

**FINAL DECISION OF  
THE COMMUNICATIONS AUTHORITY**

**BREACH BY CHINA MOTION TELECOM (HK) LIMITED OF  
SPECIAL CONDITION 13.1 OF  
ITS SERVICES-BASED OPERATOR LICENCE**

<b>Telecommunications Licensee Investigated:</b>	China Motion Telecom (HK) Limited (“China Motion”)
<b>Issue:</b>	Contravention of the “Guidelines for the Implementation of Fair Usage Policy for the Provision of Mobile and Fixed Broadband Services” (the “Guidelines”) by China Motion
<b>Relevant Instruments:</b>	Special Condition (“SC”) 13.1 of China Motion’s Services-Based Operator (“SBO”) Licence No. 908
<b>Decision:</b>	Breach of SC 13.1 of China Motion’s SBO licence No. 908
<b>Sanction</b>	Warning
<b>Case Reference:</b>	LM T22/13 in OFCA/R/R/267 C

**BACKGROUND**

In October 2012, the Office of the Communications Authority (“OFCA”) received a complaint lodged by a consumer (the “Complainant”) alleging that China Motion had contravened the Guidelines. The Complainant subscribed to China Motion’s service plan on 12 October 2012. He found that his data access speed was restricted on 20 October 2012. When he made enquiry with China Motion’s customer service centre, he was informed that his service plan was subject to Fair Usage Policy (“FUP”) and data speed restriction was imposed after usage had exceeded the threshold as specified in the FUP. However, the Complainant claimed that China Motion did not duly inform him that his service plan was subject to FUP during the sales and

promotion process.

## THE COMPLAINT

2. The Complainant alleged that China Motion had contravened the Guidelines in the following aspects –

(a) **Allegation 1**

There was no indication of FUP in China Motion’s promotion leaflet. The Complainant provided OFCA with a copy of China Motion’s sales and marketing leaflet (the “Leaflet”) (at **Annex A**) in which the service plan was promoted as “unlimited” 「無限」 without any qualifications.

(b) **Allegation 2**

The clause on FUP in the sales and service agreement ( “銷售及服務協議” ) did not specify any data access speed restriction. The Complainant provided OFCA with a copy of his sales and service agreement (at **Annex B**) which contained the following FUP clause –

“11 公平使用政策

11.1 潤迅之公平使用政策(可於網上瀏覽(www.cmmobile.com.hk))構成本協議之一部分。”

**English translation**

“11 Fair Usage Policy

11.1 China Motion’s Fair Usage Policy (available online (www.cmmobile.com.hk)) constitutes a part of this Agreement.”

(c) **Allegation 3**

China Motion had not notified him in advance before triggering the FUP and reducing his data access speed on 20 October 2012.

(d) **Allegation 4**

China Motion restricted the data access speed to a level which he could not connect to the Internet with his 3G mobile router and 3G modem (“3G Device”) on 20 October 2012.

### **RELEVANT LICENCE CONDITION AND THE GUIDELINES**

3. China Motion is the holder of SBO Licence No. 908 issued under the Telecommunications Ordinance (Cap. 106) (“TO”) for the provision of Mobile Virtual Network Operator (“MVNO”) service. SC 13.1 of the SBO Licence requires that –

*“13.1 Without limiting or affecting in any way the licensee’s obligations under any other licence condition, the licensee shall comply with any code of practice or guideline which may be issued by the Authority from time to time for the purpose of providing practical guidance to the licensee in respect of –*

- (a) the provision of satisfactory service;*
- (b) the protection of customer information; and*
- (c) the protection and promotion of the interests of consumers of telecommunications goods and services.”*

4. On 9 November 2011, the former Telecommunications Authority promulgated the Guidelines which set out the relevant guiding principles for mandatory compliance by service providers on how they may implement their FUP. The Guidelines came into effect on 13 February 2012. China Motion, as with other fixed and mobile broadband network operators and service providers, has to comply with the Guidelines on a mandatory basis under SC 13.1 when it develops and implements its FUP for the provision of mobile broadband services.

