

Tariff No.: U025-009

Published on 3 November 2010

UNIFIED CARRIER LICENCE
TELECOMMUNICATIONS ORDINANCE (CHAPTER 106)

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

Name of Tariff:

Special Conditions of PCCW Convergence

Description of Tariff:

See Annex A

Effective date of tariff:

3 November 2010

Revision history:

Revision to the tariff published in F050-0008 on 28 November 2008

PCCW Convergence Special Conditions

These Special Conditions, the General Conditions (as hereinafter defined), the Application attached hereto and any Addendum are referred to collectively herein as the “**Agreement**”. Capitalized words in this Agreement have a particular meaning, which is specified in these Special Conditions or in the Hong Kong Telecommunications (HKT) Limited General Conditions of Service (“General Conditions”) or elsewhere in this Agreement. “**We**” and “**us**” mean Hong Kong Telecommunications (HKT) Limited (“HKT”) and “**you**” means the Customer specified in the Application and you and us are each a “**party**” to this Agreement.

1. Our Responsibilities

We will provide you with the Services in accordance with the terms and conditions of this Agreement from the time we notify you that the Services are ready. We may limit, suspend or terminate your access to the Services without notice where we are of the reasonable opinion that such action is appropriate or where: (a) we suspect that you have breached or you have breached any of the terms of this Agreement; or (b) it is necessary to limit, suspend or terminate your access in order for us or our Affiliates to protect the integrity of the network, carry out unplanned maintenance or to repair or upgrade any equipment or facility forming part of the network. In addition, we may: (a) expand, reduce and/or modify any of the Services; (b) change the amount of Charges or introduce new Charges; and (c) amend the terms and conditions of this Agreement or any operating rules which govern your use of the Services by posting the details of such amendments on www.pccw-convergence.com which amendments will take effect seven (7) days from the date of posting. Where we exercise our rights under (a), (b) or (c) above such that there is a material adverse effect to the Services and/or there is a material increase in the Charges then you are entitled to terminate this Agreement by giving two (2) months prior written notice within seven (7) days of us exercising such rights and if you do so the Agreement will remain unchanged prior to termination and (where applicable) no termination charge will be payable by you under these Special Conditions or the General Conditions. If you do not give notice to terminate as herein provided then you will be deemed to have accepted the adverse effect to the Services and/or the increase in the Charges.

2. Your Responsibilities

You will: (a) be solely responsible for any use of the login ID(s) and password(s) provided by us to you and any Designated User in accessing the Services and you agree that any such use by any Designated User or any other person will be treated by us as a use by you; (b) not copy, distribute, publish, transmit, make available, infringe any Intellectual Property Rights or otherwise exploit any Content unless you own that Content or possess an appropriate license; (c) not use the Services and/or the Equipment to publish, distribute, transmit or circulate any unsolicited advertising, information or promotional material of any kind or any Content that is obscene, indecent, seditious, offensive, defamatory, threatening, liable to incite racial hatred, discriminatory, menacing or in breach of confidence; (d) not hack, break into, access, use or attempt to hack, break into, access or use any part of the Services, Equipment or any network operated by us, its Content and/or any data areas on our server(s) for which you have not been authorized by us; (e) not hack, break into, access, or attempt to hack, break into, access or by other unauthorized means use any part of any website(s) of any third parties, their Content and/or any data areas on any server(s) of any third parties for which you have not been authorized; (f) not store or upload any kind of tools, software or materials in any storage space assigned by us to you in our server(s) that can be used, in our sole opinion, for hacking or any other illegal or improper purpose; (g) ensure that each of the Designated Users comply with these terms and conditions; (h) abide by all relevant laws of Hong Kong or any other applicable jurisdiction and any operating rules, as amended from time to time, when using the Services and you warrant and represent that you have all necessary licenses, permits and registrations as are required to receive and use the Services; (i) in relation to any Content which you transmit via the Service, be deemed to have granted to us an irrevocable perpetual license to copy, distribute, publish and transmit such Content as is necessary for the operation of the Services, without charge, unless agreed otherwise between you and us; and (j) not use the Services and/or the Equipment in a manner which constitutes a violation or infringement of the rights of any person, firm or company (including but not limited to Intellectual Property Rights) or a violation or infringement of any statutory duty or obligation or any duty or obligation in contract, tort or otherwise, to any third party. You acknowledge that: (a) no unused 'free usage hours' of access time may be carried forward to the following month; and (b) except for that Content which is

supplied by us as principal, it is not our policy to exercise any editorial control over or to edit or amend any Content before it is transmitted or made available through the Services. However, you hereby authorize us to amend or delete any Content which is uploaded or otherwise provided by you where any such Content is, in our sole opinion, defamatory, in breach of any Intellectual Property Rights, illegal or otherwise not appropriate to be accessed by or through using the Services. You acknowledge and agree that we may check your storage space as assigned by us to you in our server(s) if required to do so by law or if in good faith we reasonably believe that such checking is necessary to: (a) enforce the terms of this Agreement; (b) respond to claim(s) by third parties that your use of the Services and/or the Equipment violates the rights of third parties, is illegal or improper; or (c) protect the rights, property or safety of us, our users, other web sites and the public. You agree to indemnify us and our Affiliates, directors, officers, employees, agents, contractors and licensors from and against any and all claims, actions, expenses, losses and liabilities (including legal costs), arising from or which is related to: (a) your use, any Designated User's use and/or any other person's use of the Services where such person was able to access the Services with your authority; and (b) any breach or non-observance of any term of this Agreement by you, any Designated User or any other person you allow to use or access the Services and/or the Equipment.

