

## **Terms and Conditions for SmarTone *iN!* Services**

It is hereby agreed by and between the Customer and SmarTone Mobile Communications Limited ("The Company") for SmarTone *iN!* services ("the Services") as follows:

### **1. The Services**

1.1 The Company agrees to provide the Services to the Customer subject always to the Customer paying the charges as and when they become due and payable in accordance with the terms herein set out and due performance and observance of the other terms herein.

1.2 The Company shall use reasonable efforts to make the Services available to the Customer. The Company may suspend the Services in whole or in part or limit access to the Services at any time without notice but The Company shall use reasonable efforts to minimise such suspension or limitation. The Customer shall still be liable for all charges (where applicable) during the period of suspension or limitation unless otherwise specified by The Company.

1.3 The Company reserves the right, in its absolute discretion to withdraw, expand, reduce and/or modify at any time any or all the Services (being any of the services which may be accessed through the Services).

1.4 The Services are provided without any warranties or guarantees (including any warranties implied by law) unless expressly stated otherwise.

### **2. Content**

2.1 The Company shall make available data, information, photographs, diagram, symbol or other material in whatever languages including without limitation all textual, audio, video, still and moving /images, graphical, musical or other content or information or goods or services supplied by third parties other than The Company that can be accessed by or through using the Services (collectively the "Content").

2.2 The Customer must only use a mobile telephone or other wireless device which is of a type specified by The Company for use of the Services and access to and download of the Content.

2.3 The Company reserves the right in its absolute discretion to prevent the Customer from accessing any of the Content from time to time.

2.4 Except for Content which is supplied by The Company as principal, The Company is not responsible for exercising any editorial control over or to edit or amend any Content before it is transmitted or made available through the Services. The Customer hereby acknowledges, agrees and authorises The Company to use, store, screen, edit, access, copy, amend or delete any content uploaded or otherwise provided by the Customer

where any such content is, in The Company's opinion defamatory, in breach of copyright, illegal or otherwise not appropriate to be accessed by or through using the Services.

### 3. Password

3.1 "Password" means any identification code, password or other security tool for identifying the Customer for the purpose of accessing or using the Services.

3.2 The Company shall assign a Password to the Customer and any other person(s) as specified by the Customer ("Subsidiary Account User") with an independent Password to access or use the Services.

3.3 The Company shall have the right to withdraw the Password(s) from the Customer and/or the Subsidiary Account User: 3.3.1 if this Agreement is terminated; or 3.3.2 where in The Company's opinion there are reasonable grounds for believing the Customer and/or the Subsidiary Account User has not complied, is not complying or is likely not to comply with its obligations under this Agreement.

3.4 The Customer and/or the Subsidiary Account User shall keep the Password(s) confidential and shall not reveal or disclose the Password(s) to any person.

3.5 The Customer and/or the Subsidiary Account User shall use the Password(s) in accordance to the instructions given by The Company to the Customer from time to time.

3.6 The Customer shall notify The Company immediately where there are grounds for suspecting or believing that the Password(s) has been lost or stolen or that a third party is using the Password(s) without the knowledge, consent or permission of The Company, the Customer and/or the Subsidiary Account User. The Company shall not be liable for any loss or damage sustained by the Customer by reason of any access to the Services obtained through the use of any of the Password.

3.7 The Customer shall indemnify The Company against all actions, proceedings, damages, costs, claims, demands or expenses which may be sustained or suffered by The Company arising out of or in connection with any usage of the Services by means of any of the Password(s) notwithstanding the use may be without the Customer's consent.

### 4. Customer's Obligations

4.1 The Customer undertakes:

4.1.1 to use the Services in accordance with such conditions as may be specified by The Company from time to time and in accordance with all laws, rules and regulations of the telecommunications Authority, the relevant government department or other competent authorities;

4.1.2 that each Subsidiary Account User complies with these terms and conditions;

4.1.3 not to use or allow others to use the Services for any purpose which The Company considers improper, immoral, defamatory, fraudulent or otherwise unlawful;

4.1.4 not to use or allow others to use the Services to publish, distribute, transmit or

circulate any unsolicited advertising or promotion information or any content that is obscene, indecent, seditious, offensive, defamatory, threatening, liable to incite hatred, discriminating, menacing;

4.1.5 not to use or allow others to use the Services in any way which may breach any confidence, copyright or other intellectual property or similar rights of The Company or any third parties, nor store, modify, transmit, broadcast, download, publish, copy, distribute or disseminate or otherwise exploit any Content or use any Content other than for private and personal use, except to the extent otherwise expressly authorised;