5. With regard to the Complainant's allegations, OFCA considers that the following principles in the Guidelines are relevant –

- (a) **Allegation 1** – Principle 1 (paragraph 22 of the Guidelines): *“Service providers seeking to promote or offer service plans with the word “unlimited” 「無限」 included in the name thereof shall also provide in the same set of advertising, marketing and sales materials the necessary qualifications if any form of FUP is imposed or applicable.”*;
- (b) **Allegation 2** – Principle 2 (paragraph 23 of the Guidelines): *“Service providers shall set out in their websites, the customer service agreements and related advertising, marketing and sales materials whether their local usage plans are subject to FUP, the forms of FUP that will be applied as well as the applicable qualifications as required under Principle 1 above. Such information must be presented and be perceived in a clear and non-misleading manner.”*;
- (c) **Allegation 3** – Principle 7 (paragraph 32 of the Guidelines): *“If the local usage of the customers is found (a) approaching the specified allowance or threshold or (b) to have exceeded the specified allowance or threshold for a service period and the service providers will trigger the FUP for the remainder of that service period, the service providers shall notify the affected customers in advance before taking action to reduce the service level.”*; and
- (d) **Allegation 4** – Principle 4 (paragraph 27 of the Guidelines): *“Service providers shall not terminate or suspend the service if the usage of the customers concerned has exceeded the specified allowance or threshold.”*

## **OFCA'S INVESTIGATION**

6. OFCA had conducted an investigation into the complaint. On **Allegation 1**, China Motion submitted in its letter of 22 April 2013 to OFCA that the Leaflet was produced by one of its sales associates and was only distributed to a trade union's members during the period 5 October to 21

October 2012. Upon receipt of the complaint case on 20 October 2012 and following its own investigation, China Motion immediately discontinued the use of the Leaflet and reviewed its internal process to minimise the chance of similar incidents from happening again. OFCA notes that the “unlimited” service plan promoted by China Motion in the Leaflet was actually subject to FUP. It is evident that China Motion had failed to provide the necessary qualifications in the Leaflet on the form of FUP imposed or applicable and was hence in contravention of Principle 1 of the Guidelines. Accordingly, OFCA considers that **Allegation 1** is substantiated.

7. On **Allegation 2**, China Motion provided OFCA with a copy of the supplementary agreement, which was signed by the Complainant. According to the supplementary agreement, the service plan was subject to FUP and data access speed would be restricted when FUP was triggered. As such, China Motion had not contravened Principle 2 of the Guidelines. Accordingly, OFCA considers that **Allegation 2** is not substantiated.

8. On **Allegation 3**, the system log provided by China Motion indicated that a short message had been sent to notify the Complainant when his data usage approached the specified threshold for triggering the FUP. The Complainant claimed that he did not receive the short message. OFCA believes that it might be because the Complainant had been using his 3G Device for data access. As short messages are generally for reception by a mobile phone, not by 3G Device, it could be the reason the Complainant did not receive the short message. Given that China Motion did as per Principle 7 of the Guidelines notify in advance the Complainant upon the approach of his data usage with the specified threshold for triggering FUP, OFCA considers that **Allegation 3** is not substantiated.

9. On **Allegation 4**, China Motion claimed that its system was not equipped with the capability to allow it to specifically limit the data usage on certain devices or applications. China Motion also provided system information indicating that the triggering of its FUP restriction was only based on the concerned mobile phone number and data usage, without regard to device type. Based on the information provided by China Motion and the fact that the Complainant confirmed that he could still access the Internet with his 3G mobile phone on 20 October 2012, OFCA is of the view that China

Motion had not breached Principle 4 of the Guidelines. Accordingly, OFCA considers that **Allegation 4** is not substantiated.

10. OFCA completed its investigation and submitted its findings to the Communications Authority (“CA”) on 3 August 2013. Having considered the findings of OFCA, the CA issued its Provisional Decision to China Motion on 6 August 2013 and invited China Motion to make representations. China Motion submitted its representations to OFCA on 16 August 2013.

