notice amend the terms and conditions for the provision of the Information Service at any time and from time to time and with or without notice introduce new fees and/or change the amount of the fees payable, terms of any offers subscribed by the Customer governing the use of the Information Service;
 - (e) the Company and the Information Service Provider make no warranty or representation of any kind in relation to the Information Service or any third party Content or information or service provided to the Customer;
 - (f) the Company and the Information Service Provider are not responsible for the accuracy, completeness, usefulness or timeliness of the Information Service;
 - (g) any views or opinions expressed on the Information Service are not necessarily those of the Company and/or the Information Service Provider;
 - (h) any data, information or Content received from the Information Service is for reference only and is not intended, and must not be used, for trading or any other purposes;
 - (i) nothing the Customer does on or in relation to the Information Service or Content will transfer any intellectual property rights or license the Customer to exercise any intellectual property rights subsisting in the Information Service or Content (in whole or in part);
 - (j) there may be Content or Information Service which is not suitable for viewing or which must not be viewed or purchased by minors. In this regard, the Company or the Information Service Provider will provide the Customer with a PIN to, amongst other things, access such Content or Information Service. Unless otherwise agreed by the Company or the Information Service Provider, the Customer shall not disclose such PIN to anyone. The Company or the Information Service Provider will not be responsible for any uses of such PIN to access the Information Service or any Content (including purchasing and viewing of any Information Service or Content);
 - (k) except for the Content and/or the Information Service which is supplied by the Company or its Affiliates as a principal, it is not the Company's policy to exercise any editorial or other control over or otherwise to edit, modify, change, delete or block any Content and/or the Information Service before it is transmitted or made available to the Customer through the Service;
 - (l) the Customer must not, and must not authorize or permit any other person to, sell, reproduce, record, download, rent, store, song rip, remix, share, exploit, segue, copy, distribute, publish, modify, prepare derivative works, display or manipulate by whatever means the Information Service or any Content available on or through the Service, or, cause or authorize or permit such Information Service or Content to be displayed and/or played in public;
 - (m) the Customer must not, and must not authorize or permit any other person to, cause the Information Service or any Content to be sent, transmitted, re-transmitted or broadcast in any form or by any means (including the Internet or inclusion in a cable program service). Without limiting the preceding sentence of this sub-clause (m), the Customer must not, and must not authorize or permit any other person (except for connecting to the eye2 Device at the Installation Address) to, end, transmit, re-transmit, forward or 'place-shift' any Information Service or Content (including by the use of any device, for example a Slingbox) to any device (including any personal computer,

- television receiver, television set-top-box, telephone or mobile device) or to any place or device outside the Installation Address;
- (n) when the Customer is using the Information Service concurrently with any other services (whether or not provided by the Company) using the same transmission bandwidth or path which results in the actual consumption of the transmission bandwidth being higher than the Customer's subscribed bandwidth (whether or not provided by the Company and/or its Affiliates), the quality of the Service and other services may be affected; and
 - (o) the Customer shall immediately notify the Company in writing if the Customer suspects that any part of the Service is being used in violation of the Agreement and the Customer shall co-operate with the Company, in any action the Company may take in connection with such unauthorized use.

6.3 The Customer expressly agrees that the Company in providing the Customer with access to the Information Service or Content is not responsible for any acts, willful default, negligence or omissions of any third party including, without limitation, the Information Service Provider (unless the Company is the Information Service Provider) or its preferred credit provider or banker (if any) to whom the payment details of the Customer and/or any user of the Service will be submitted by the Customer and/or such user for approval including, refusal by any such credit provider or banker to authorize a transaction or refund, and, the Customer expressly waives any rights the Customer may have against the Company and its Affiliates in this regard.

