

Tariff No.: F050-0003

Published on 28 November 2008

FIXED CARRIER LICENSE
TELECOMMUNICATIONS ORDINANCE (Chapter 106)

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

Name of Tariff:

Super Hotline

Description of Tariff:

Super Hotline service enables users to use the agreed routing of the telephone numbers and can support a number of calls (ports) simultaneously. The service provides a call forwarding feature and can unify the various hotlines in various places under one hotline number.

Setup Charge: \$8,000/manday

Rental: \$1000/port/month

Remarks:

1. Customer is required to pay additional charge for the various IVRS features.
2. This service is subject to the Company’s prevailing General Conditions of Service and the Super Hotline – General Terms and Conditions (as attached).

Effective date of tariff:

28 November 2008

Revision history:

1st publication on 28 November 2008

SUPER HOTLINE - TERMS AND CONDITIONS

1. INTERPRETATION

The Definition Section in the Attachment :

- (a) defines some of the terms used in this Agreement; and
- (b) sets out the rules of interpretation which apply to this Agreement.

2. SERVICES

- (a) In consideration of the payment of the relevant Charges under this Agreement, the Company shall provide the Service to the Customer in accordance with the Service Literature, Order Form, these Terms and Conditions and any schedule, annexure or appendix attached hereto.
- (b) If so ordered by the Customer in the Order Form and accepted by the Company, the Company shall provide the Customer with the Standard Service with such features set out in items (i) to (vi) below. The configuration of these features are pre-set, standardized and cannot be modified by the Customer.
 - (i) the Service Number;
 - (ii) an agreed number of Ports;
 - (iii) standard Call Flow;
 - (iv) standard Service Applications;
 - (v) standard Service Reports; and
 - (vi) a designated number of Administration Accounts for Service Contents Updating through the Administration Portal
- (c) At the request of the Customer and in consideration of the payment of the Customisation Charge by the Customer, the Company may, subject to the technical feasibility, also develop Customised Service for use by the Customer. For the avoidance of doubt, the Company reserves the right to reject the Customer's request for Customised Service. Such Customised Service shall comprise all or any of the following features:
 - (i) Customised Call Flow (being a customised Call Flow developed by the Company in accordance with those requirements agreed by the parties).
 - (ii) Customised Service Application (being a customised Service Application developed by the Company in accordance with those requirements agreed by the parties. The Company shall retain the Intellectual Property Rights of all Customised Service Applications).
 - (iii) Customised Service Report (being a customised Service Report developed by the Company incorporating such additional information or particularity in such report in accordance with the requirements as agreed by the parties).
- (d) Depending on the Customer's requirements for the Service, the Customer is required to pay :-
 - (i) Set-up Charge;
 - (ii) Rental;
 - (iii) Customisation Charge (if any); and
 - (iv) Any other charges or feed required to be paid under this Agreement
- (e) The Company shall provide the Standard Service and/or the Customised Service (as the case may be) to the Customer in accordance with this Agreement.

- (f) The Company will determine the most appropriate means of providing the Service including the method, technology and route of delivery and may vary the method, technology and route of delivery at any time.
- (g) The Customer acknowledges that the Company may:
 - (i) monitor the Customer's use of the Service; and
 - (ii) intercept the Service as required by Applicable Law.
- (h) The Customer acknowledges that the Service may not be fault free. If any faults arise in the operation of the Service, the Customer must immediately notify the Company. In the event of a fault, the Company shall co-ordinate with the relevant administration and shall use its reasonable endeavours to remedy the fault as soon as practicable.

3. DURATION

- (a) This Agreement shall come into force on and with effect from the date of acceptance by the Company of the initial Order Form signed by the Customer and shall continue to be in force until terminated in accordance with the terms and conditions of this Agreement.
- (b) If the Customer cancels an Order Form after it has been accepted by the Company, the Customer shall be liable to pay, as liquidated damages, the Cancellation Charges.
- (c) Each Service shall commence by the Service Commencement Date for that Service and continue unless and until terminated by either party in accordance with clause 13.
- (d) If the Company is unable to supply the Service by the Service Commencement Date for that Service, the Company will notify the Customer as soon as practicable of a revised Service Commencement Date.
- (e) Where specified in the Specific Terms or the relevant Order Form the Service shall be subject to a Minimum Commitment Period.

4. CUSTOMER'S OBLIGATIONS

- (a) The Customer shall:
 - (i) comply with any reasonable direction given by the Company in connection with the provision, use, operation, maintenance, removal, modification or set-up of the Service;
 - (ii) provide at its own expense, when so required by the Company, all facilities and/or resources whatsoever for the proper set-up, operation and maintenance of the Service, such as, but not limited to, access to the Internet and security measures;
 - (iii) not share or allow to be shared the Service with any other person without the prior written consent of the Company nor use or allow the Service to be used for any purpose other than that for which it is subscribed;
 - (iv) promptly comply with any advice by the Company to upgrade, at the Customer's own expense, the existing facilities, which in the opinion of the Company are inadequate to cope with its Service requirement;
 - (v) be solely responsible for obtaining and maintaining in its own name and at its own cost, throughout the duration of this Agreement, all licences, permits, consents, authorisations and Intellectual Property Rights or other rights required for the Service and for ensuring due compliance with any regulatory or other requirements whether at law or otherwise;
 - (vi) not use the Service in a manner which constitutes an infringement by the Customer or the Company of the rights of any person (including Intellectual Property Rights)

or a violation or infringement of any duty or obligation in contract, tort or otherwise, to any third party.