### **THE CA’S CONSIDERATIONS AND DECISION**

11. Having considered the findings of OFCA’s investigation and the representations of China Motion, the CA takes the view that China Motion has contravened the Guidelines on **Allegation 1**, in that the “unlimited” service plan promoted in the Leaflet was actually subject to FUP but China Motion failed to provide the necessary qualifications in the Leaflet. The CA has come to the view that China Motion has breached SC 13.1 of its SBO licence for failing to comply with the Guidelines.

12. In considering the sanction on China Motion for the breach, the CA notes that –

- (a) this is the first occasion where China Motion is found to have contravened the Guidelines;
- (b) the Leaflet was distributed to only a relatively small number of potential customers;
- (c) China Motion had taken speedy remedial action to discontinue the distribution of the Leaflet and arranged the termination of the service agreement with the Complainant in accordance with his request;
- (d) China Motion had taken an immediate step to educate all sales associates on the importance of adhering to internal procedures

for sales materials, and had also reviewed and revised all marketing materials to ensure that its FUP was fairly described in a clear and non-misleading manner;

- (e) there are no other complaints received by OFCA; and
- (f) China Motion was cooperative with OFCA in the investigation process.

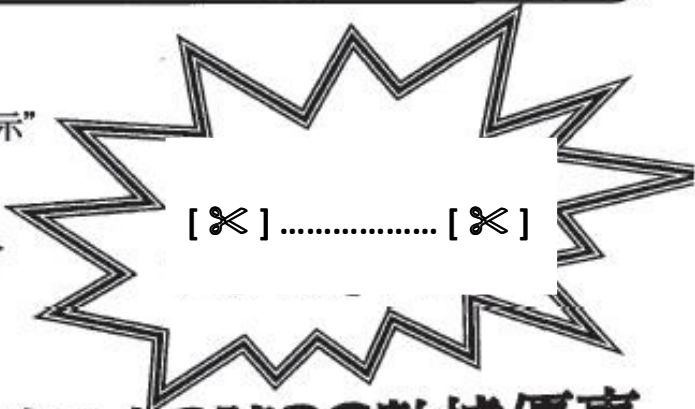
13. Having considered the above and all circumstances of this case, the CA has decided to issue a warning to China Motion in the form of this decision for it to strictly observe SC 13.1 of its SBO licence in future.

**The Communications Authority**  
**September 2013**

# 政府公務員員工升級版優惠

## 潤迅“1卡2號+3G數據”月費計劃

- 可保留現有香港號碼轉台，中國號碼(全國通行)
- 附送“香港接駁鈴聲”及免費“中港跨境來電顯示”
- 全部月費計劃均 <豁免隧道費>
- 選用香港及中國最佳網絡 → → → → →







使用 [X] 高速數據網絡

### 新上台 / 帶號碼轉台 - 尊享1卡2號3G數據優惠

月費	香港基本分鐘	額外分鐘收費	香港免費數據流量	國內通話收費	國內額外優惠
\$58	600	\$0.8	200MB	廣東省: \$0.6/分鐘 非廣東省: \$0.65/分鐘	<b>全廣東省</b> <b>接聽國內來電免費</b>  接聽香港來電只需收取 每分鐘\$ 0.35 轉駁費用
\$115	1,500	\$0.8	1GB		
\$198	2,000	\$0.8	<b>無限</b>		
\$88	不適用		1GB	平板電腦月費計劃	
\$168	不適用		<b>無限</b>	Pure HK Data Sim 純香港數據優惠	

[X].....[X] **3G手機“\$ 0 機價”員工出機優惠**

手機				
型號 / 預繳	GALAXY S II \$3,120	GALAXY S III \$4,800	GALAXY Note 2 \$5,088	GALAXY Note \$3,888
正價月費 / 回贈後月費	\$298 / \$168	\$338 / \$138	\$338 / \$126	\$338 / \$176
香港基本分鐘 / 香港數據用量	2,500 / 1GB	2,500 / 1GB	2,500 / 1GB	2,500 / 1GB

