



## NOW TV ADVERTISING TERMS & CONDITIONS

All Bookings made are subject to these terms and conditions:

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1. The following definitions apply:

**"Advertisement"** means any advertisement or promotional materials for broadcast incorporating the Advertising Copy in respect of which a Spot or Advertising Format has been sold and which has been cleared for transmission or exhibition in the manner prescribed by these Conditions.

**"Advertiser"** means the person, firm or company named or described in the Booking as an advertiser or the person, firm or company who has authorized the Advertising Agent to place the Booking.

**"Advertising Agent"** means a person, firm or company named or described in the Booking as an agent or the person, firm or company who placed the Booking on behalf of the Advertiser.

**"Advertising Copy"** means any materials including but not limited to programs, logo pop-up or dropdown, products, services, content, stills, images, talent, scripts, voice-overs, films, slides, videos, discs, recordings and music provided by (or produced or developed by PCCW and/or any PCCW Affiliate hereunder at the request of) the Advertiser and/or the Advertising Agent and intended for incorporation into an Advertisement.

**"Advertising Format"** means any advertisement in any format displayed on Now TV Digital and includes without limitation banner ads, native ads, splash ads and all other advertising formats specified in the Rate Card for Now TV Digital.

**"Advertiser's Product"** means the product(s), good(s) or service(s) which the Advertiser wishes to promote via the Advertisement.

**"Agreement"** means the agreement between (i) PCCW; and (ii) the Advertiser or the Advertising Agent (as the case may be) in respect of the Spots, Advertising Formats, advertising airtime, facilities and other services provided by PCCW hereunder to the Advertiser or the Advertising Agent (as the case may be) and which is made up of the Booking, these Conditions, the Rate Cards and the relevant sales circulars of advertising packages, as amended by PCCW from time to time.

**"Authorities"** means the Commerce and Economic Development Bureau, Communications Authority, the Office of the Communications Authority, the Office for Film, Newspaper and Article Administration and any other competent governmental departments empowered by the Hong Kong Government to issue and/or implement codes, rules, regulations or guidelines in relation to any broadcasting and telecommunication issues (including but not limited to the Content and transmission or exhibition of the Advertisement). The definition of **"Authorities"** shall also include any similar regulatory authorities with similar responsibilities within the Territory.



"**Booking**" means any request or order made for the purchase of any Spot(s), Advertising Formats, advertising airtime, facilities and/or other services placed by the Advertiser and/or the Advertising Agent with PCCW, subject to these Conditions.

"**Business Day**" means a day (other than a Saturday, Sunday or public holiday in Hong Kong) on which licensed banks are generally open for ordinary banking business in Hong Kong.

"**Codes of Practice**" means the codes of practice on:

- (a) advertising standards;
- (b) program standards;
- (c) technical standards of transmission or exhibition, and
- (d) any other rules, guidelines, directions and regulations regarding television broadcasting, telecommunication, transmission and exhibition of the Advertisement as may be issued and/or amended by the Authorities from time to time.

"**Conditions**" means these terms and conditions and includes the provisions contained in the Booking and the Rate Cards, as may be amended from time to time.

"**Content**" means text, images, video (being any still picture or other series of moving images, whether animated or otherwise), audio (including, without limitation, music used in relation with text, images, or video), data, products, services, advertisements, information, promotions, links, pointers, frames and software.

"**Devices**" mean television receivers, portable media players (including without limitation mobile phones, tablets, phablets and broadband video devices), desk top computers and notebook computers.

"**Fees**" means the fees payable by the Advertiser or the Advertising Agent to PCCW in relation to any Booking, as specified from time to time by PCCW.

"**HKTVE**" means HK Television Entertainment Company Limited (香港電視娛樂有限公司) whose registered office is at 41/F, PCCW Tower, 979 King's Road, Taikoo Place, Quarry Bay, Hong Kong.

"**HKTVE Affiliate**" means any company, corporation, partnership, joint venture or other entity that directly or indirectly controls, is controlled by or is under common control with HKTVE.

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

"**Licence**" means any licence in respect of telecommunications, broadcasting, television, sound, data or other transmissions or related activities or services issued to PCCW, any PCCW Affiliate and/or distributor of Now TV and/or Now TV Digital, by the Hong Kong government or other



competent authorities within the Territory.

**"Now TV"** means the domestic pay television program service in Hong Kong provided by PCCW and/or any PCCW Affiliate from time to time, known as "Now TV".

**"Now TV Digital"** means the <http://now.com> website, Now News mobile application, Now Finance mobile application and Now Sports mobile application operated by PCCW.

**"PCCW"** means PCCW Media Limited (電訊盈科媒體有限公司) whose registered office is at 41/F, PCCW Tower, 979 King's Road, Taikoo Place, Quarry Bay, Hong Kong.