6.4 For any transaction between the Customer and any third party Information Service Provider, the Company is not a party to and is not otherwise involved in any manner in:

- (a) any verification or authentication of any payment details provided by the Customer and/or any other user of the Service to an Information Service Provider (unless the Company is the Information Service Provider or is acting as agent for and on behalf of such Information Service Provider) or its preferred credit provider or banker (if any) when the Customer accesses an Information Service;
- (b) the provision of any credit to, or any payment collection function to or from, the Customer or any other person;
- (c) any arrangement for payment of any bill, or the settlement of any account between the Customer or any other user of the Service and any third party;
- (d) any transaction between the Customer and/or any other person and an Information Service Provider (unless the Company is the Information Service Provider or is acting as agent for and on behalf of such Information Service Provider) or its preferred credit provider or banker (if any);
- (e) any underlying transaction between an Information Service Provider (unless the Company is the Information Service Provider or is acting as agent for and on behalf of such Information Service Provider) and that Information Service Provider's preferred credit provider or banker (if any);
- (f) any dispute between the Customer and/or any other user of the Service and an Information Service Provider (unless the Company is the Information Service Provider or is acting as agent for and on behalf of such Information Service Provider) or its preferred credit provider or banker (if any); and

- (g) any dispute between an Information Service Provider (unless the Company is the Information Service Provider or is acting as agent for and on behalf of such Information Service Provider) and any person to or from whom data is transferred pursuant to the Agreement.

6.5 The Customer agrees to fully and effectively indemnify the Company, its Affiliates, licensors, agents, Information Service Providers and any other Content providers from and against any and all action, claim, proceeding, suit, demand, loss, damage, liability, fine, charge, cost and expense suffered or incurred by the Company, its Affiliates, licensors, agents, Information Service Providers and any other Content providers arising out of, relating to or in connection with:

- (a) any use of the Information Service or Content by the Customer and/or any users of the Information Service or Content (whether authorized or not);
- (b) any breach or non-observance of any provision of the Agreement by the Customer;
- (c) any theft, loss and/or damage caused to the Service Provisioning Equipment (save for such equipment owned by the Customer); and
- (d) any installation, de-installation or reconnection of any Service Provisioning Equipment carried out by the Customer or with or without the Customer's knowledge and/or consent.

7. **Extent of Use**

7.1 The Customer acknowledges and agrees that:

- (a) the Service must be used at the Installation Address set out in the Application or the Company's records. The Company shall provide the Installation Address and/or the Personal Data of the Customer to the Hong Kong Police Emergency Centre or any relevant entity in handling an emergency incident as required or directed by the Government Agency (including the Office of Telecommunications Authority) in case of emergency or any other circumstances as the Company sees fit;
- (b) the Customer shall notify the Company in such form and manner as specified by the Company for any change of the Installation Address, failing which the Customer shall assume the risk and responsibility that the Customer's changed Installation Address cannot be traced when an emergency call is made using the Service. The Company shall assume no responsibility or liability for any consequence arising out of the Customer's failure to do so;
- (c) the Company may, with or without notice to the Customer, at its discretion, terminate (in whole or in part), suspend (in whole or in part), block (in whole or in part) or limit (in whole or in part) the access to the Service if the Service and/or the Service Provisioning Equipment are used in places other than the Installation Address;
- (d) the Customer shall not, and shall not authorise or permit any other person to, send or attempt to send or cause to be sent, any Commercial Electronic Message not in accordance with the Applicable Law and with the following:
 - (i) if the Customer intends to send a Commercial Electronic Message to another person ("**Recipient**"), the Customer shall:

- (A) obtain the prior consent of such Recipient and it is the obligation of the Customer to procure such consent;
 - (B) provide written evidence of such consent to the Company within 5 days of the Company's request; and
 - (C) comply with any requirements under the Applicable Law;
 - (ii) if the Company receives a complaint ("**Complaint**") from any Recipient regarding the sending of unsolicited Commercial Electronic Message by the Customer, the Company may:
 - (A) require the Customer to respond to the relevant Complaint and the Customer shall respond to the Company within 5 working days of the Company's request unless specified otherwise by the Company;
 - (B) suspend (in whole or in part), block (in whole or in part) or limit (in whole or in part) the Customer from sending and/or receiving any Message using the Service, with or without notice to the Customer; and
 - (C) suspend (in whole or in part), block (in whole or in part), limit (in whole or in part) or terminate (in whole or in part) the Customer's access to the Service, with or without notice to the Customer;
- (e) the Customer shall not resell the Service to any person by whatever means under any Service Plans offered by the Company for the Customer's own use and the Customer shall subscribe for other Service Plans offered for the purpose of resale if required;
- (f) the Customer shall not hack, break into, access, reverse engineer, decompile, use or attempt to hack, break into, access, reverse engineer, decompile or use any part of (i) the Service and/or any data areas on the Company's or its Affiliates' servers for which the Customer has not been authorized by the Company; and (ii) any wap site or web site of the Company, its Affiliates or any third party for which the Customer has not been authorized;
- (g) the Customer shall not, and shall not authorize or permit any other person to, send, publish, distribute, transmit or circulate any material or content that is obscene, indecent, seditious, offensive, defamatory, threatening, liable to incite racial hatred, discriminatory, menacing or in breach of confidence or in contravention of the Applicable Law;
- (h) in relation to any material or Content which the Customer uploads or posts on the Service, the Customer is deemed to have granted to the Company, its Affiliates and/or the Information Service Provider a royalty-free, non-exclusive, irrevocable, perpetual, transferable and worldwide licence to use, store, transfer, sub-license, distribute, display, publish, change, edit, modify, dispose of, remove, delete, block or restrict the access to or otherwise deal with any Content or information the Customer sends or uploads using the Service;
- (i) without limiting the generality of sub-clause 7.1(h), the Customer authorizes the Company, its Affiliates and/or Information Service Provider to edit, modify, change, delete or block the access to any Message, Content, or material which is uploaded, posted or otherwise provided by the Customer through the Service where such Message, Content or material is, in the sole opinion of the Company, in breach of the Agreement or any Applicable Law;