- (vii) not use the Service and require all users of its network connected to the Service not to use the Service for any illegal or improper purpose or in a manner which constitutes an infringement of the rights of any person or a violation or infringement of any duty or obligation in contract, or otherwise, to any third party;
 - (viii) not use the Service in any manner that would cause the Company to be in breach of any Applicable Law;
 - (ix) not use the Service for publishing, distributing, transmitting, circulating or sending:
 - A. any material that is unlawful, harmful, harassing, obscene, indecent, seditious, offensive, defamatory, threatening, liable to incite racial hatred, discriminatory, menacing or in breach of confidence; or
 - B. any Virus
 - (x) require all users of its network connected to the Service to disclaim all liability of the Company and its agents, licensors, vendors and subcontractors with respect to the use of such Customer network.
 - (xi) not use the Service for hacking, breaking into, accessing, or attempting to hack, break into, access or use any part of any website of any third parties, its contents and/or any data areas on any server of any third parties for which the Customer has not been authorised.
- (b) The Customer must not, and must ensure that its customers and any third parties within its control do not:
- (i) interfere with or impede or impair use or operation of the Service or the Network or any telecommunication service or network of a third party; or
 - (ii) take, or allow any other person to take, any action not authorised by the Company or under this Agreement in relation to the Network or the Service.

5. SERVICE NUMBERS

- (a) The Company will provide the Phone-in Program Customer with a new Service Number for the Service.
- (b) The Phone-in Program Customer who wishes to use the existing telephone number allotted to the Customer as Service Number is subject to the prior written approval of the Company. For the purposes of granting approval under this clause, the Company may, in its discretion, impose such limitation or condition in relation to the Service.
- (c) No Service Numbers provided to Customer under this Service can be ported out to other telecommunications service Operators.
- (d) The Customer acknowledges that the Service Numbers do not belong to the Customer and the Customer accepts that it shall acquire no rights whatsoever in any Service Numbers.
- (e) The Customer acknowledges that the Company may withdraw or change any Service Number or Network User Identity Number upon reasonable notice being provided to the Customer.
- (f) Service Numbers allotted to the Customer shall be personal to the Customer and the Customer shall be responsible for using them in accordance with the rules and instructions given to it by the Company from time to time.
- (g) The Customer shall immediately notify the Company of any unauthorised use of any Service Number or Network User Identity Number and the Company shall immediately discontinue

access to the affected Service and allocate a new Service Number or Network User Identity Number.

- (h) The Customer shall be responsible for all charges incurred through use of the Service (whether authorised or otherwise) when access to the Service is obtained through the use of any of the Service Numbers and/or the Network User Identity Number allotted by the Company to the Customer.
- (i) The Customer shall be responsible for keeping any Network User Identity Number, which has been allotted to the Customer, confidential.

6. VOLATILE TRAFFIC

- (a) The Service is designed for the Customer with regular and steady traffic. The Customer with Volatile Traffic shall not use the Service without the prior written consent of the Company.
- (b) The Customer should provide the Company with particulars with respect to the purpose, nature and estimated traffic pattern for the Service [in the Order Form]. The Company may, in its discretion, demand further particulars or clarification regarding the Customer's traffic pattern at any time and from time to time during the continuance of this Agreement. The Customer warrants that it will not change the purpose, nature or traffic pattern for the Service without seeking prior written approval from the Company.
- (c) In the course of using the Service, if the Customer anticipates that Volatile Traffic may be sent through the Service Number for the access of the Service, the Customer shall give the Company at least 14 days' prior written notice and the Company shall use all reasonable endeavours to take appropriate actions to cater for the emergence of Volatile Traffic. The Company has the right to terminate the Service without any liability if in its sole determination the Service is not capable to handle the Volatile Traffic. For sustained Volatile Traffic sent to the Service Number, the Customer will be allotted a Hotline Number as the Service Number. Should the Customer fail to comply with the notice requirement provided under this clause, the Company is entitled in its discretion to suspend the Service with or without notice immediately or terminate the Service by giving the Customer 7 days' prior written notice. The Customer shall indemnify the Company against any claims and Loss in accordance with clause 10 below.

7. SERVICE CONTENTS UPDATING

- (a) A designated number of Administration Accounts will be provided by the Company to the Customer for use by the Customer to maintain and manage the Service Contents.
- (b) The Service Contents can be updated by the Customer through a 2-stage process. Firstly, the Customer is required to update the Service Contents through the Administration Portal. Secondly, the Company has the right to access and review the updated Service Contents and may, subject to clause 7(c) below, post the updated Service Contents to the Service platform in order to effect the changes updated by the Customer. The Company is entitled to refuse to post the updated Service Contents to the Service platform without any liability whatsoever if the Customer fails, in the sole determination of the Company, to comply with clause 7(c) below.
- (c) In updating the Service Contents under this clause 7, the Customer :-
 - (i) shall comply with the Applicable Law;
 - (ii) shall comply with the terms and conditions of this Agreement; and
 - (iii) shall not induce Volatile Traffic (unless with the prior written approval of the Company).

- (d) Pre-approval Exemption
 - (i) Upon the Customer's written request and the prior written approval of the Company, the Customer is, notwithstanding clause 7(b) above, entitled to update the Service Contents directly via the Service platform. The Company's approval under this clause is in the sole discretion of the Company and the Company is not required to provide any reasons for its refusal to grant such approval.
 - (ii) The Company is not liable for any claims, Loss or damage arising out of or resulting from the malfunctions of the Service caused by the updating of the Service Contents by the Customer under clause 7(d)(i).