**"PCCW Affiliate"** means any company, corporation, partnership, joint venture or other entity that directly or indirectly controls, is controlled by or is under common control with PCCW.

**"Pre-emption Structure"** means the system whereby any Program or Spot scheduled for a particular timeslot and at any rate may be pre-empted in the manner described in the Rate Card for Now TV or as otherwise specified by PCCW.

**"Program"** means any program or content (which shall include any Special Program or Sponsored Program) during or between the transmission of which the Advertiser's Product may be advertised or promoted in commercial announcements or promotional reference.

**"Rate"** means the rate of charges for the purchase of a Spot, Advertising Format or other advertising airtime, services or facilities, applicable to Now TV or Now TV Digital, as determined by PCCW from time to time.

**"Rate Card"** means each prevailing rate card published by PCCW setting out details of the Pre-emption Structure (in the case of Now TV), Rates and other charges applicable to Now TV and/or Now TV Digital. The Rate Cards are incorporated herein and are deemed to form part of these Conditions.

**"Special Program"** means any special program, program of special or public importance, news programs, special events, sports programs, political programs, public reports or similar programs as may be determined from time to time by PCCW.

**"Sponsored Program"** means Programs that are available for sponsorship upon terms prescribed by PCCW.

**"Spot"** means such advertising airtime or space offered for sale by PCCW for the transmission or inclusion of an Advertisement (i) on Now TV; (ii) on any channel, programming service, website, social media service, mobile application, publication (print and/or electronic), shop and/or other services operated by PCCW and/or any PCCW Affiliate(s) (except for Now TV Digital); or (iii) as part of any event, promotion or campaign held or organised by PCCW and/or any PCCW Affiliate(s). For the avoidance of doubt, **"Spot"** does not include any Advertising Format.

**"Territory"** means the geographical area of transmission or exhibition of any Advertisement by PCCW and/or any PCCW Affiliate.



- 1.2. In these Conditions, unless the context otherwise requires, words importing the singular includes the plural and vice versa; words importing natural persons includes firms and corporations; and words importing the masculine gender includes the feminine gender and the neuter gender.

## **2. ACCEPTANCE**

- 2.1. By placing a Booking with PCCW, the Advertiser and the Advertising Agent, jointly and severally, accept and agree to be bound by the terms of the Agreement and additional conditions as may be introduced by PCCW from time to time.
- 2.2. In the event the Advertiser changes its Advertising Agent for whatever reason, the Advertiser, the replaced Advertising Agent and the new Advertising Agent shall be jointly and severally liable to PCCW for all its and/or their liabilities (including Fees) accrued up to the time of such replacement.

## **3. COMPLIANCE**

- 3.1. The Advertiser and the Advertising Agent acknowledge that the conduct of the business of Now TV and Now TV Digital is governed by laws and regulations, the terms and conditions of the Licences and Codes of Practice as amended from time to time.
- 3.2. All Bookings are subject to, and the Advertiser and the Advertising Agent shall ensure that any Advertisement or Advertising Copy submitted and any Bookings placed hereunder are in, compliance with all relevant laws, regulations, the terms and conditions of the Licences and Codes of Practice as amended from time to time.
- 3.3. In the event that PCCW determines (whose judgment shall be final and absolute) that the continued performance of its contractual or other obligations to the Advertiser and/or the Advertising Agent:
  - (a) may violate any of the aforesaid laws, regulations, Codes of Practice, terms and conditions of any Licence, infringe the rights of others or subject PCCW, any PCCW Affiliate, HKTVE and/or any HKTVE Affiliate to any liability, or if there is actual or threatened litigation, or
  - (b) would otherwise place PCCW, any PCCW Affiliate, HKTVE and/or any HKTVE Affiliate and/or any Licence in a prejudicial position,

then PCCW shall, without prejudice to any other rights or remedies it may have under the Agreement, have the right to terminate or suspend in whole or in part of the performance of its obligations hereunder.

- 3.4. In the event of any suspension or termination by PCCW of its performance of its obligations hereunder pursuant to clause 3.3(a), the Advertiser and/or the Advertising Agent shall make full payment for the entire Booking.
- 3.5. In the event of any suspension or termination by PCCW of its performance of its obligations hereunder pursuant to clause 3.3(b), the Advertiser and/or the Advertising Agent shall make



payment on a prorated basis to PCCW for the portion of the Advertisements under the Booking already transmitted or exhibited by PCCW but shall not be liable for the un-transmitted or un-exhibited portion of the Advertisement affected by suspension or termination pursuant to clause 3.3(b).