歡迎查詢，詳情請致電企業銷售部客戶經理

[X].....[X]





1. 在合約背頁指明之任何客戶（「客戶」）向潤迅通信（香港）有限公司（「潤迅」）申請合約背頁所列之流動電話服務、增值服務（包括但不限於：來電轉接、來電轉取、來電顯示、電話會議、通話限制、留言信箱、秘書服務、漫遊服務、長途電話服務、數據及傳真服務、資訊服務、短訊服務（統稱「增值服務」）或其他由潤迅提供之相關服務及其他服務（統稱「流動電話服務」）及購買流動無線電話、其他通訊器材、其他無線裝置或配件（統稱「流動電話設備」）均受本協議所載之條款及條件約束。

### 2. 流動電話設備銷售

2.1 客戶須於流動電話設備送交時向潤迅繳付購買流動電話設備之相關款項或任何未繳之餘款。倘有關流動電話設備已送交客戶而客戶尚未清付任何未繳之餘額，潤迅保留權利沒收有關按金及向客戶取回有關流動電話設備之物權。  
2.2 潤迅保留擁有有關流動電話設備之物權直至客戶清付購買流動電話設備之全部款項，但相關之風險將於有關之流動電話設備交付予客戶之時視作已經轉移給客戶。潤迅將不會就客戶購買之流動電話設備提供任何退款或退換任何其他流動電話設備予客戶。  
2.3 流動電話設備之保養將由生產商直接依據其當時之保用政策提供。潤迅並不負責向客戶提供任何之維修及保養服務。  
2.4 預計送交流動電話設備之日期僅為估計。產品送貨時間並非本協議之重要條件。