8. CHARGES AND TAXES

8.1 Calculation

- (a) The Customer must pay the Company the Charges for each Service:
 - (i) in accordance with the Pricing Schedule;
 - (ii) from the Service Commencement Date; and
 - (iii) in accordance with this clause 8.
- (b) The Customer agrees:
 - (i) to pay the Charges which the Company's records attribute to the Customer for the Service;
 - (ii) that records held and call logging procedures adopted by the Company will be prima facie evidence of the usage of the Service and the Charges payable by the Customer; and
 - (iii) that it is responsible for all Charges incurred between the time that the Customer makes a request for termination of the Service and the time of the actual termination of the Service.
- (c) If the calculation for any amount or Charge (including any Cancellation Charge) under this Agreement commences on a date other than the first day of a month or terminates on a date other than the last day of a month, the relevant amount or Charge due for the part month shall be calculated pro-rata, on the basis of the actual number of days in the relevant month.
- (d) Where a completion date of any item of works to be carried out under any Order Form has been confirmed by the Company and the Customer requests a change of that completion date to a date after the confirmed date, the Customer shall be liable to pay an additional fee for the establishment of the subject circuit(s) for the period between the originally confirmed date to the date when the works have been completed.
- (e) If no advance notice for Service termination, the Service will continue after the expiry of the Minimum Commitment Period and Rental will be the same as the Rental during the Minimum Commitment Period unless there is prior notice from the Company on any revision of the Rental.
- (f) For the purposes of paragraph (d) above works to be carried out under any Order Form shall include, without limitation, any requirement whatsoever in connection therewith.
- (g) If the Company has terminated or suspend the Service under clause 12 or 13:
 - (i) the Company reserves the right to refuse to reconnect the Service; and

- (ii) if the Company subsequently agrees to reconnect the Service, the Customer may be required to pay a reconnection fee in advance as a pre-condition to make the Service available again.

8.2 Variation of Charges

- (a) Subject to paragraph (b) the Company shall have the right to revise the Charges by giving reasonable notice to the Customer and the Customer shall pay on demand such revised Charges.
- (b) The Company may not increase the Charges during the Minimum Commitment Period.

8.3 Invoicing and Payment

- (a) If the Customer raises special request on additional information apart from the information set out in standard bill, the Company shall, subject to the payment of the relevant Charges payable by the Customer under this clause, the system capability, availability of the requisite information, duties of confidentiality owed to third parties and all applicable law, use all reasonable endeavours to provide the requisite information to the Customer. For the additional services provided by the Company to the Customer under this clause, the Company will charge the Customer a fee at an agreed rate based on the actual man-hour spent.
- (b) The Company will issue or cause a third party to issue a monthly invoice to the Customer outlining the Charges that are due effective from the Service Commencement Date.
- (c) The Company reserves the right to:
 - (i) vary the billing frequency at any time without prior notification;
 - (ii) issue an interim bill during a month for accrued Charges, which will become immediately due and payable;
 - (iii) re-issue any bill if any error is subsequently discovered; and/or
 - (iv) bill the Customer through a billing agent or any of its Affiliates.
- (d) The Company may include Charges omitted from an earlier invoice in a subsequent invoice.
- (e) The Customer must pay each invoice:
 - (i) in full on or before the date specified in the invoice or if no such date is specified, within 15 days from the date of the invoice or such other shorter or longer period as may be advised by the Company from time to time (“**Due Date**”);
 - (ii) without set off, counter claim or deduction for any amount (including Taxes); and
 - (iii) in the manner specified in the invoice, or if no such manner is specified, by cash, cheque, direct debt or other method permitted by the Company.
- (f) If a cheque or payment by direct debit is dishonoured or cancelled, the Customer agrees to pay to the Company:
 - (i) any resulting bank or other charges incurred by the Company; and
 - (ii) a reasonable administration charge imposed by the Company.
- (g) If a payment due by the Customer to the Company under this Agreement is not received by the Due Date the Company shall be entitled to:
 - (i) charge daily interest on outstanding amounts, until payment in full is received by the Company, at the rate of two percent (2%) above the prime lending rate of the Hong Kong and Shanghai Banking Corporation Limited as current from time to time; and

- (ii) charge any additional charges or expenses incurred by the Company in recovering outstanding amounts due under this Agreement (including any legal costs and expenses, the cost of engaging a debt recovery agent, or the cost of instituting legal proceedings); and
- (iii) suspend the Service without further notice.
- (h) All enquiries or disputes concerning any invoice must be notified to the Company within one (1) month of the invoice issue date. Nothing in this clause 8.3(h) shall relieve the Customer of its obligation to pay the Company on or before the Due Date. The Company and the Customer shall work together in good faith to resolve any bona fide invoice enquiry or dispute notified to the Company in accordance with this clause 8.3(h).
- (i) The Company may set off any amount owed by the Customer to the Company against any amount owed by the Company to the Customer under or in relation to this Agreement.
- (j) The Customer shall not be entitled to make any claim for loss or damages suffered by the Customer by reason of the Company exercising its rights under this clause 8.3.

8.4 Taxes

- (a) The Charges are exclusive of any Taxes.
- (b) The Customer agrees to pay all Taxes which may be imposed by any taxing authority in relation to any amount payable under this Agreement whether existing on the Effective Date or coming into effect at any later time.
- (c) If the Customer is required by Applicable Law to deduct any Taxes or make a withholding from any amount payable under this Agreement then, notwithstanding anything to the contrary contained in this Agreement, the gross amount payable by the Customer to the Company shall be increased so that, after any such deduction or withholding for Taxes, the Company receives an amount equal to the sum it would have received had no such deduction or withholding been made, and the Customer shall make timely payment of the amount withheld (before penalties attach thereto or interest accrues thereon) to the relevant taxing authority and promptly provide to the Company acceptable evidence of such payments.