- 3.6. PCCW and PCCW Affiliates shall not be liable to the Advertiser or the Advertising Agent for any damage, loss or liability connected with such suspension or termination referred to in clause 3.3. The Advertiser and the Advertising Agent hereby waive all claims of whatsoever nature against PCCW and PCCW Affiliates for such termination or suspension.
- 3.7. The Advertiser and the Advertising Agent acknowledge that the interpretation and enforcement of relevant laws and regulations, the Codes of Practice and Licence conditions, vests in the courts or in the relevant Authorities and PCCW and PCCW Affiliates are not able or required to provide any conclusive advice on the suitability or legality of any Advertising Copy or Advertisement. PCCW and PCCW Affiliates shall not be liable to the Advertiser or the Advertising Agent nor shall any of them have any claim whatsoever for damages, loss or otherwise, in respect of any advice sought from or given by PCCW and PCCW Affiliates.

#### **4. PLACING OF BOOKINGS**

- 4.1. To be capable of acceptance, each Booking must contain the information required by PCCW from time to time, including but not limited to:
  - (a) duration, date and time of the Spot(s), Advertising Format(s) and the applicable Rate(s);
  - (b) name of the Advertiser's Product, the Advertiser and (if applicable) the Advertising Agent;
  - (c) type and format of the Advertising Copy; and
  - (d) technical or other specifications prescribed by PCCW and/or PCCW Affiliates from time to time.
- 4.2. The deadline for submission of a Booking to PCCW shall be four (4) Business Days before the scheduled date of transmission or exhibition of the Advertisement in its first Spot or Advertising Format (as applicable). PCCW will accept Bookings sent by post, personal delivery, facsimile, electronic mail or other means of communication as may be specified by PCCW from time to time.
- 4.3. If any of the details in any Booking is in the opinion of PCCW incomplete or unclear, PCCW may reject the Booking or accept some or all of the Booking and make any amendments or adjustments that are necessary at its sole discretion. In the event that PCCW accepts such amended or adjusted Booking, the Advertiser and the Advertising Agent shall remain fully liable for the payment of the full amount of Fees for the Booking.
- 4.4. The Advertising Agent shall be deemed to have full authority to act for and on behalf of the Advertiser on all matters connected with the Booking, including but not limited to the placing of and making changes to the Booking, submission of the Advertisements and the Advertising Copies hereunder and authorizing amendments thereto.
- 4.5. PCCW reserves the right to accept or reject any Advertising Agent appointed by the Advertiser at its sole discretion.



## **5. APPROVAL AND DELIVERY OF ADVERTISEMENT AND ADVERTISING COPY**

- 5.1. All Bookings, Advertisements and Advertising Copies are subject to PCCW's prior approval. PCCW reserves the right to reject or cancel any Booking, Advertisement or Advertising Copy at any time in its sole discretion including but not limited to any Booking, Advertisement or Advertising Copy which:
- (a) contains or incorporates references to more than one (1) product or service item; or
  - (b) in PCCW's determination (whose decision shall be final) is in breach of clause 3.2; or
  - (c) is otherwise determined by PCCW (whose decision shall be final) as unsuitable or inappropriate for transmission or exhibition on Now TV, Now TV Digital and/or for reception on any Device.
- 5.2. Without limiting clause 5.1, the Advertiser or the Advertising Agent must submit to PCCW all Advertising Copies, Advertisements and the relevant supporting documents for PCCW's prior approval. The aforesaid materials must be in PCCW's prescribed format and shall be sent to PCCW's offices (as specified in the relevant Booking) with the appropriate packaging and labelling as required by PCCW, at the sole risk and expense of the Advertiser and the Advertising Agent, four (4) Business Days before the scheduled date of transmission or exhibition. If the Advertiser or the Advertising Agent fails to meet the aforesaid timeline or fails to submit the aforesaid materials in PCCW's prescribed format, PCCW shall have the right to exploit the Spot or Advertising Format originally booked by the Advertiser or the Advertising Agent but the Advertiser and the Advertising Agent shall, nonetheless, remain liable to pay for the full amount of Fees for the whole duration of the Spot or Advertising Format booked.
- 5.3. Prior approval given by PCCW in relation to the technical specifications, audio, script, storyboard or other relevant Content of any Advertisement or Advertising Copy shall not be regarded as approval of such Advertisement or Advertising Copy by PCCW.
- 5.4. Acceptance of any Advertisement or Advertising Copy by PCCW shall not be deemed to be an acknowledgement by PCCW that the Advertiser or the Advertising Agent has complied with all relevant laws, regulations, the terms and conditions of the Licences or Codes of Practice as amended from time to time.
- 5.5. Each of the Advertiser and the Advertising Agent hereby grants to PCCW all necessary rights and licences to use, store, record, edit, copy, broadcast, transmit and exhibit all Advertisements, Advertising Copies and the relevant supporting documents supplied by the Advertiser and/or the Advertising Agent for the purpose of enabling PCCW and PCCW Affiliates to exercise their rights and perform their obligations hereunder.