4.1.6 not, nor allow others to, act in such a way that may jeopardize or impair the provision of the Services in Hong Kong or any parts of the world;

4.1.7 not hack, break into, access, use or attempt to hack, break into, access or use any part of the Services, any Content, or any areas on the Services server for which The Company has not authorised access to the Customer;

4.1.8 not resell the Services to any person by whatever means or re-sell copy or incorporate information into any other work of part or all of the materials on the Services in any form;

4.1.9 not to use the trade name(s) or logo(s) of The Company and/or the content providers for the Content or any other names or logos similar thereto.

4.2 The Customer agrees to grant The Company (at no charge to The Company) an irrevocable licence in perpetuity in respect of any Customer's content (i.e. any content uploaded by the Customer or any Subsidiary Account User to the Services) to copy, distribute, publish and transmit such content as may be required for the operation of the Services.

## 5. Deposit

5.1 The Company shall have the right at any time to require the Customer to pay a deposit as security for the due performance and discharge by the Customer of its obligations and liabilities relating to the provision of the Services or otherwise under this Agreement. The amount of the deposit shall be determined by The Company at its sole discretion. The Company reserves the right to increase the amount of the deposit from time to time. The deposit shall be retained by The Company free of any interest to the Customer.

5.2 Without prejudice to any other rights or remedies which The Company may have against the Customer, The Company shall be entitled to apply and set off the deposit against any sum due or owing by the Customer under this Agreement or under any of the Customer's other account for the Services or for any loss or damage suffered or sustained by The Company as a result of any non-performance or non-observance by the Customer of any terms and conditions under this Agreement or under any of the Customer's other account for the Services.

5.3 Subject to the above, the deposit shall be refunded to the Customer without interest after the termination of this Agreement or the settlement of the last outstanding claim by The Company against the Customer under this Agreement; whichever shall occur later.

## 6. Charges and Payment

6.1 In consideration of the provision of the Services, the Customer shall pay the subscription charges (“Basic Subscription Charges”) that are applicable to the relevant Content (as described in Clause 2). The Basic Subscription Charges are specified by the Company from time to time.

6.2 Charges on data usage of accessing, browsing, streaming or downloading the Content from the Services are not included in the Basic Subscription Charges and will be charged according to mobile service plan subscribed by the Customer or deducted directly from the specified data usage from the subscribed plan. Unless otherwise specified, the calculation of the Basic Subscription Charges are on a monthly basis and the Basic Subscription Charges are billed and payable by the Customer in advance on a monthly basis. Usage charges for the Content (“Usage Charges”) will be billed and payable in arrears on a monthly basis.

“Basic Subscription Charges” and “Usage Charges” are collectively hereinafter referred to as “Charges”).

6.3 Unless otherwise specified, all Charges are non-refundable under whatever circumstances.

6.4 A monthly invoice setting out the Charges for the relevant month payable by the Customer shall be forwarded to the Customer each month. The Company reserves the right to determine the format and/or medium through which the invoice is to be issued and the intervals for the issuance of the invoice at its sole discretion.

6.5 The Customer can request for printed hard copy or itemized invoice subject to the payment of Charges at such rate as may be prescribed by The Company from time to time.

6.6 Unless otherwise specified, the full amount of the invoice are due for payment on the date as specified in the invoice.

6.7 The Company reserves the right to increase the rate of Charges at any time and the Customer shall pay on demand such increase in the Charges.

6.8 In the event of any disputes between The Company and the Customer relating to any Charges invoiced by The Company, the books and records of The Company shall be conclusive evidence of all such charges incurred by the Customer.

6.9 All sums payable to The Company hereunder shall be in full without any deductions or set-offs. All sums shall be paid in Hong Kong Dollars and in such manner as The Company may from time to time specify.

6.10 Payments made by post shall be at the Customer's risk and a payment shall not be deemed to have been paid until the payment is received by The Company.

6.11 Time of payment is of essence. The Company shall be entitled to charge interest at the rate of two percent (2%) per month on any overdue amount from the due date until the date on which payment in full is received by The Company. Such interest shall accrue from day to day.

6.12 Where the Customer has registered more than one account in his name with The Company for the Services and other services, The Company shall have the right to transfer any credit balance of charges he has paid under any one of the account to settle the outstanding charges in another account.