9. DEPOSIT

- (a) Under normal circumstances, there is no deposit for Standard Service.
- (b) If the development lead time for the requisite Customised Service is more than 45 days from the order placement date, a deposit equals to one month Rental
- (c) For Customised Service, a deposit of up to 100% of the Customisation Charge is required before project development task starts. The amount of deposit will depend on the complexity and effort required for each Customised Service.
- (d) The Company reserves the right, at any time, to demand an advance payment as security for due payment of all Charges (“**Advance Payment**”), where it considers it necessary.
- (e) The Customer authorises the Company, without prejudice to any other rights and remedies available to the Company, to deduct amounts from the Advance Payment for payment of any outstanding Charges and for compensating the Company for any Loss it may incur or sustains as a result of any non-observance or non-performance by the Customer of any terms, conditions or obligations under this Agreement.
- (f) The Advance Payment shall, after termination of this Agreement, be refunded to the Customer without any interest and less any amounts deducted by the Company in accordance with clause 9(e).

- (g) An Advance Payment does not affect any right of the Company to suspend, cancel or terminate this Agreement for non-payment by the Customer of the Charges. The Advanced Payment will not affect any right of the Company to suspend, cancel or terminate the Service or this Agreement for non-payment by the Customer of the Charges.

10. INDEMNITY

The Customer must indemnify the Company, its employees, contractors, Affiliates and agents against any claims and Loss, howsoever arising, which the Company suffers or incurs in connection with this Agreement, including any Loss or a claim resulting directly or indirectly from:

- (a) any use by the Customer of the Service;
- (b) any act or omission of the Customer or any third party within the Customer's control;
- (c) the negligence, recklessness or wilful misconduct of the Customer;
- (d) any claim by any person relating to any delay or failure to provide the Service;
- (e) a breach (including breach of any warranties) by the Customer of this Agreement;
- (f) any claim for infringement of any Intellectual Property Right due to an act or omission of the Customer;

except to the extent that the claim or Loss is the result of the wilful breach of this Agreement by the Company.

11. LIABILITY

11.1 Limitation of Liability

- (a) The Company shall not be subject to any liability or responsibility by reason of any delay in effecting any repairs or by any failure of the Service whether such failure or delay shall arise from accident, defect in the equipment, omission, default, negligence or other act of an employee of the Company or from any other cause.
- (b) The Company shall not be subject to any liability or responsibility for any cost, claim, damage or loss to the Customer or to any person, body of persons or corporation resulting from subsequent maintenance or system upgrade of the platform.
- (c) In no event should the Company be liable in contract, tort (including negligence or breach of statutory duty) or otherwise for any loss (whether direct or indirect) of revenue, loss of profits or any Consequential Loss whatsoever under this Agreement.
- (d) The Customer acknowledges that the Company cannot guarantee nor is it liable for the security of traffic transmitted over any Service.
- (e) Nothing in this Agreement excludes or restricts a party's liability for death or personal injury resulting from the negligence of that party.
- (f) Subject to clause 11.1 (e) above, the Company's total liability under this Agreement, whether in tort, contract or otherwise shall be limited to the aggregate amount of the Charges for the Service payable by the Customer to the Company under this Agreement.

11.2 Exclusion of liability and implied warranties

Notwithstanding any term of this Agreement and to the extent permitted by law:

- (a) the Company excludes liability for any Consequential Loss:
 - (i) whether arising from negligence (or other tort), breach of contract, under indemnity or otherwise;
 - (ii) whether or not such Consequential Loss was foreseeable; and

- (iii) whether the Company has been advised of the possibility of such Consequential Loss;
- (b) the Company shall not be liable for any Loss sustained by the Customer by reason of any disclosure, inadvertent or otherwise, if any information concerning the Customer's accounts and particulars nor shall the Company be liable for any error, omission or inaccuracy with respect to the information disclosed; and
- (c) conditions and warranties implied by custom, the general law, statute or any Applicable Law are excluded from this Agreement.

12. SUSPENSION OF SERVICE

12.1 Right to suspend any Service

The Company may at its discretion elect to suspend immediately all or part of any Service, at any time, until further notice on notifying the Customer verbally or in writing in the event that:

- (a) the Company shall be entitled to terminate the Service or this Agreement;
- (b) the Company reasonably suspects that any activities not authorised under this Agreement have occurred or are occurring in relation to the Service, whether or not such activities are carried out by the Customer;
- (c) the Company shall be obliged to comply with an order, instruction or request of the Government of Hong Kong, an emergency services organisation or other competent administrative authority;
- (d) the Company considers it necessary to carry out work for upgrading or maintaining the Network provided that the Company gives the Customer the maximum advance notice practicable in the circumstances; or
- (e) the provision of the Service would cause the Company to be in breach of any Applicable Law.

12.2 Suspension of any Service

- (a) Without prejudice to clause 11 (*Liability*), the Company is not liable to the Customer or any third person for any Loss resulting from, or in connection, with a suspension, withdrawal or restriction of the Service under this clause 12.
- (b) If the Company elects to suspend the provision of one or more Services when it is entitled to terminate this Agreement, the Customer shall reimburse the Company for all reasonable costs incurred by the Company in implementing such suspension and in re-commencing provision of the Service.
- (c) The exercise of any of the Company's rights under this clause 12 is without prejudice to any other remedy available to the Company under this Agreement.

13. TERMINATION

13.1 Termination by either the Company or the Customer

Either party may terminate this Agreement as a whole at any time with immediate effect on the giving of notice to the other party if the other party is a legal entity (including a partnership), and it becomes or appears likely to become insolvent or bankrupt, subject to a winding up proceeding, has a receiver appointed, is dissolved or in the process of dissolution, makes any arrangement for the benefit of creditors, or initiates or becomes or appears likely to become subject to any other form of an insolvency proceeding.