## **6. TRANSMISSION OF SPOTS AND ADVERTISING FORMATS**

- 6.1. It is the duty of the Advertiser and the Advertising Agent to ensure that the Advertisement provided will run for the exact duration of its Spot or Advertising Format, as per the Booking. If the Advertisement provided runs for a shorter duration of time than the Spot or Advertising Format as booked, PCCW shall have the right but not the duty to exploit the un-used Spot or Advertising



Format. The Advertiser and the Advertising Agent shall, nonetheless, remain liable to pay for the full amount of Fees for the whole duration of the Spot or Advertising Format booked.

- 6.2. If the Advertiser or the Advertising Agent supplies any Advertisement which exceeds the duration of the Spot or Advertising Format booked, PCCW shall at its sole discretion either transmit such part of the Advertisement that will run for the exact duration of the Spot or Advertising Format booked or charge the Advertiser and/or Advertising Agent an additional sum for the transmission of the Advertisement which exceeded the duration of the Spot or Advertising Format booked. PCCW shall not incur any liability whatsoever to the Advertiser and the Advertising Agent for any editing or cuts made to such Advertisement.
- 6.3. PCCW reserves the right (but it does not have any obligation) to transmit or exhibit the Advertisement or any part thereof for reception on any or all the Devices in its sole discretion. For the avoidance of doubt, PCCW shall only be required to transmit or exhibit the Advertisement on Now TV (as required under the Booking) for reception via television receivers pursuant to the terms of the Agreement.

## **7. PRE-EMPTION STRUCTURE**

- 7.1. All Bookings for Now TV are subject to pre-emption according to the Pre-emption Structure and PCCW's decision concerning all matters and disputes relating to the Pre-emption Structure shall be final and binding on the Advertiser and the Advertising Agent. In particular, PCCW reserves the right to pre-empt all or any portion of any Program or Spot in accordance with the Pre-emption Structure or in order to telecast or transmit Special Programs.
- 7.2. In the event of any pre-empted Bookings, the Advertiser or the Advertising Agent so affected shall be required to re-schedule the Booking to a different Spot within the same or higher Rate category (subject to PCCW's prior approval, Spot availability and payment of the higher Rate to PCCW where applicable).

## **8. SPONSORED AND SPECIAL PROGRAMS**

PCCW has the sole discretion in deciding the number and timing of Spots available to the Advertiser or the Advertising Agent for Sponsored Programs and Special Programs.

## **9. CANCELLATION AND RESCHEDULING**

- 9.1. Cancellation: Bookings once made cannot be cancelled by the Advertiser or the Advertising Agent. Any payments made by the Advertiser or the Advertising Agent will not be refunded.
- 9.2. PCCW shall be entitled to cancel the scheduled transmission of any Program or Spots, or the exhibition of any Advertising Format, without cause and without any prior notice to the Advertiser and/or the Advertising Agent. Such cancellation of any one or more Programs, Spots or Advertising Formats shall not invalidate the Advertiser's entire Booking or entitle the Advertiser and/or the Advertising Agent to any claim for loss or damage in respect thereof. Upon such cancellation, PCCW shall at its sole discretion, offer any of the following options to the Advertiser and/or the Advertising Agent:



- (a) transmission of the Advertisement at another Spot or exhibition of the Advertising Format within the same Rate category at no extra cost; or
- (b) granting of additional Spots or Advertising Formats of a similar value; or
- (c) deduction or refund of a pro-rata amount from the Fees for the Program, Spots or Advertising Formats cancelled.

9.3. Rescheduling: Except through pre-emption, the transmission or exhibition times specified in any Booking may not be modified save:

- (a) with PCCW's consent; or
- (b) where a minimum of four (4) weeks prior written notice is received by PCCW from the Advertiser and/or the Advertising Agent and such notice is accompanied by a new Booking which is acceptable to PCCW.

9.4. In the event that less than four (4) weeks' written notice is given to PCCW as required under clause 9.3 above, PCCW may nonetheless proceed to modify the transmission or exhibition times subject to payment by the Advertiser and/or Advertising Agent of a surcharge imposed by PCCW. The Rate applicable at the time of transmission will be applicable to the modified Booking. Notwithstanding the foregoing, any modification that:

- (a) reduces the overall monetary value of the Booking; or
- (b) postpones a confirmed Booking to beyond the current fiscal year of the Advertiser or PCCW (whichever is earlier);

will not be accepted by PCCW.

9.5. All scheduled transmission and exhibition times of any Programs and/or Advertisements are subject to change. PCCW will use reasonable commercial efforts to adhere to the scheduled times for transmission and exhibition but will not give any warranty in respect thereof and in particular will not give any warranty as to the specific transmission and/or exhibition times of the Advertisements.