- (j) the Company and/or its Affiliates may change or withdraw any and all the Information Service, VAS, Content or any other Service at any time as a result of changing technologies, new or different product features, the withdrawal of any Information Service Provider or third party service providers or services with or without notice to the Customer;
- (k) the Company, its Affiliates and/or the Information Service Provider (as the case may be) may deactivate (in whole or in part) or withdraw (in whole or in part) the Information Service, VAS, any Content or any other Service (as the case may be) with or without notice to the Customer at any time to carry out system maintenance, upgrading, testing and/or repair;
- (l) the Company, its Affiliates and/or the Information Service Provider (as the case may be) may terminate (in whole or in part), block (in whole or in part), limit (in whole or in part) or suspend (in whole or in part) the Customer's access to any or all of the Information Service, VAS, any Content or any other Service (as the case may be) with or without notice to the Customer where the Company, its Affiliates and/or the Information Service Provider (as the case may be) believes that such action is appropriate as a result of the use by the Customer and/or any user of the Service (whether authorized or not) of the Information Service, VAS, any Content or any other Service (as the case may be) and/or when the Customer is in breach of any of these terms or conditions and/or fails to make any payment in accordance with clause 3 of the General Conditions and/or where the Customer is in breach of the terms or conditions of supply of any other service provided to the Customer by the Company, its Affiliate and/or the Information Service Provider (as the case may be);
- (m) the Company, its Affiliates and/or the Information Service Provider (as the case may be) may with or without notice to the Customer (i) amend, modify or change the terms and conditions for the provision of the Information Service, VAS, any Content or any other Service (as the case may be); and/or (ii) modify (in whole or in part) any of the Information Service, VAS, any Content or any other Service (as the case may be);
- (n) the Company, its Affiliates and/or the Information Service Provider (as the case may be) may remove (in whole or in part), disable (in whole or in part) or suspend (in whole or in part) the provision of the Information Service, VAS, any Content or any other Service (as the case may be) which the Company, its Affiliate or the Information Service Provider (as the case may be) considers in its sole opinion, breaches any Applicable Law, regulation or regulatory directive, infringes or may infringe any third party rights or to be otherwise unacceptable with or without notice to the Customer;
- (o) the Customer shall promptly comply with all notices, instructions or directions given by the Company and its Affiliates to the Customer in relation to the installation, operation or use of the Service or Service Provisioning Equipment;
- (p) the Company and its Affiliates shall not be responsible or liable for any acts, omission, default or negligence of the Customer and/or any users (whether authorized or not) arising out of or relating to the use of the Service;
- (q) the Customer shall not tamper, change or modify or in any other ways seek to or attempt to tamper, change or modify the Network;
- (r) the Customer shall, and procure any third party using the Service to, fully comply at all times with (i) the Applicable Law and regulatory requirements applicable to the use of the Service and/or Service Provisioning Equipment;