13.2 Termination by the Customer

The Customer may terminate one or more Services or this Agreement as a whole:

- (a) subject to clause 13.4, by giving the Company not less than two (2) months' prior written notice; or
- (b) if the Company breaches any material provision of this Agreement and fails to remedy that material breach within 30 days after receiving written notice requiring it to do so.

13.3 Termination by the Company

- (a) The Company shall have the right to terminate one or more Services or this Agreement as a whole forthwith at any time in any of the following events:
 - (i) if any Charges or sums payable remain unpaid after the Due Date;
 - (ii) without cause after the expiration of the Minimum Commitment Period by giving the Customer 30 days written notice;
 - (iii) if the Customer has provided any information to the Company which the Company believes to be material to the provision of the Service and such information is incorrect or incomplete;
 - (iv) if the Customer breaches any provision of this Agreement that in the opinion of the Company is capable of being remedied and the Customer fails to remedy that breach within 14 days after receiving written notice requiring it to do so;
 - (v) if the Customer breaches any provision of this Agreement that in the opinion of the Company is incapable of being remedied;
 - (vi) if in the opinion of the Company the Customer has used, attempted to use, or is likely to use the Service in contravention of any Applicable Law;
 - (vii) if continued provision of the Service is not in the public interest or if it is deemed by the Company that it is not in the Company's interest to continue providing the Service to the Customer for any reason whatsoever;
 - (viii) the Company suspects fraud or misuse of the Service, or an activity not authorised by the Company or this Agreement in relation to use of the Service, by any person, regardless of whether the Customer consented to or had knowledge of such fraud, misuse or unauthorised activity;
 - (ix) the Company is named as a defendant or threatened with suit in any action or proceeding in which it is alleged that the Service has been used to carry defamatory content;
 - (x) the Company is prohibited from supplying the Service under any Applicable Law; and
 - (xi) any Force Majeure Event continues for more than 90 days.
- (b) If the Company terminates one or more Services or this Agreement as a whole by reason of clauses 13.1 or 13.3 (a) (i), (iii), (iv), (v), (vi), (viii) or (ix) during the Minimum Commitment Period then, without prejudice to any other rights or remedies the Company may have, the Customer must pay the Cancellation Charge calculated in accordance with clause 13.4.

13.4 Cancellation Charge

- (a) If the Customer terminates the Service before the Service Commencement Date, the Company may charge the Customer an aggregate amount equal to (a) any costs and expenses incurred by the Company up to the date of the termination and (b) a cancellation fee equal to

3-month Rental. If the Service is a Customised Service, the Company may charge the Customer an additional sum equal to the remainder of the Customisation Charge after deducting the paid deposit paid by the Customer under clause 9(c).

- (b) Where a Minimum Commitment Period is specified in an Order Form or Specific Terms and the Customer terminates one or more of the Services in accordance with clause 13.2 before the expiry of the Minimum Commitment Period, the Customer shall pay a Cancellation Charge equal to the Rental that would have been payable by the Customer to the Company if the Customer had continued to receive the Service from the date of termination until the expiry of the Minimum Commitment Period. In case of disputes, the Company reserves the right to make the final decision.
- (c) The parties agree that the Cancellation Charge is an agreed reasonable pre-estimate of the anticipated losses suffered by the Company if the Service is terminated before the expiry of the Minimum Commitment Period or Service Commencement Date.

13.5 Consequences of termination

- (a) Upon the date of termination of this Agreement, all licences, rights and privileges granted to the Customer under this Agreement shall cease.
- (b) On termination of this Agreement, the Customer must:
 - (i) immediately pay all Charges for the Services up to and including on the date of termination and all other amounts owing by the Customer to the Company;
 - (ii) cease use of any Services;
 - (iii) promptly return all Service Literature to the Company; and
- (c) Without prejudice to clause 11 (*Liability*), the Company will not be liable to the Customer or to any third party for any Loss resulting from or in connection with termination of this Agreement under this clause 13.

13.6 Survival

- (a) Termination of this Agreement will not extinguish or otherwise affect any rights of any party against the other which accrued before the date of termination of this Agreement.
- (b) To the extent possible, clauses 8 (*Charges and Taxes*), 10 (*Indemnity*), 11 (*Liability*), 13 (*Termination*), 14 (*Confidentiality and Intellectual Property Rights*) and any other clause of the Agreement, which by its nature is intended to survive termination of this Agreement, will survive termination of this Agreement.

14. CONFIDENTIALITY AND INTELLECTUAL PROPERTY RIGHTS

14.1 Confidentiality

- (a) The Customer shall keep confidential and shall not disclose to any person any and all written and/or oral information of any kind relating to this Agreement or disclosed by the Company pursuant to this Agreement or prior to it or in the course of performance of it, whether or not such information is identified as being confidential at the time of disclosure.
- (b) The obligations under this clause 14 shall not apply, however, to any information which:
 - (i) was already in the public domain or which becomes so through no fault of the Customer; or
 - (ii) is approved for release by prior written authorisation of the Company.
- (c) Subject to the provisions in clause 14.1(b) these obligations of confidentiality shall continue without limit of time.

14.2 Intellectual Property Rights

- (a) The Customer agrees and acknowledges that nothing in this Agreement:
 - (i) assigns any Intellectual Property Right of the Company or any third party to the Customer; or
 - (ii) grants any licence to the Customer in respect of any Intellectual Property Right of the Company or any third party, except for any licence that the Company may grant pursuant to clause 14.2 (b).
- (b) If the Company permits the Customer to use any software as part of the Service under this Agreement:
 - (i) the Company grants to the Customer a non-exclusive, non- sub-licensable and non-transferable licence to store, run or use such software for the purposes only of using the Service;
 - (ii) the Customer must use such software in accordance with this Agreement and any additional terms and conditions that the Company may notify to the Customer; and
 - (iii) to the maximum extent that Applicable Law permits, the Customer must not alter, modify, adapt, translate, decompile, disassemble or reverse engineer or commercially exploit any such software.
- (c) Neither party shall do any act or permit any act to be done which is an infringement of any Intellectual Property Rights of any other person in the performance of its duties and obligations under this Agreement.