## **10. TRANSMISSION AND EXHIBITION CONTROL**

10.1. If an approved Advertisement is subsequently:

- (a) ruled unacceptable or questioned by any relevant Authority; or
- (b) determined by PCCW (whose decision shall be final) to be no longer acceptable or appropriate due to changed or other circumstances,

PCCW may in its sole discretion refuse to transmit or exhibit the Advertisement without notice to the Advertiser or the Advertising Agent. The Advertiser and the Advertising Agent shall have no claim whatsoever for damages, loss or otherwise in respect of such non-transmission or non-exhibition. In such event, the Advertiser and/or the Advertising Agent is required to supply PCCW with other Advertisements or Advertising Copy for the transmission of the remaining Spots and Advertising Formats covered by the Booking (without prejudice to PCCW's right to vet the



Advertisements or the Advertising Copy pursuant to the terms hereof). The Advertiser and the Advertising Agent shall nonetheless remain liable to pay all Fees for the Booking including those affected Spots and Advertising Formats not used.

- 10.2. PCCW shall be entitled to edit, fade or cut in whole or in part the Advertisement or the Advertising Copy if, in its determination (whose decision shall be final), they contain any unsuitable or inappropriate material or material which is in breach of clause 3.2. PCCW and/or PCCW Affiliates shall not thereby incur any liability to the Advertiser or the Advertising Agent or to any third party nor shall any of them have any claim against PCCW and/or PCCW Affiliates for damages, loss or otherwise in respect of such editing, fading or cutting of part or whole of the Advertisement or the Advertising Copy. The Advertiser and the Advertising Agent shall remain liable to pay all Fees for the Booking, notwithstanding such editing, fading and/or cutting.
- 10.3. PCCW reserves the right to determine and restrict any continuous or repeat transmissions or exhibitions of the same or substantially the same Advertisement.
- 10.4. For the avoidance of doubt, PCCW shall not be required to transmit or exhibit any Advertisement in respect of any product or service not named or stipulated in the Booking.

#### **11. NO RESALE OF SPOTS OR ADVERTISING FORMATS**

The Advertiser and the Advertising Agent shall not resell, assign or transfer any of its rights under any Booking (including any Spot and/or Advertising Format) other than with PCCW's prior written consent. In the event of any breach of the foregoing, PCCW shall be entitled to terminate the Agreement forthwith without any liability and the Advertiser and/or the Advertising Agent shall make payment of all Fees under such Booking immediately to PCCW.

#### **12. NO WARRANTY**

The Advertiser and Advertising Agent acknowledge and agree that:

- 12.1. PCCW and PCCW Affiliates do not warrant or guarantee that an approved Advertisement will be transmitted or exhibited as per its Booking or as scheduled; and
- 12.2. to the fullest extent permitted by law, PCCW and PCCW Affiliates expressly disclaim and exclude any representation or warranty whether express or implied in relation to Now TV, Now TV Digital, any Spot, Advertising Format, Program, the transmission or exhibition of any Advertisement, the Agreement or their obligations thereunder, and the Advertiser and the Advertising Agent expressly waive any claims they may have against PCCW and PCCW Affiliates in this regard.

#### **13. LIMITATION OF LIABILITY**

- 13.1. To the fullest extent permitted by law, the total liability of PCCW and PCCW Affiliates for breach of express or implied warranties, conditions, undertakings or other terms under the Agreement is limited to the Fees paid by the Advertiser and/or the Advertising Agent for the relevant Booking in respect of which the breach arose.



13.2. In no event shall PCCW and/or any PCCW Affiliate be responsible for any consequential or special damages, loss of profits or any other damages arising from the Agreement (including but not limited to any failure to transmit or exhibit any Advertisement timely or otherwise in accordance with the Booking as scheduled). Without limiting the foregoing, PCCW and PCCW Affiliates shall not be liable for any failure or delay to perform their obligations under the Agreement resulting from any event of force majeure under clause 23.

#### **14. INTERRUPTION OR DELAY IN TRANSMISSIONS**

14.1. PCCW and PCCW Affiliates shall not be liable for the non-transmission, non-exhibition, interruption or delay in transmission or exhibition of or any failure to transmit or exhibit all or any part of the Advertisement or the failure of the transmission or exhibition of the Advertisement as a result of failure of telecommunications, broadcasting and/or telecasting facilities or services, or any networks (including all electrical or mechanical failures) nor shall PCCW and/or PCCW Affiliates be liable for any errors which occur during the transmission or exhibition of any Advertisement.

14.2. In the event of non-transmission, non-exhibition, interruption or delay in transmission or exhibition of, or any failure to transmit or exhibit all or any part of, the Advertisement as provided under clause 14.1, PCCW will transmit or exhibit the same as soon as practicable, at the next best available time as decided by PCCW in its sole discretion. The Advertiser and the Advertising Agent will accept and pay for such alternative transmissions or exhibitions as if the same has been transmitted or exhibited at the time stated in the Booking.