### 3. 流動電話服務

3.1 潤迅將根據本文所載及與客戶所簽訂之有關合約之條款提供流動電話服務。客戶須使用附有適用效能之流動電話設備接收及享用流動電話服務。  
3.2 除依據本條款協議外，潤迅嚴禁客戶發放未經授權之宣傳性的短訊、電郵、圖像及資訊（個別稱為「訊息」，統稱「該等訊息」）予任何其他人士。倘客戶未經收訊人同意而擅自發出訊息，潤迅有權暫停或終止提供其流動電話服務。  
3.3 客戶同意如其旨在發放宣傳或類似性質之流動電話訊息予他人，必須先行取得接收人願意接收此等宣傳性訊息之確實同意，方可發放訊息予接收人。如潤迅要求，客戶必須出示從接收人處取得之確實同意。  
3.4 如潤迅接獲接收人投訴客戶發放未經同意的訊息，則潤迅可（依以下任何程序）：  
(a) 以口頭或書面形式通知客戶有關投訴；  
(b) 要求客戶於接獲該通知後三個工作天內回應所接獲之投訴；及  
(c) 限制客戶發放任何訊息或暫停客戶之流動電話服務，直至事件完滿解決為止。  
3.5 客戶確知及同意：  
(a) 潤迅之流動電話服務並無提供電話簿或電話簿刊登資料服務；  
(b) 即使客戶已獲分配流動電話號碼（「流動電話號碼」），潤迅並無義務向客戶提供任何流動電話服務；  
(c) 如流動電話號碼基於任何原因不能由其他營辦商之網絡攜帶至潤迅網絡，潤迅可就客戶之流動電話服務分配一新流動電話號碼給予客戶；  
(d) 客戶可隨時對流動電話服務、流動電話智能卡（「智能卡」）或流動電話設備作出必要措施（包括要求客戶使用智能卡以切入流動電話服務），以確保流動電話服務的真實；  
(e) 客戶不可使用或容許流動電話服務用作任何所申請服務以外之目的；  
(f) 客戶並無享有任何變遷潤迅分配之流動電話號碼之選擇權，潤迅可就提供予客戶之任何流動電話號碼作出修改、取消、收費或重新分配；  
(g) 客戶提供潤迅之資料，必須在各方面為完整、真實及為最新的；  
(h) 除本文之條件及條款，客戶須遵守適用於客戶之所有法律、規則及條例，（「適用法律」）；  
(i) 客戶於未獲潤迅授權下不可、亦不可企圖入侵、闖入、進入或以其他非法途徑使用流動電話服務之任何部份、數據保存區或伺服器；  
(j) 客戶不可干擾、複印、修改或以其他方法尋求更改或容許其他人干擾、複印、修改或尋求更改網絡、流動電話設備或智能卡；  
(k) 客戶不可使用流動電話服務作：  
i) 任何非法、詐騙、不恰當、未經授權、騷擾、歧視、毀謗、侮辱、恐嚇、加害、粗鄙、不雅或任何可遭反對的行為；  
ii) 鼓吹任何可構成刑事罪行、導致民事責任或其他侵犯任何適用法律之行為；  
iii) 侵犯第三者知識版權的行為；或  
iv) 對潤迅或其聲譽可能有損或不利的行為；及  
(l) 潤迅不會因客戶使用流動電話服務（包括該等於上述第3.5(k)條款所特別列明的服務）而產生之任何行為及過失承擔責任。  
3.6 如客戶使用增值服務，須依照一般通話時間及有關費用計算。  
3.7 如客戶決定停止使用增值服務，潤迅因有權停止向客戶提供任何其他增值服務。  
3.8 客戶可於潤迅不時釐定之費用向潤迅申請最近三個月的通話詳情。  
3.9 客戶確知，如客戶以潤迅提供之流動電話號碼申請中國長途電話漫遊服務及於中華人民共和國（「中國」）境內（不包括中國香港特別行政區（「香港」）、澳門特別行政區及台灣）就任何流動電話服務使用流動電話號碼，客戶須繳付有關漫遊費用及其他相關費用。  
3.10 漫遊服務只可於潤迅指定之適用國家名單使用，潤迅有權隨時更改該名單所列之國家。潤迅不保證客戶使用任何漫遊服務之適用性或真實性。

### 4. 智能卡

4.1 潤迅會為客戶及其流動電話設備制定智能卡，以使用流動電話服務。  
4.2 智能卡在什麼時候皆屬潤迅的財產，於潤迅要求下或本協議終止時，客戶必須退還予潤迅。  
4.3 潤迅有絕對酌情權替客戶免費更換因正常使用日久使用而損壞的智能卡。潤迅可就以下原因於更換或維修智能卡時向客戶收取費用：  
(a) 因客戶誤用、疏忽或刻意破壞而引致智能卡損毀；  
(b) 因客戶智能卡遺失或智能卡被竊。  
4.4 客戶需於得知遺失流動電話設備及/或智能卡後二十四小時內向警署報失或如遺失於香港以外發生則需於類似部門以及潤迅報失。  
4.5 如潤迅收到上述第4.4條款所指的遺失或被竊的報告通知後，客戶仍需繼續承擔該遺失或被竊的流動電話設備及/或智能卡的所有費用，直至潤迅切實該遺失或被竊的流動電話設備及/或智能卡所有流動電話服務為止。  
4.6 假如已遺失的流動電話設備及/或智能卡獲尋回，潤迅可於客戶要求下，並於客戶繳交所有過期未繳或新費用（包括重新接取費）及於潤迅行使酌情權經潤迅或任何其他代理（包括其任何董事、高級職員、僱員、代理、承包商或專業顧問（「代表」））就流動電話設備及/或智能卡作出給予服務前之檢查後，重新接取已尋回流動電話設備或智能卡的所有流動電話服務。  
4.7 如潤迅相信已尋回的國際流動電話設備識別碼號碼或智能卡的預編程式數據經複印、干擾或修改，潤迅可拒絕客戶依上述第4.6條款重新接取流動電話設備及/或智能卡的要求。