15. PERSONAL DATA

15.1 Consent

If the Company requests Personal Data from the Customer, the Customer may decline to provide that Personal Data, but in that event the Company may decline to provide the Service.

15.2 Use of Personal Data

- (a) The Customer agrees that the Company may use the Personal Data for any and all of the following purposes:
 - (i) provision of the Service (including transfer of such Personal Data to other telecommunication network providers or third parties as necessary for the provision of the Service);
 - (ii) marketing of goods and/or services by the Company, its agents, Affiliates or subsidiaries, in relation to the Service;
 - (iii) improving of goods and/or services in relation to provisioning of the Service;
 - (iv) processing of any benefits arising out of or in connection with the Service;
 - (v) analysing, verifying and/or checking of the Customer's credit, payment and/or status in relation to the provision of the Service;
 - (vi) processing of any payment instructions, direct debit facilities and/or credit facilities in relation to provisioning of the Service or requested by the Customer;
 - (vii) enabling the daily operation of the Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Service;
 - (viii) enabling the Company to comply with its obligations to interconnect or other industry practices;

- (ix) keeping the Company informed of other services of the Company;
 - (x) prevention or detection of crime;
 - (xi) disclosure as required by Applicable Law; and
 - (xii) any other purpose as may be agreed between the parties.
- (b) The Customer agrees that Personal Data may be disclosed and transferred in Hong Kong or in places outside of Hong Kong to the Company's Affiliates, agents, contractors, Operators, any other third parties including collection agencies, credit reference agencies, security agencies, credit providers or other financial institutions and any of the Company's actual or proposed assignees or transferees of its rights in respect of the Customer for such person to use, disclose, hold, process, retain or transfer for the purposes set out in clause 15.2 (a).

15.3 Customer obligations

- (a) The Customer must, as soon as practicable, notify the Company of any change in any information or particulars provided to the Company (including any information provided in the Order Form) which may affect the provision of the Service.
- (b) On request by the Company, the Customer shall provide the Company with information relating to the Customer and its use of the Service reasonably required by the Company:
- (i) to assist the Company in complying with its obligations under any Applicable Law and reporting to any government or regulatory body regarding compliance with those obligations; and
 - (ii) to assess whether or not the Customer has complied, is complying and will be able to continue to comply with all its obligations under this Agreement.

16. DISPUTE RESOLUTION

- (a) Any dispute or difference which arises between the parties in respect of any aspect of this agreement must be dealt with in accordance to this clause 16.
- (b) Either party may, by serving notice in writing upon the other party, refer a dispute or difference to an appropriate senior representative of the other party.
- (c) Prior to the commencement of any legal proceedings (other than for urgent interlocutory relief under clause 16(e)) and if the appropriate senior representatives of each party are unable to resolve the dispute or difference within 7 days of its referral (or such longer period agreed between the parties), either party may refer the dispute to mediation to be conducted in Hong Kong in accordance with the Mediation Rules of the Hong Kong International Arbitration Centre (HKIAC) in force from time to time.
- (d) In the event that the dispute or difference has not been settled within 30 days of the notification of the dispute or difference under clause 16(b) or such other period as agreed in writing between the parties after the appointment of a mediator, the parties shall not be obliged to mediate or continue to mediate and may instead rely on their rights at law, including the right to institute court proceedings.
- (e) The dispute resolution procedure described in this clause 16 does not prevent a party seeking urgent interlocutory relief.
- (f) English shall be the language of all proceedings.

17. SERVICE LEAD-TIME

Save for Customised Service, the Standard Service lead-time shall be 1 month from the date of the acceptance by the Company of the Customer's signed Order Form. The lead-time for Customised Service will be such time as agreed by the parties.

18. LIMITATION ON TRANSFER

- (a) For the transfer of telephone calls made by Users (who access the Service by dialling the Service Number) to another telephone number, the telephone number to which the Users' calls are transferred must be the Company's number not being the OneCall Numbers or Hotline Numbers.
- (a) In case of platform breakdown or platform maintenance, the incoming calls will be transferred to a Customer pre-set destination number to ensure the continuity of the Service. The destination number must be the Company's number not being the OneCall Numbers or Hotline Numbers.

19. GENERAL

19.1 Governing law and Jurisdiction

This Agreement shall be governed in all respects by the laws of Hong Kong and the parties submit themselves to the jurisdiction of the Courts of Hong Kong in the event of any dispute.

19.2 Assignment

- (a) The Customer shall not assign, any or all of its rights or obligations under this Agreement, except with the prior written consent of the Company. In the event of a permitted assignment, the Customer shall at all times remain bound to the Company as primary obligator.
- (b) The Company may at any time (with or without notice) assign, novate, sub-contract, transfer or otherwise dispose of any or all of its rights, duties or obligations under the Agreement to a third party or appoint a third party to perform any or all of the Company's duties or obligations, or exercise any of the Company's rights, under the Agreement.

19.3 Export Control

The Customer acknowledges that the export, import or use of certain encryption products provided under this Agreement may be subject to the laws of foreign governments. The Customer warrants that it shall not export, import or use any encryption product without obtaining all required government authorisations and licences.

19.4 Force Majeure

The Company shall not be liable to the Customer for any Loss resulting from delay or failure to perform this Agreement, either in whole or in part, where any such delay or failure shall be due a Force Majeure Event.