#### **15. CHANGES IN RATES AND CONDITIONS**

15.1. PCCW reserves the right to change any Rate at any time upon giving reasonable advance written notice to the Advertiser and/or the Advertising Agent who have Bookings in force at that time. The Advertiser and/or the Advertising Agent concerned shall, by giving written notice to PCCW within fourteen (14) days upon receiving notice of such change, be entitled to cancel such portions of the outstanding Booking which are affected by the change in the Rate. PCCW reserves the right to amend these Conditions and shall publish details of all amendments online at <http://nowtv.now.com/advertising/package> and these amendments shall take effect 30 days after such posting.

15.2. PCCW reserves the right to introduce special rates and conditions which may pre-empt all standard rates and conditions for particular Programs or Spots. PCCW shall use its reasonable endeavours to give reasonable advance written notice of such changes to the Advertiser or the Advertising Agent. The Advertiser or the Advertising Agent so affected may, subject to Spot availability, change their Booking to other Spots or sponsor other Programs in the same Rate category.

15.3. The Advertiser or the Advertising Agent may, with the prior written consent from PCCW, change any booked Spot to a higher Rate category subject to payment of the higher Rate to PCCW and providing the minimum notification period stipulated by PCCW in the Pre-emption Structure. For the avoidance of doubt, change of any booked Spot to a lower Rate category is not permitted.



15.4. The Advertiser and the Advertising Agent shall be jointly and severally liable for all Fees.

## **16. PAYMENT OF FEES**

- 16.1. Once a Booking is accepted by PCCW, the Advertiser and the Advertising Agent shall be jointly and severally liable for the payment of Fees. The Advertiser and the Advertising Agent are liable to pay all Fees irrespective of whether the Advertisement is transmitted or exhibited including without limitation where such non-transmission or non-exhibition is due to or caused by, or occurs in connection with, any of the following:
- (a) the Advertiser and/or the Advertising Agent's failure to submit the Advertisement, the Advertising Copy or the relevant supporting documents, as requested by and in a form satisfactory to PCCW, within the prescribed time frame; or
  - (b) the non-compliance of any Advertisement or the Advertising Copy with the relevant laws, regulations, Codes of Practice or Licence conditions, or the Advertisement or the Advertising Copy is otherwise in the determination of PCCW (whose decision shall be final) deemed unsuitable or inappropriate for transmission or exhibition on Now TV and/or Now TV Digital (as the case may be) and/or for reception on any Device; or
  - (c) any event of suspension or termination by PCCW of the performance of its obligations hereunder pursuant to clauses 3.3(a) or 3.3.(b); or
  - (d) the Advertisement submitted does not run for the exact duration of the advertising airtime booked; or
  - (e) any event of transmission and exhibition control as described in clause 10; or
  - (f) any event of force majeure under clause 23.
- 16.2. The Advertiser and the Advertising Agent jointly and severally undertake to pay all Fees due to PCCW for the Booking upon the placing of that Booking or ten (10) Business Days prior to the scheduled transmission or exhibition of the first Spot or Advertising Format booked, whichever is later unless a credit facility (usually a period of thirty (30) days) is granted by PCCW to the Advertiser and/or the Advertising Agent. Such payment shall be made by cheque or telegraphic transfer on or before the relevant due dates. PCCW may agree to a monthly settlement of Fees by the Advertiser and/or the Advertising Agent. In such event, payment for all Fees shall be made within thirty (30) days of the issuance of the invoices by PCCW.
- 16.3. For non-accredited Advertisers and Advertising Agents, PCCW shall be entitled to require them to secure their payment obligations under the Agreement by submitting to PCCW personal, corporate and/or bank guarantees, or make cash payment in advance for such amount before such deadlines as designated by PCCW, or otherwise by making other arrangements satisfactory to PCCW. If the non-accredited Advertiser and/or Advertising Agent fail(s) to comply with the aforesaid, PCCW shall be under no obligation to transmit or exhibit any Advertisements and/or provide any services under their Booking.
- 16.4. If the Advertiser or the Advertising Agent defaults in payment on the due date, PCCW shall be entitled, without prejudice to any other remedy available to it, to refuse to transmit or exhibit any Advertisement and/or provide any services under their Booking. The Advertiser or the Advertising Agent shall remain fully liable for any portion of the Advertisements under the Booking that have already been transmitted or exhibited.