3. Software, Customer Equipment and Third Party Software and Equipment

You acknowledge and authorize us to procure the Third Party Software and Equipment (if any) specified in the Application on your behalf and that all relevant licenses, leases or contracts in respect of the Third Party Software and Equipment shall be granted or entered into directly by the relevant third party software and equipment suppliers directly to or by you and you shall comply with the terms and conditions of such licenses, leases or contracts. In relation to the Software, we hereby grant to you a non-exclusive and non-transferable license for you to use the Software on the Customer Equipment provided that: (a) all copyright and proprietary notices are maintained on the Software; and (b) the Software is used only by Designated Users for your internal business purposes and not for the benefit of any other person. You agree and acknowledge that: (a) all Intellectual Property Rights in the Software are owned by and remain at all times with us or our licensors; and (b) nothing in this Agreement operates to give you any ownership rights in the Software. You also agree to comply (to the extent it is not inconsistent with this Agreement) with any software license which accompanies the Software. Except to the extent permitted by law, you shall not copy, alter, modify, adapt, translate, distribute, commercially exploit or create derivative works of the Software or any part of the Software nor decompile, disassemble or reverse engineer the same nor attempt to do any such thing, provided that you may make one back-up copy of the Software to be used solely in accordance with this Agreement. You must not attempt to create the source code from the object code of the Software. We are not responsible for the installation, maintenance, compatibility or performance of any Customer Equipment, and you represent and warrant that the Customer Equipment will not infringe the Intellectual Property Rights of any person. If the Customer Equipment impairs the Services, you remain liable for payment for the Services and any other damages caused, and if such Customer Equipment is likely to cause hazard or service obstruction, you shall eliminate such likelihood promptly at our request. In the event that you provide your own router equipment to interface with the Services, you must cooperate with us in configuring and managing such router(s) in order to implement and operate the Services.

4. Service Provisioning

You authorize us to reconfigure the Customer Equipment and install the Installation Equipment on your behalf to enable us to provide the Services to you. You agree: (a) that it will be your responsibility prior to reconfiguration and installation by us to back up data on the Customer Equipment and inform us if any reconfiguration and installation by us is likely to invalidate any support arrangements or other functions of the Customer Equipment; and (b) to conduct all Customer Site preparation activities necessary for reconfiguration and installation. You represent and warrant that you own the Customer Equipment on which we conduct reconfiguration and installation activities or if you do not own any of the Customer Equipment you represent and warrant that you hold an applicable license or lease and have obtained all necessary consents and/or approvals from the relevant owners, licensors or lessors of the Customer Equipment to allow us to reconfigure the Customer Equipment, install the Installation Equipment and provide the Services. The provision of the Services under this Agreement is subject to the Customer Equipment meeting the Basic Requirements.

5. Warranty and Maintenance

You agree that: (a) any Equipment is and will at all times remain the property of us or our subcontractors; and (b) you are responsible for the Equipment while it is in your custody or control or on the Customer Site and you are liable to us for any loss or damage to the Equipment. You agree: (a) that you will not part with possession or control of the Equipment and you will not permit anyone other than us to carry out any repairs or maintenance to the Equipment; (b) to keep the Equipment in good and clean condition (fair wear and tear excepted); (c) not to alter or remove any labels or other markings which are on the Equipment at the date of this Agreement; (d) not to tamper with, avoid or remove any integrated circuit, component or protection facility contained in the Equipment; and (e) to give us and our agents and subcontractors all reasonable assistance and access to the Customer Site at all reasonable times as required by us to supply the Services. If any of the Equipment proves to be defective under normal use due to defective materials, design and/or workmanship, we will, at our option, either repair or replace the same or the defective parts thereof unless such Equipment has been purchased by you in which case you will only receive the benefit of any relevant equipment vendor warranty (if any). You represent and warrant that you own or have a license to use all Intellectual Property Rights for all elements of your web site (if applicable) that are subject to the Services (“**IP Elements**”), and that there is no geographic restriction on your use of the IP Elements. You specifically grant us a world-wide right to transmit, download, copy or cache all IP Elements necessary for us to provide the Services.