19.5 Notices

Any notices required to be given hereunder shall be sufficiently given if sent by hand, facsimile transmission, or post addressed to the principal or registered office of the party to be served. Any such notice shall be deemed to have been received:

- (a) if by hand delivery, when it is delivered;
- (b) if a letter, 3 days after posting 7, if posted to or from a place outside Hong Kong; and
- (c) if a facsimile, a time of dispatch of the sender receives a transmission report which confirms that the facsimile was sent in its entirety to the facsimile number of the recipient.

19.6 Entire Understanding

- (a) This Agreement embodies the entire understanding between the parties in relation to the Service and there are no promise, terms, conditions or obligations oral or written expressed or implied other than those contained in this Agreement.

- (b) In entering into this Agreement the parties do not rely on any representations or warranties in relation to the Service except as expressly provided in this Agreement.

19.7 Amendment of Agreement

This Agreement may only be amended by written agreement between the parties.

19.8 Order of Precedence

In the event of any inconsistency between the Specific Terms, the relevant Order Form and the General Terms and Conditions the inconsistency will be resolved in the following order:

- (a) the Specific Terms;
- (b) the relevant Order Form; and
- (c) the General Terms and Conditions.

19.9 Non-Waiver

No failure, or delay on the part of the parties to exercise any right, power or remedy under this Agreement shall operate as a waiver of that power or right unless expressed in writing to be a waiver.

19.10 Severability

If any provision of this Agreement shall be construed to be illegal or invalid, they shall not affect the legality, validity and enforcement of the other provisions of this Agreement. The illegal or invalid provision shall be deleted from this Agreement and no longer incorporated in this Agreement but all other provisions of this Agreement shall continue to have full force and effect.

19.11 Cumulative rights

The rights and remedies of a party under this Agreement do not exclude any other right or remedy provided by law.

19.12 Continuing indemnities and survival of indemnities

- (a) Each indemnity contained in this Agreement is a continuing obligation despite a settlement of account or the occurrence of any other thing, and remains fully effective until all money owing, contingently or otherwise, under an indemnity has been paid in full.
- (b) Each indemnity contained in this Agreement:
 - (i) is an additional, separate and independent obligation and no one indemnity limits the generality of another indemnity; and
 - (ii) survives the termination of this Agreement.

ATTACHMENT

DEFINITION SECTION AND RULES OF INTERPRETATION (clause 1)

Part 1

In this Agreement:

Administration Accounts means the Customer's accounts used by the Customer for accessing the Administration Portal for the purposes of administering and maintaining the Service.

Administration Portal means a portal in the form of a website or an IVR Service through which the Customer may update and maintain its Service Contents for the Service.

Advance Payment has the meaning given in clause 9(c).

Agreement means the General Terms and Conditions, Specific Terms for each Service and the Order Form relating to each Service.

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.

Applicable Law means:

- (a) any applicable laws, statutes or ordinances and any regulations, rules, practice notes, circulars and any other notification issued by any taxing authority pursuant to such laws, statutes and ordinances;
- (b) any lawful determination, decision or direction of a government or regulatory body or agency in any jurisdiction;
- (c) any applicable obligations under any telecommunications licence, any binding industry standard or industry code; and
- (d) any applicable international convention or agreement.

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

Call Flow means the Service flow structure setting out the maximum permissible options at each flow level and the maximum permissible levels as particularised in the Service Literature.

Cancellation Charge means the charge payable by the Customer under Clause 13.2(a), 13.3(b) and 13.4.

Charges means:

- (a) the charges payable for each Service;
- (b) any Set-up Charges;
- (c) any Rental;
- (d) the Customisation Charge;
- (g) the reconnection fee ; and
- (h) any other charge the Company is entitled to charge the Customer for each of the Services.

Company means Hong Kong Telecommunications (HKT) Limited.

Consequential Loss means:

- (a) any loss of profit, loss of goodwill, loss of production, loss of business, loss of opportunity, business interruption, loss of revenue, loss of contract, loss of anticipated savings, loss or corruption of data or loss of privacy of communications; and
- (b) any consequential, special, indirect, exemplary or punitive damages, of any nature.

Customer means the customer specified on the Order Form.

Customisation Charge means the upfront one-off Charge payable by the Customer to the Company under clause 2(d)(iii) of this Agreement in respect of the development of the Customised Call Flow, Customised Service Application and Customised Service Reports. The amount of Customisation Charge shall be based on the actual man-hour spent by the Company in the Customised Service.

Customised Service means the Customised Service mentioned in clause 2 (c) of this Agreement.

Defect means a defect, error or problem in the Service.

Deposit has the meaning given in clause 9(a).

Due Date has the meaning given in clause 8.3(e) (*Invoicing and payment*).

Effective Date means the date that both parties sign this Agreement.

Force Majeure Event means an event outside the reasonable control of the Company, including but not limited to, industrial disputes of any kind, war declared or undeclared, blockade, disturbance, a natural disaster such as lightening, earthquake, storm, flood, explosion or meteor, law or any power lawfully exercised by a government agency, any change in any Applicable Law, inability or delay in granting governmental or other approvals, consents, permits, licenses or authorities, or telecommunication network outage or degradation.

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

Hotline Numbers means the numbers designated by the Company for use by the Customer with high traffic level.

Intellectual Property Rights means all intellectual property rights subsisting throughout the world conferred under statute, common law and equity, including:

- (a) patents, copyright, rights in civil layouts, registered designs, trademarks and any right to have confidential information kept confidential; and
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a).

IVR service means an interactive voice response service that provides Customer's pre-set information to the Users through the selection of key options in accordance with instructions given to the Users who dial into the Service Number.

Loss includes any loss, costs, damages, expense, liability and charge incurred by a party, including Consequential Loss.