6.13 Any unused access time as specified in the service plan selected by the Customer will not be carried forward to the following month and The Company will not give any credit or refund in respect of any failure, suspension or interruption of all or part of the Services for any reasons whatsoever.

6.14 The Company may apply a credit limit for the Charges incurred by the Customer and/or the Subsidiary Account User and may suspend access to the Services, in whole or in part, if such limit is exceeded.

## 7. Termination

7.1 Either party shall have the right to terminate this Agreement by giving to the other party not less than three (3) working days notice in writing to that effect.

7.2 The Company shall have the right to terminate this Agreement forthwith at any time without notice in any one or more of the following events:

7.2.1 if any Charges or sums payable by the Customer under this Agreement remain unpaid after becoming due; or

7.2.2 if the Customer commits a breach of any of the terms and conditions contained herein; or

7.2.3 if the Customer is subject to the law as to insolvency and/or bankruptcy or makes any arrangement or composition with its creditors or has a Receiver appointed or enters into liquidation; or

7.2.4 if the Customer fails to pay the deposit specified in Clause 5; or

7.2.5 if the Customer furnishes information to The Company which he knows to be false or misleading.

7.3 If the Customer has registered more than one account in his name for the Services and other services with The Company, The Company shall have the right to forthwith terminate or disconnect all the Services and other services in the other account(s) if any charges in any one of the account remain unpaid after becoming due or if The Company terminates this Agreement pursuant to Clause 7.2.

7.4 The termination of this Agreement shall be without prejudice to any rights and/or claims that The Company may have against the Customer prior to the date of termination and shall not relieve the Customer from fulfilling his obligations including payment of all outstanding Charges prior to the date of termination. Any amount accrued and unpaid shall be due and payable forthwith upon termination.

7.5 In the case of termination pursuant to Clause 7.1 by the Customer, the Customer shall continue to be liable for all charges payable hereunder until notice of termination is actually received by The Company and becomes effective.

## 8. Reconnection

8.1 If the Services is disconnected for reasons set out in Clause 7 or upon the Customer's request, The Company may upon the Customer request reconnect the Services subject to payment by the Customer of all sums due or owing to The Company, a deposit requested by The Company and a reconnection charge. The amount of the deposit and the reconnection charge shall be determined by The Company in its sole and absolute discretion.

## 9. Verification

9.1 The Customer shall on the request of The Company provide all necessary documents which would verify the truth or correctness of the information furnished by the Customer to The Company. The Company reserves the right not to provide the Services until The Company has established the truth or correctness of the information from the documents furnished by the Customer.

9.2 The Company reserves the right to request the Customer to produce a copy of its business registration certificate.

## 10. Use of Customer Information

10.1 The Company is hereby authorized, in relation to any information it has relating to the Customer or the authorized user under the Customer's account, to use and/or disclose such information for the purpose of The Company performing its obligation or enforcing its rights under this Agreement or any other purpose reasonably incidental thereto or in contemplation thereof.

10.2 The policy and practices of SmarTone *in* relation to personal data and the Personal Data (Privacy) Ordinance as set out below is deemed incorporated into this Agreement.

10.3 Where any personal data other than personal data of the Customer is disclosed to SmarTone *in* the performance of its obligations under this Agreement, the Customer undertakes and agrees that he has processed all third party consents necessary from time to time for The Company to use or disclose such personal data for the purposes specified in Clause 10.1.

## 11. Limitation of Liability

11.1 To the extent permitted by law, The Company disclaims any warranty or responsibility, whether express or implied:

11.1.1 as to the title, fitness for a particular purpose, merchantability, accuracy, standard of quality or performance of the Services;

11.1.2 that the Services will be uninterrupted, error free or free of any contaminating or destructive properties;

11.1.3 as to any results obtained from using the Services.

11.2 The Company and / or its content providers shall under no circumstances be liable whether in contract, tort, statute or otherwise (including without limitation for negligence, breach of contract, defamation, or intellectual property right infringement) for any special, direct, indirect or consequential loss or damage (including without limitation, loss of revenue or projects, loss of data or goodwill, or the loss of use of any equipment or software) which is suffered, sustained or incurred by the Customer, the Subsidiary Account User or any person arising (directly or indirectly) from or out of or relating to the Services or this Agreement.

11.3 The Company shall not be party to any transaction made between the Customer and/or the Subsidiary Account User and any third party through use of the Services.