- 16.5. PCCW reserves the right in respect of outstanding Fees:
- (a) to charge interest at an annual rate of two percent (2%) above the prime lending rate of The Hongkong and Shanghai Banking Corporation Limited on a daily basis from the date payment is due until all outstanding Fees are received by PCCW and to charge a handling fee and collecting agency fee (the Advertiser and the Agent shall be jointly and severally liable for payment of the interest charges and such handling and collecting agency fees); and
  - (b) to appoint any collecting agency to collect payment on its behalf.
- 16.6. Any disputes regarding an invoice must be raised by the Advertiser or the Advertising Agent to PCCW, within thirty (30) days of the date of the invoice; failing which the Advertiser or the Advertising Agent shall be deemed to have accepted the invoiced amount to be accurate.
- 16.7. An accredited Advertising Agent may receive a commission of fifteen percent (15%) (or other rate agreed between PCCW and the Advertising Agent) on Fees paid under each Booking from PCCW provided that payment under the Booking is made on or before the relevant due date.

## **17. WARRANTIES AND INDEMNITIES**

- 17.1. The Advertiser and the Advertising Agent jointly and severally warrant that the following are true and correct and will remain so throughout the term of the Agreement:
- (a) they have (or will have made prior to the scheduled transmission or exhibition) made all necessary payments and obtained (or will have obtained prior to the scheduled transmission or exhibition) all necessary rights, licences, documents, permits, authorisations, clearances, consents and waivers in connection with the use and transmission or exhibition of, any Content contained or the appearance of any person in the Advertising Copy and the Advertisement (including but not limited to the use and transmission or exhibition thereof on Now TV, Now TV Digital and/or for reception on the Devices) and relating to granting of the rights and licences to PCCW hereunder;
  - (b) the Advertisement and the Advertising Copy will not violate any laws, regulations, Codes of Practice or Licence conditions as amended from time to time; and
  - (c) the use and transmission or exhibition of the Advertisement or the Advertising Copy on Now TV, Now TV Digital and/or for reception on the Devices does not (and the Advertisement and the Advertising Copy do not contain any material that will) libel or defame any person or entity or violate or infringe any copyright, trade mark, trade secret or other intellectual property right or proprietary right, publicity, privacy, personality or similar rights of any person or entity.
- 17.2. The Advertiser and the Advertising Agent shall jointly and severally indemnify PCCW and PCCW Affiliates and keep PCCW and PCCW Affiliates indemnified against any liability, economic or other losses, damages, costs, claims (actual or threatened), suits, proceedings, demands, penalties (including those imposed by any relevant Authority), fees and expenses of whatsoever nature (including without limitation legal costs on a full indemnity basis and other professional fees), arising from or in connection with:



- (a) any breach of any provisions of the Agreement by the Advertiser and/or the Advertising Agent;
- (b) the use, storage, recording, editing, copying, broadcast, transmission or exhibition of any Advertisement, any Advertising Copy or any relevant supporting documents supplied by the Advertiser and/or the Advertising Agent hereunder; and
- (c) PCCW's and/or PCCW Affiliates' provision of the services and performance of their obligations, under the Booking.

## **18. RECORD OF TRANSMISSIONS**

PCCW will keep a transmission log of the date and time of all transmissions of all Advertisements. Except for any manifest error in the transmission log, the log shall be conclusive evidence and binding on the parties of such transmission. Unless otherwise agreed by PCCW with or without conditions, PCCW shall not be obliged to provide the Advertiser and/or the Advertising Agent the original or a copy of the said log.

## **19. FACILITIES, STORAGE AND OTHER SERVICES**

- 19.1. PCCW may provide at such costs as notified to the Advertiser and/or the Advertising Agent, the following facilities and services:
- (a) studios and facilities (including air-conditioning and lighting) for rehearsals, filming, videotaping (with electronic editing), on-air presentation of live commercial announcements and commercial recordings;
  - (b) recording on and processing of film either in black and white or colour;
  - (c) preparation of artwork for use in slides, graphics, caption cards, opaques or scenery;
  - (d) provision of photographic stills in black and white or colour;
  - (e) the production of slides in either black and white or colour;
  - (f) subtitling, dubbing or voice-over in any language;
  - (g) video shooting and broadcasting services; and/or
  - (h) any other service (including video production services, event management and marketing collaterals production services) and/or other materials.
- 19.2. The Advertiser and the Advertising Agent acknowledge and agree that as between PCCW and the Advertiser or the Advertising Agent, PCCW and PCCW Affiliates shall (unless otherwise stipulated explicitly in the Booking or other related document) retain all title, ownership and rights (including but not limited to copyright and other intellectual property rights and proprietary rights) to and in all the materials produced and/or developed by PCCW and/or PCCW Affiliates hereunder at the request of the Advertiser and/or the Advertising Agent and intended for incorporation into an Advertisement.
- 19.3. PCCW may provide the Advertiser and/or the Advertising Agent with storage for sets and property at such costs and for such duration as PCCW may determine in its absolute discretion but PCCW and PCCW Affiliates do not accept responsibility for any loss or damage howsoever caused to the sets or property and it is the sole responsibility of the Advertiser and/or the Advertising Agent to take out appropriate insurance against any such loss or damage.