Maintenance Charge means the charges specified on the relevant Order Form for the maintenance and updating of any Service.

Minimum Commitment Period means the fixed period specified in the Specific Terms or the Order Form and commencing on the Service Commencement Date.

Network means the telecommunications network owned or operated by the Company and used in connection with providing the Service and all facilities and associated equipment used in, or in connection with, that network, but excluding the Customer equipment.

Network User Identity Number means an identity number, allotted by the Company to the Customer, that allows the Customer to use the Service.

OneCall Numbers means the telephone numbers subscribed by the users which can enable them to be reached by such telephone number any where and any time. OneCall Numbers will be provided to customers who have subscribed OneCall service offered by the Company.

Operator means a provider of telecommunications services.

Order Form means a written application (in a form approved by the Company) made by the Customer requesting provision of one or more Services or modifications to one or more Services.

Personal Data means any data as defined in the Personal Data (Privacy) Ordinance.

Ports means the maximum number of concurrent calls allowed for a single Service Number.

Phone-in Program means a program approved by the Company whereby the Customer publishes the Service Number to the public which will induce Volatile Traffic.

Pricing Schedule means the pricing schedule attached to an Order Form or referred to in the Order Form.

Rental means the monthly recurring amount that the Customer must pay the Company for the rental relevant to the Service. The Rental shall include the Charges for the provision by the Company to the Customer of (a) an agreed number of Ports in accessing the Service and the Service Application; (b) the Service Number; (c) a designated number of Administration Accounts; and (d) designated copies of Service Reports.

Schedule means a schedule to this Agreement.

Service means **Voice 1** service which is an IVR service provided by the Company to the Customer which (a) provides Customer's information or services to the Users who access the Service via the Service Numbers allocated to the Customer and (b) comprises the Standard Service and/or Customised Service (as the case may be) supplied by the Company to the Customer under this Agreement pursuant to the Order Form accepted by the Company.

Service Application means the voice mailbox application (that allows the Users to leave voice messages to the Customer), fax retrieval application (that allows the Users to retrieve information through fax) and any other applications agreed to be provided by the Company to the Customer under this Agreement.

Service Commencement Date means, with respect to the Service, the date specified in the relevant Order Form or as otherwise notified by the Company to the Customer as the date for the commencement of the Service.

Service Contents means the Call Flow and voice prompts and any other service contents agreed to be provided by the Company to the Customer under this Agreement.

Service Literature means any brochure, tariff schedule, customer guide, code of practice, device description, instructions or manual issued by the Company from time to time in connection with the provision of the Service.

Service Number means the telephone number allotted to the Customer by the Company under this Agreement in relation to the use of the Service.

Service Report means the Customer reporting product which provides the Customer with reports on its use of the Service.

Set-up Charge means the one-off Charge specified in the relevant Order Form and Service Literature for the set up of the Service.

Specific Terms means the specific terms applicable to the Service and is the same as the contract duration as specified in the Service Literature.

Standard Call Flow means the standardised and pre-set call flow configuration provided by the Company to the Customer under the Company's Standard Service.

Standard Service means the Service set out in clause 2(b) of this Agreement.

Tax means any present or future income tax, withholding tax, VAT, business tax, sales tax, turnover tax, excise tax, tariff, levies, impost, deduction, charge, duties and any other similar liabilities that are imposed on any amount payable under this Agreement, including any penalty interest and other additions to such liabilities imposed by any taxing authority in any jurisdiction, except for liabilities imposed by reason of the Company carrying on a business in a jurisdiction or being incorporated in that jurisdiction.

User means an end-user who dials into the Service Number for the purposes of accessing the Service .

Virus means any material that contains computer viruses, computer worms or any computer code, files or programmes or transmissions of any type which destroy, disable, disrupt, interrupt, limit or otherwise impede the use, functionality or connectivity of any computer software or hardware or any telecommunications equipment.

Volatile Traffic means an irregular traffic as characterised by (i) a sudden temporary high and unsteady traffic level; and/or (ii) the average number of calls is greater than 20,000 calls per hour and/or (iii) the average number of calls per hour is 30% greater than the allowable *Busy-Hour-Call-Attempt* (BHCA) based on the number of Ports subscribed by the Customer. During the sudden temporary high traffic period, the majority of Users will experience busy tone when calling the Service Numbers.

Part 2

- (a) In this Agreement, unless the context otherwise requires:
- (i) words importing the singular include the plural and vice versa;
 - (ii) words which are gender neutral or gender specific include each gender;
 - (iii) other parts of speech and grammatical forms of a word or phrase defined in the agreement have a corresponding meaning;
 - (iv) a reference to a clause, schedule or attachment in the General Terms and Conditions is a reference to a clause, schedule or attachment to the General Terms and Conditions of this Agreement;
 - (v) subject to paragraph (iv), a reference to a clause, party, schedule or attachment is a reference to a clause, party, schedule or attachment to this Agreement and a reference to the Agreement includes a schedule and attachment to this Agreement;
 - (vi) a reference to a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law judgment, rule of common law or equity or a rule of an applicable stock exchange and is a reference to that law as amended, consolidated or replaced;
 - (vii) a reference to a document includes all amendments or supplements to that document, or replacements or novations of it;
 - (viii) a reference to a party to a document includes that party's successors and permitted assigns; and
 - (ix) an agreement on the part of two or more persons binds them jointly and severally.

- (b) Where the day on or by which something must be done is not a Business Day, that thing must be done on or by the following Business Day.
- (c) Headings are for convenience only and do not affect the interpretation of this Agreement.
- (d) Any words in this Agreement appearing after the words 'includes', 'includes' or 'including' do not limit anything else that might be included.