- (ii) all instructions or guidelines as may be imposed by the Company from time to time; and (iii) the terms of the Agreement. The Customer further undertakes not to use or allow others to use the Service and/or Service Provisioning Equipment for any purpose which the Company considers improper, immoral, defamatory, fraudulent or otherwise in contravention of the Applicable Law;
- (s) the Service may temporarily fail, or be delayed, suspended or interrupted, if there is power failure or any other situation beyond the reasonable control of the Company. The Company shall in such case resume the provision of the Service as soon as practicable after such an event. The Customer accepts and acknowledges that if the Service is suspended as a result of power failure or otherwise, connection to the Information Service, VAS, any Content or any other Service may fail and calls may not, during this time, be able to be connected to emergency or other numbers through the Service;
- (t) the Customer must not, and must not authorise or permit any person to, use the Service to publish, post, upload, transmit, re-transmit, send, or circulate any software or other materials that:
 - (i) contain any computer viruses, worms, software bombs, Trojan horse or other harmful or malicious computer instructions, devices or techniques that can or were designed to threaten, infect, damage, disable or shut down any telecommunications device or any component of a computer system;
 - (ii) contain any hidden files;
 - (iii) replicate, transmit or activate itself without control of a person operating the computing equipment on which it resides;
 - (iv) alter, damage or erase any data or computer programs without control of a person operating the computing equipment on which it resides; or
 - (v) contain any illicit code;
- (u) the Customer must not, and must not authorize or permit any person to, copy, encode, digitise, reformat, compress, intercept, interfere, or tamper with or otherwise manipulate the signals of the Service including output signals of the Service Provisioning Equipment in any way and by any means;
- (v) the Company may (although the Company is not obliged to do so) delete (in whole or in part) (i) any suspected spam Messages and/or (ii) virus-infected files, Messages, Contents or any other materials, with or without notice to the Customer;
- (w) the Company may (i) limit (in whole or in part) or suspend (in whole or in part) the transmission, delivery or circulation of any information, Content, Messages and/or any other materials by the Customer or any users of the Service, with or without notice to the Customer, if and when the Company detects for the first time that the Service is used for the spamming activities; and (ii) terminate the Service immediately, with or without notice to the Customer, if the Company detects for the second time that the Service is used for the spamming activities;
- (x) the Company or its Affiliate may provide aggregated, segmental or otherwise, anonymous, statistical information on the Customer's usage of the Service

- (including but not limited to subscription and usage data), to existing and potential third party Content providers and/or advertisers upon their request with or without notice to the Customer;
- (y) any use (whether authorized or not) of the Service, Information Service, VAS, Content, PIN and Service Provisioning Equipment at the Installation Address shall be treated by the Company as a use by the Customer;
 - (z) the Customer shall bear the risks, loss or damage associated with the use (whether authorised or not) of the Service, Information Service, VAS, Content, PIN and Service Provisioning Equipment; and
 - (aa) the Customer may opt to receive Broadcast Message, or, block the receipt of Broadcast Message at any time by giving the Company at least 10 days' prior written notice.

7.2 For SMS to be exchanged via the Service for any Service Plans, the Customer acknowledges and agrees that:

- (a) the Service enables the Customer upon payment of any prevailing charges (if applicable) to communicate in text format as SMS by (i) sending SMS to and receiving SMS from another subscriber of the fixed line telecommunications services of the Company using a compatible device with fixed line SMS functionality; (ii) sending SMS to and receiving SMS from another subscriber of local mobile telephone services; and (iii) sending SMS to and receiving SMS from another subscriber of fixed line or mobile phone services in pre-defined international destinations;
- (b) unless otherwise provided in any specified Service Plan, each SMS shall only contain a maximum of (i) 160 characters in English alone, or (ii) 70 characters in Chinese alone, or, (iii) 70 characters in Chinese and English (in each of items (i), (ii) and (iii) above, any space, symbol and punctuation mark shall be regarded as a character); and
- (c) the Customer must use a compatible device with fixed line SMS functionality in order to send SMS via the Service.

8. **Links and Related Advertisement**

8.1 The Customer accepts and acknowledges that the Company has not reviewed all of the web sites linked to the Service and shall not be responsible for the Content or accuracy of any off-site pages or any other web sites linked to the Service (including, without limitation, web sites linked through advertisements). Some links which appear on the Service are automatically generated, and may be offensive or inappropriate to some people and the use of the Service by the Customer or any user (whether authorised or not) shall be treated as an acceptance of such automatically generated links and a waiver by the Customer of any claim for compensation, loss or damage of any nature whatsoever, if any, relating to such links. The inclusion of any link does not imply that the Company and/or its Affiliates endorse the linked web sites, and the Customer uses the links at the Customer's own risk. The Customer's correspondence or dealings with, or participation in promotions of, advertisers or any third party on the web sites are solely between the Customer and such advertisers or any third party. The Company and/or its Affiliates shall not be liable or responsible

for any claim, loss or damage of any sort incurred or suffered arising out of or relating to any such dealings or the presence of advertisements on the Service.