## **20. TERMINATION BY PCCW**

- 20.1. PCCW may terminate any Booking or the Agreement by giving not less than three (3) days written notice to the Advertiser and/or the Advertising Agent.
- 20.2. PCCW may terminate any Booking or the Agreement forthwith in any of the following circumstances:
- (a) if the Advertiser and/or the Advertising Agent is adjudged insolvent or bankrupt, or upon the institution of any proceedings by it seeking relief, reorganisation or arrangement under any laws relating to insolvency or if an involuntary petition in bankruptcy is filed against the Advertiser or the Advertising Agent; or
  - (b) if the Advertiser or the Advertising Agent is in breach of any provision of the Agreement; or
  - (c) any relevant Licence is revoked; or
  - (d) PCCW's broadcasting activities being terminated, restricted, curtailed or affected by laws and regulations or any determination by any relevant Authority; or
  - (e) due to a change in regulatory and/or business environment and conditions, it is no longer commercially viable for PCCW to continue its obligations under the Booking; or
  - (f) in the circumstances described in clauses 3.3, 11 and 23; or
  - (g) if the suspension referred to in clause 3.3 or 23 continues for more than thirty (30) days.
- 20.3. For the avoidance of doubt, the Advertiser and the Advertising Agent shall remain liable to make payment for those portions of the Booking already transmitted or exhibited prior to such termination date.

## **21. ASSIGNMENT**

- 21.1 PCCW reserves the right to assign the Agreement to any company, firm or person. The Agreement shall be personal to the Advertiser and/or the Advertising Agent. The Advertiser and/or the Advertising Agent shall not assign the Agreement without the prior written consent of PCCW.

## **22. SUBCONTRACTS**

PCCW may, at any time, subcontract the whole or any part or parts of its obligations hereunder in its sole discretion.

## **23. FORCE MAJEURE**

PCCW shall not be liable for any delay or failure in performance under the Agreement resulting from any occurrence of a Force Majeure Event. If any Force Majeure Event prevents, restricts or curtails the transmission or exhibition of any Advertisement or the performance of PCCW's obligations under the Agreement, PCCW shall have sole discretion to terminate the Agreement or suspend the Agreement until such event ends and afterwards carry out transmission or exhibition of such Advertisement and/or resume performance of its obligations under the Agreement, at any other time and date at PCCW's sole discretion. For the purpose of the Agreement, "Force Majeure



Event" means any event which causes inability or delay of PCCW's performance under the Agreement and which is due to circumstances beyond PCCW's reasonable control including but not limited to inability or delay caused through strike, lockout, labor disturbance, government action, riot, armed conflict, act of God, earthquake, fire, flood, sabotage, act of terrorism or disaster, accident, explosion, casualty, epidemic, unavailability of transportation, power or materials, civil disturbance, war, inclement weather, transmission and/or satellite failure or degradation, decision of any court or other body of competent jurisdiction, the enactment of any law, the issuance of any administrative, executive or judicial order or decree.

**24. ENTIRE AGREEMENT**

The Agreement shall represent the entire agreement between the parties and supersedes all previous agreements or representations, written or oral.

**25. NO WAIVER**

No waiver, representation or statement shall be binding on PCCW unless in writing and incorporated herein or in any document signed by the parties.

**26. NOTICE**

Any notice to the Advertiser and/or the Advertising Agent under these Conditions shall be by ordinary prepaid post or by personal delivery or by facsimile or electronic mail or other acceptable means of communication to such address, fax number, email address, or other contact details provided by the Advertiser and/or the Advertising Agent in the relevant Booking or with reasonable prior written notice to PCCW, and shall be deemed to have been duly given and received twenty-four (24) hours after posting or on the date of delivery or transmission. Any notice to PCCW shall be duly served on PCCW only upon actual receipt by PCCW.

**27. SEVERANCE**

If any provision or term of the Agreement shall become or be declared illegal, void, invalid or unenforceable for any reason whatsoever, such term or provision shall be severed from the Agreement and shall be deemed to be deleted from the Agreement.

**28. THIRD PARTIES**

Save and except for PCCW Affiliates, any person or entity who is not a party to the Agreement shall have no right under the Contracts (Rights of Third Parties) Ordinance (Cap 623) of Hong Kong to enforce any of its terms.

**29. APPLICABLE LAW**

The Agreement shall be governed by and construed in accordance with the laws of Hong Kong and the parties hereby submit to the non-exclusive jurisdiction of the courts of Hong Kong.

**30. LANGUAGE**



The English version of these terms and conditions shall prevail over the Chinese version which is provided for reference only.