### 5. 付款

5.1 客戶同意繳付潤迅因提供流動電話服務之各項收費，此等收費包括但不限於月費、登記、取消、可攜流動電話號碼、重新接取費用及任何其他服務費用（包括潤迅代他人收取之賬項（「費用」）。潤迅可於給予客戶30天通知後更改任何費用。  
5.2 除非相關合約背頁另有註明，客戶須繳付予潤迅之每月服務費用將會由提供流動電話服務之日期起開始計算，該費用須以預付形式繳交。  
5.3 所有費用須在潤迅發出賬單上所列之限期前繳付。所有費用均以港幣為結算單位及以賬單條款上註明之方法繳付。  
5.4 以郵遞、電子方式或透過互聯網方式付款的所有風險概由客戶承擔。除非繳款已被潤迅收妥及兌現，否則視客戶尚未履行其責任論。  
5.5 有關任何賬單之查詢或爭議，須在賬單付款限期前向潤迅提出，但本條款並無解除客戶須於賬單付款限期日或之前繳款之責任。如在付款限期前無提出任何賬項之查詢，則該賬單將被視作正確無誤已被客戶接納及正確無誤。  
5.6 凡客戶與潤迅就潤迅賬單之費用方面有任何爭議，潤迅的賬簿及記錄一概被視為客戶應繳費用的真實證據。  
5.7 於本協議中，就客戶之繳款責任而言，時間仍重要因素。若客戶未能於限期前繳付費用，潤迅有權對未繳費用收取利息，利率為月息兩釐，直至費用全數繳付為止。  
5.8 凡客戶於潤迅登記超過一個賬戶，潤迅有權將任何一個賬戶的賬款餘額轉移至逾期未繳的費用的另一賬戶。  
5.9 客戶須繳付流動電話服務的相關費用，不論該服務是否由客戶使用，或該服務有否經客戶同意或知情情況下由第三者使用，亦不論流動電話通話、短訊或其他流動電話服務是否成功傳送。  
5.10 潤迅可不時設定客戶用額上限。如客戶之使用量超過該限額，潤迅可暫停提供其流動電話服務。  
5.11 任何費用均以整個賬單月為收費單位。為免存疑，無論在任何情況下，於本協議被終止/到期/流動電話服務被暫停。（不論該終止日/到期日/暫停日是否在賬單月未完結前），客戶仍需繳付整個賬單月之費用。客戶已繳付之費用將不獲發還。  
5.12 客戶確知及同意，流動電話服務（不論是否僅為部分）之提供是受限於潤迅與第三者網絡供應商及/或資訊服務與內容提供者之合約。儘管本協議之條款及條件另有規定，如該第三者網絡供應商及/或資訊服務與內容提供者就有關服務收取額外費用，潤迅有權在合理切實可行範圍內盡快向客戶額外徵收合理數額之費用。

### 6. 按金

6.1 客戶同意潤迅有權隨時要求客戶向潤迅提交按金，以保證繳付本協議或任何其他協議內流動電話服務的所有費用，及補償潤迅因客戶違反客戶與潤迅訂立之本協議或其他協議內之任何條款或條件而蒙受的損失或損害。潤迅有權決定按金的款額。在不損及本協議下的任何其他權利或補償方法下，潤迅有權扣除按金。  
6.2 除上述第6.1條款另有註明外，在本協議被終止而客戶已清付本協議或其他協議的所有未繳費用後，或潤迅因客戶違反本協議或其他協議的任何條款或條件的索償完結後，按金將由潤迅無息退回客戶。  
6.3 客戶確知需自行承擔繳付按金或預付費用之風險。一旦潤迅清盤，則任何按金或預繳費可能無法退回或退還予客戶。客戶有關退回按金或退還預繳費之權利將受本協議條款與條件及有關香港公司清盤的所有適用法律限制。