11.4 The Company disclaims any responsibility to control the Content, whether or not the Content is stored by The Company. All information provided through the Services (including without limitation the Content) is for reference purposes only. The Company and all third party content providers make no warranties of any kind in relation to the information and accept no responsibilities for the accuracy or completeness or timelessness of such information provided through the Services (including without limitation any Content) and do not accept any liability for any cost, expense, loss or damage whatsoever arising from any inaccuracies, errors, omissions, delays or defaults, regardless of cause, in the Services. Further, The Company disclaims liability for any error, omission or misstatement in or arising from the Content. The Company does not endorse or recommend any person, names, product or service referred to in the Content. The Company accepts no responsibility and makes no representation or warranty that the Content will not be objectionable or offensive to the Customer or any other person.

11.5 The Company does not warrant the confidentiality or security of data whether personal or otherwise transmitted through the Services (although The Company will take reasonable steps to maintain confidentiality).

11.6 The Company's total liability and / or the total liability of The Company's content providers under this Agreement shall in any event not exceed the total Charges paid by the Customer for the immediately preceding twelve (12) months prior to any incident giving rise to a claim.

## 12 Indemnity

12.1 The Customer shall indemnify and keep The Company fully indemnified against any action, liability, cost, claim, loss, damage, proceedings, expense including legal costs) suffered or incurred by The Company arising from or which is directly or indirectly related to:

12.1.1 the Customer, any Subsidiary Account User or any other person's use of the Services (whether or not the Customer or any Subsidiary Account User as the case may be has authorised such use), including without limitation claims arising from or for any act alleged to be illegal, defamation, intellectual property right infringement, damage to computer database, loss of data, distribution of obscene or offensive material;

12.1.2 any interference or damage to the Services or any property due to or caused by the use or misuse of the Services by the Customer or any Subsidiary Account User;

12.1.3 any breach or non-observance of any provision contained in this Agreement by the Customer, any Subsidiary Account User or any other person.

### 13. Assignment

13.1 No rights or liabilities under this Agreement may be assigned, transferred, conveyed or otherwise disposed by the Customer to any party without prior written consent of The Company.

### 14. Governing Law

14.1 This Agreement shall be construed in accordance with the laws of Hong Kong Special Administrative Region and the parties shall submit to the exclusive jurisdiction of the courts of Hong Kong Special Administrative Region in the event of dispute.

### 15. Force Majeure

15.1 The Company shall not be under any liability for any loss or damage resulting from delay or failure to perform this Agreement either in whole or in part where such delay or failure shall be due to causes beyond its reasonable control, or which is not occasioned by its fault or negligence, including, but not limited to, war, the threat of imminent war, riots or other acts of civil disobedience, insurrection, acts of God, restraints imposed by governments or any other supranational legal authority or any other industrial or trade disputes, fires, explosions, storms, floods, lightning, earthquakes and other natural calamities.

### 16. Notices

16.1 Any notice required to be given by The Company to the Customer may be given by The Company either personally to the Customer or by post, facsimile to the address specified in this Agreement or any address as notified by the Customer or by e-mail or short message to the Customer. Any such notice shall be deemed to have been received and given at the time when in the ordinary course of transmission it should have been delivered at the address to which it was sent.

## 17. Entire Agreement

17.1 This Agreement embodies the entire undertaking between the parties and there are no promises, terms, conditions or obligations, oral or written expressed or implied other than those contained herein.

17.2 Subject to Clause 18, this Agreement may only be amended in writing and signed by or on behalf of The Company and the Customer.

## 18. Variation

18.1 The Company reserves the right at any time to vary, modify, delete any or all of the terms and conditions contained herein or add new terms to this Agreement by giving notice to the Customer to that effect.

## 19. Non-Waiver

19.1 No failure or delay on the part of the parties hereto to exercise any right, power or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise by either of the party of any right, power or remedy. The rights, powers and remedies provided herein are cumulative and are not exclusive of any rights, powers or remedies by law.

## 20. Severability

20.1 If any provisions of this Agreement shall be construed to be illegal or invalid, they shall not effect the legality, validity and enforceability of the other provisions of this Agreement. The illegal or invalid provisions shall be deleted from this Agreement and no longer incorporated herein but all other provisions of this Agreement shall continue.

## 21. Interpretation

21.1 References to the plural shall include the singular and vice versa, words importing a gender shall include every gender; references herein to any person shall include references to individual, firm, body corporate or unincorporate.