6. General Warranties & Liability

To the extent permitted by law and unless expressly provided herein, we disclaim any representation or warranty whether express or implied as to the title, fitness for a particular purpose, merchantability, accuracy or standard of quality of the Services, the Software, the Third Party Software and Equipment, the Equipment, and/or any Content, that the Services will be uninterrupted or error free, any obligation to maintain the confidentiality of information (although our current practice is to maintain such confidentiality), the results to be obtained from use of the Services and/or any Content unless otherwise expressly stated in this Agreement. You agree that our total liability under this Agreement shall in any event not exceed the aggregate of the Periodic Fees paid by you to us for the immediately preceding twelve (12) months prior to any incident giving rise to a claim. In the absence of our willful default, we expressly disclaim any liability for: (a) any damage to or loss of data suffered by you arising from your use of the Services, (b) any claim based in contract, tort, or otherwise for any loss of revenue (whether direct or indirect), loss of profits or any indirect, consequential, collateral, special or incidental loss or damage whether of an economic nature or not; (c) any claim relating to any Content supplied, provided, sold or made available by or through the Services (or any failure or delay to so supply, provide, sell or make available); (d) any injury, disease, seizure or loss of consciousness suffered by you or any person who uses the Services and/or the Equipment, arising whether directly or indirectly from using the Services and/or the Equipment; and (e) any disruption or suspension of the Services or any part thereof which is attributable to an event or circumstance beyond our reasonable control whether or not such damages, claims, injuries, losses or disruptions referred to in (a), (b), (c), (d) or (e) above were foreseeable. Nothing in this Agreement excludes or restricts a party's liability for death or personal injury resulting from the negligence of that party.

7. IP Address

Any Internet Protocol Addresses (“**IP Addresses**”) that may be assigned to you by us under this Agreement are allocated to us by regional registries and, other than the right to use, you shall have no rights or any title to the IP Addresses. We reserve the right to withdraw any of the IP Addresses at any time without notice. Upon termination of the Services or this Agreement, you shall immediately cease all use of the IP Addresses and remove the IP Addresses from the Customer Equipment and return them to us.

8. Domain Name Registration

Where specified in the Application, you authorize us to apply for registration of domain names on behalf of you and where subsequently requested by you, the modification or renewal of domain names on behalf of you. You acknowledge that registration of domain names is at the sole discretion of the applicable Domain Name Registry, and we make no guarantee as to the availability for registration of a particular domain name or your ability to continue to use any

domain name. You acknowledge that we will only use our reasonable endeavors to assist you to apply to the applicable Domain Name Registry to register domain names and we will not in any event be responsible for any registration delays or failures to register. We hereby notify you of the terms and conditions of the relevant registration agreements issued by the applicable Domain Name Registry including that available at http://www.hkirc.net.hk/eng/legal/registration_agreement_2_0.html (“**Registration Agreement**”) and you authorize us to act as your agent in entering into the Registration Agreements and you agree to be bound by the terms and conditions of the Registration Agreements as the principal. You represent and warrant that your statements in the domain name Application are complete, true and correct and that you intend to use the domain names without delay and that you exclusively own or have all necessary rights to any name (and the Intellectual Property Rights therein) that you submit to us or the Domain Name Registry.

9. Definitions

In this Agreement: “**Addendum**” means an addendum to this Agreement in a form approved by us and executed by you and us for the purpose of varying this Agreement; “**Basic Requirements**” means the configuration requirements of the Customer Equipment specified by us to you from time to time by us posting such details on www.pccw-convergence.com or otherwise; “**Content**” means any text, words, names, likenesses, trademarks, logos, artwork, graphics, video, audio, HTML coding, domain names, image maps, links, software applications, goods, services or other content, material or software that may be made available, accessed, transmitted, circulated or distributed through the Services; “**Customer Equipment**” means all hardware, software and consumables owned by you or licensed or leased to you by a third party or used in relation to the Services; “**Customer Site**” means your premises as may be specified in the Application where the Equipment and Software is located; “**Designated Users**” means those other persons related to you (including without limitation your agents and employees) who will be issued with separate login ID’s and passwords to access the Services; “**Equipment**” means any equipment (including any software contained in that equipment) supplied by us to you under this Agreement or used by us to make available the Services to you; “**Installation Equipment**” means the Equipment, the Software and the Third Party Software and Equipment (as applicable); “**Installation Fee**” means the installation and reconfiguration charges specified in the Application; “**Periodic Fee**” means the periodic charges for the Services specified in the Application; “**Software**” means any software or documentation owned or licensed by us or our Affiliates and supplied by us to you under this Agreement; “**Third Party Software and Equipment Fee**” means the third party software and equipment Charges specified in the Application; and “**Third Party Software and Equipment**” means any third party software and/or equipment as may be specified in the Application. In this Agreement unless the context otherwise requires: (a) headings are for convenience only and do not affect the interpretation of this Agreement; (b) the singular includes the plural and vice versa; (c) the word person includes a body corporate, an unincorporated association or an agency or department; (d) a reference to a party includes its successors and permitted assigns; (e) a reference to a document, includes any amendment, novation, replacement or later version agreed or otherwise issued in accordance with this Agreement; and (f) if any matter is covered in an Addendum, the terms and conditions herein or the attached Application but the provisions are in conflict, the documents will have the same order of precedence as listed herein.