### 7. 終止

7.1 在下列任何情況下，潤迅有絕對酌情權及不受約束地隨時立即終止本協議或暫停提供任何流動電話服務：  
(a) 任何依本協議客戶應付之費用或賬項於付款限期後尚未繳付；  
(b) 客戶死亡或無能力償還款項或破產或表面上有理由相信極有可能無力償還款項；  
(c) 使用流動電話服務之費用已超過潤迅不時訂立的信用限額；  
(d) 潤迅的信貸核對披露客戶有不良信貸記錄；  
(e) 客戶違反或潤迅有理由相信客戶極有可能違反本協議中任何條款及條件；  
(f) 客戶或任何其他人士在使用流動電話設備或流動電話服務時，乃違反上述第3.5條；或作任何非法或不恰當的用途；或潤迅有理由相信客戶的行為對潤迅、任何其代表或其他客戶造成滋擾或騷擾；  
(g) 任何客戶在申請表所填報或由客戶就本協議任何其其他部份所提供之資料被發現為錯誤或誤導；  
(h) 客戶成功將流動電話號碼攜帶至另一電話/流動電話服務營辦商；  
(i) 任何潤迅或第三者網絡供應商持有之電訊或其他牌照遭終止、撤銷、逾期或未續期；  
(j) 潤迅有理由相信必須暫停任何流動電話服務以：  
i) 遵從政府或規管當局的命令、指示、裁決聲明、指引或類似公告；  
ii) 就任何流動電話服務或任何裝置、設施、或潤迅或第三者網絡供應商的網絡任何部份作出緊急或定期保養、維修或提升；  
iii) 為客戶之流動電話設備提供任何維修服務；  
iv) 減低或防止任何流動電話服務的詐騙或干擾；或  
v) 解決任何上述第3.4條款提及之投訴。  
(k) 潤迅或第三者網絡供應商停止提供任何流動電話服務。  
7.2 潤迅依據本條款7.1以行使暫停或終止流動電話服務的權利，並不影響現存的其他權利或索償或其他適用於潤迅的賠償，而暫停任何流動電話服務亦不構成潤迅放棄日後終止本協議的權利。  
7.3 假如客戶使用多於一個流動電話設備接收潤迅流動電話服務而該客戶未於付款限期前繳付任何流動電話設備或流動電話服務的費用，潤迅可即時暫停任何或全部有關流動電話設備所接收的流動電話服務。  
7.4 潤迅或客戶任何一方均可隨時於毋須理由的情況下，給予對方30天事前書面通知或以付款代替通知以終止本協議。而客戶須立即繳付所有截至終止日應繳之費用予潤迅。  
7.5 除可攜流動電話號碼外，於本協議或流動電話服務被終止後，潤迅有權將客戶的流動電話號碼分配予潤迅的另一客戶。

### 8. 重新接取

8.1 客戶如終止與潤迅之合約，潤迅可於終止服務後九十天內，按客戶要求（但潤迅有絕對酌情權），及在客戶清付所有現存未繳費用、新費用及按金後，重新提供流動電話服務及客戶舊有流動電話號碼（如該舊有流動電話號碼尚未分派予新客戶）予客戶。客戶須預繳流動電話服務月費及潤迅當時釐定的重新接取費。