- 8.2 The Customer accepts and acknowledges that the Company has not reviewed all of the Commercial Electronic Messages linked to or sent through the Service and shall not be responsible for the content or accuracy of any such Commercial Electronic Messages. To such extent permissible by law, the use of the Service by the Customer or any user (whether authorised or not) shall be treated as a consent to the receipt of such Commercial Electronic Messages and a waiver of any claim, if any, against the Company relating to such Commercial Electronic Messages. Any action taken by relying on such Commercial Electronic Messages shall be at the risk of the Customer or any user (whether authorised or not). To such extent permissible by law, the Company and/or its Affiliates shall not be liable or responsible for any claim, loss or damage of any sort incurred or suffered arising out of or relating to the Commercial Electronic Messages.
- 8.3 The Company, its Affiliates and/or Information Service Providers may use third parties to track and/or measure advertising effectiveness on the Company's web site and other web sites with or without notice to the Customer. The Customer acknowledges and agrees that these third parties may use information (not including the Customer's Personal Data such as name, address, email address or telephone number) about the Customer's visits to such web sites in order to measure advertising effectiveness and to provide advertisements about goods and services of interest to the Customer.

9. **IP Address**

Any Internet Protocol Address ("**IP Address**") that is assigned by the Company or its Affiliate to the Customer for the Customer's use under the Agreement is neither owned by the Customer nor by the Company. Such IP Address is allocated to the Company or its Affiliate by regional registries so that the Company or its Affiliate can assign the same to its Customer for the Customer's use only and the Customer shall have no other rights or any title thereto.

10. **Software Licence**

- 10.1 The Company grants to the Customer a non-exclusive, revocable and non-transferable licence for the Customer to use the software installed in the Service Provisioning Equipment (if applicable) during the term of the Agreement only in conjunction with the Service and in accordance with the Agreement. Except to the extent permitted by law, the Customer shall not copy, alter, modify, adapt, translate, decompile, disassemble or reverse engineer such software or any other software provided by the Company and/or its Affiliates nor attempt to do so.
- 10.2 The Customer shall indemnify and keep the Company and its Affiliates fully indemnified against all and any action, claim, proceeding, suit, demand, loss, damage, liability, charge, cost and expense that the Company or any third parties suffered or incurred as a result of the use of the software by the Customer and/or any user (whether authorised or not) which is not expressly permitted under the Agreement.

11. **Limitation of Liability**

11.1 The Customer accepts and acknowledges that the provision of the Service is contingent upon the reliability and stability of the Internet and the telecommunications network, which may be out of the Company's control. The Company and/or its Affiliates will not be liable to the Customer or any other third parties (including users of the Service (whether authorised or not)) for the consequences or effects on any telecommunications network, internet connection, the broadband service and/or speed of bandwidth subscribed that may be caused by the Service and/or failure of Service.

11.2 The Company will not be liable to the Customer for:

- (a) any fault, malfunction or non-performance of any other equipment used by the Customer and/or users of the Service (whether authorised or not) not authorised by the Company;
- (b) any fault, malfunction or non-performance of the Service Provisioning Equipment whether or not caused by the Customer tampering with it; and
- (c) the Customer's negligence or failure to follow the instructions of the Company, its Affiliates and/or the Information Service Provider in relation to the use of the Service, Information Service and/or Service Provisioning Equipment.