### 9. 責任及賠償限制

9.1 潤迅並不擔保或保證流動電話服務之提供不會被終斷或完整無誤，包括流動數據、短訊或流動電話通話之成功傳送。潤迅不擔保或保證且不負責客戶所接收之流動電話服務之準確性或完整性或準時服務。  
9.2 潤迅對客戶使用流動電話服務時引起的任何行為或疏忽或損失無須負責上任何責任。  
9.3 在法律容許下，就有關本協議內未有說明的主要事項之所有明示或暗示保證、說明或聲明，均可獲潤迅剔除。潤迅可豁免對任何費用、對客戶的損害或損失或對第三方不論賠償是否直接或間接的包括任何形式的收費、虧損或利潤或其他適用法律或以其他方式（包括疏忽為引致的）或與本協議（包括由於流動電話服務的暫停或終止時導致客戶的任何損失）有關的協議、侵權行為中的任何重大損失的所有義務及責任。  
9.4 與本協議有關又未就第9.3條豁免（不論是否基於合約法、民事侵權法（包括疏忽）、成文法律、違反保證或任何其他法律或公理方面）而潤迅可能需向客戶承擔的累計責任，只限於以下：  
(a) 如少於有關責任產生前十二個月內繳付之費用總和；  
(b) 如少於十二個月，則以客戶由本協議生效起至有關責任產生之間的時段內繳付之費用總和；或  
(c) 港幣拾萬圓正，當中以較低者為準。  
9.5 客戶確知及同意：  
(a) 當提供流動電話設備予客戶時，潤迅只擔當流動電話設備製造商的分銷商；  
(b) 客戶不會向潤迅索償或要潤迅負責上任何有關流動電話設備之產品責任（以合約法、民事侵權法、成文法律或其他（包括疏忽）方面）。  
9.6 凡由於延遲或未能履行本協議全部或部份責任而造成任何損失或損害，而引致延誤或未能履行協議的原因，並不是潤迅可以合理控制的（包括但不限於原料短缺、戰爭、戰爭來臨的威脅、暴動、或其他群眾騷動行為、叛亂、天災、任何政府或其他超越法律當局所實行的限制，或任何其他工業或貿易爭議、火災、爆炸、風暴、水災、閃電、地震及其他自然災害），又或不是其過失或疏忽所造成（包括第三者之行為或過失），或通訊網絡營辦商、資訊服務內容提供者及設備供應商），潤迅均無須負責。  
9.7 就客戶違反本協議或有關任何人仕（包括客戶）在使用流動電話服務或連接流動電話服務之流動電話設備引致之任何形式之損失或損害（不論是個人或財產方面）之所有索償、行動、訴訟或要求，客戶須對潤迅及其代表作出賠償。為免存疑，倘客戶所作之行為或疏忽被視為違反本協議，則該第三方（包括客戶的代表）所作之該等行為將會構成違反本協議之條款及條件。  
9.8 除本協議所載者外，本協議內並無免除或限制任何一方就另一方的疏忽所導致人命傷亡的責任。

### 10. 使用個人資料

10.1 潤迅個人資料（私隱）政策（可於網上瀏覽(www.cmmobile.com.hk)）構成本協議之一部分。

### 11. 公平使用政策

11.1 潤迅之公平使用政策（可於網上瀏覽(www.cmmobile.com.hk)）構成本協議之一部分。

### 12. 一般事項

12.1 潤迅保留權利，隨時以書面或電子形式給予客戶三十天前通知以更改任何條款及條件。為免存疑，潤迅可透過任何方式或訊息，如書信、賬單附加文件或留言、電郵、傳單、指定銷售店、流動電話設備螢幕顯示訊息、於香港報章刊登廣告，給予客戶任何通知及溝通。  
12.2 潤迅可在獲取客戶之同意下轉讓本協議或任何權利予第三者。未得潤迅明確同意下，客戶不可將其與潤迅所訂立之任何合約中的任何權利或責任（包括潤迅分配予客戶之流動電話號碼）轉讓予他人。  
12.3 本協議須受香港法律管轄並按照香港法律詮釋。如有任何爭議，雙方須提交予香港法院的專屬司法管轄與審理裁判權。  
12.4 一方在行使本協議下的任何權利、權力或補救辦法時如有不履行、延遲、放寬或寬容，概不得視為放棄權利，除非以書面明示為放棄。任何本協議的權利、權力及補救辦法可累積，且並不免除該方在一般法律或衡平法上的權利、權力或補救辦法。  
12.5 若本協議全部或部份條款被解釋為非法或無效，本協議須移除該等條款，但其他條款均持續有效。  
12.6 本協議取替潤迅及客戶之前訂下的所有合約、安排及承諾並構成潤迅及客戶就本文所載的事項之全部協議。