11.3 To the extent permitted by law or unless otherwise provided expressly in the Agreement, the Customer acknowledges and agrees that the Company, its Affiliates, the Information Service Provider and third party supplier or service provider shall not be liable to the Customer and/or any other person:

- (a) for any indirect, special, economic, collateral, incidental, consequential or punitive loss or damage, whether in contract, tort, statutory or otherwise, suffered, sustained or incurred by the Customer or any person howsoever arising out of, relating to or in connection with the Service and/or the Service Provisioning Equipment. For the purposes of the Agreement, indirect or consequential loss or damage includes, without limitation, loss of revenue, profit, anticipated savings or business, loss, corruption or damage to data, voice or other information, loss of goodwill, loss of bargain, loss of opportunities, loss of use or value of any equipment and software, any third party claims, and, all associated and incidental costs and expenses;
- (b) for any claim, loss or damage of data, voice or other information arising from the Customer's use of the Service and/or the Service Provisioning Equipment insofar as such claim, loss or damage is direct or in connection with any incorrect record, omission, transmission, communications, mixing, divulging or destruction of any communication sent or received using the Service and/or the Service Provisioning Equipment;
- (c) for any claim, loss or damage relating to the Service or Content accessible through the Service and/or the Service Provisioning Equipment supplied, provided, sold or made available by or through the Service (or any failure or delay to so supply, provide, sell or make available);
- (d) for any claim, loss or damage relating to any disruption, suspension, degradation, withdrawal, limitation, deactivation, disabling or modification of

- (e) the Service and/or the Service Provisioning Equipment or any part thereof; for any claim, loss or damage which is attributable to a Force Majeure event; and
- (f) for any damage to or loss of software and/or hardware installed in the Customer's computer, Service Provisioning Equipment or other equipment.

11.4 To the extent permitted by law and notwithstanding clause 12.3 of the General Conditions, the aggregate liability of the Company to the Customer under or in connection with the Agreement which is not, or cannot be, excluded by law, whether based on contract, tort (including negligence), statute, breach of warranty or any other legal or equitable ground is limited to:

- (a) the sum of the Charges paid by the Customer in the 12-month period prior to the accrual of such liability; or
- (b) the sum of the Charges paid by the Customer for the period that the Agreement has been in force prior to the accrual of such liability, if the period is less than 12 months,

whichever is the lower.

11.5 The eye2 Device is made for the Company by a manufacturer and all product liability relating to the eye2 Device, if any, shall rest with the manufacturer solely in any event. The Company accepts no warranty as to the safety and suitability of the eye2 Device used by the Customer. To the extent permitted by law, the Customer acknowledges and agrees to irrevocably waive all claims against the Company and not to hold the Company liable for any product liability relating to the Service Provisioning Equipment either in contract, tort (including negligence), under any statute or otherwise.

12. **Termination**

12.1 Upon the expiration or termination of the Agreement, (a) the Company will not provide any refund of any amount prepaid by the Customer in advance (including for the avoidance of doubt any amount prepaid by the Customer for renting or using any Service Provisioning Equipment); and (b) all licences, rights and privileges granted to the Customer under the Agreement (unless otherwise agreed or provided) shall cease.

12.2 The expiration or termination of the Agreement (howsoever caused) shall not prejudice or affect any accrued rights or liabilities nor shall it prejudice or affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such expiration or termination.

13. **General**

13.1 The Company may appoint agents and the Company may assign its rights, sub-contract (in whole or in part), transfer (in whole or in part) or otherwise dispose of (in whole or in part) its rights, duties and obligations under the Agreement to any person at any time without the consent of the Customer.

- 13.2 The Customer acknowledges and agrees that the provision of the Service is subject to availability and discretion of the Company.
- 13.3 The Company and/or its Affiliates may with or without notice to the Customer (a) amend the Special Conditions at any time; and (b) introduce new fees, Charges or Rentals and/or change the amount of the fees, Charges or Rentals payable, terms of any Service Plan and offers subscribed by the Customer governing the use of the Service.
- 13.4 Time shall be of the essence in all respects for the Customer to undertake and perform its duties and obligations under the Agreement.
- 13.5 These Special Conditions may be translated into Chinese. The English version of these Special Conditions shall prevail over any Chinese version.
- 13.6 If there is any inconsistency between the General Conditions, the Special Conditions, the terms and conditions of now TV (in relation to access through the eye2 Device), the terms and conditions of MOOV on eye2, the terms and conditions of the Service Plan, the Application, the Service Literature and the terms and conditions for the Information Services, the inconsistency will be resolved in the following order of preference:
- (a) the terms and conditions of the Service Plan;
 - (b) the terms and conditions of now TV;
 - (c) the terms and conditions of MOOV on eye2;
 - (d) the Application;
 - (e) the Special Conditions;
 - (f) the General Conditions;
 - (g) the terms and conditions for the Information Services (other than now TV and MOOV on eye2); and
 - (h) the Service Literature.