

It is hereby agreed by and between the Customer and Sonic Point Limited ("the Company") for Internet 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 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).

2. Content

- 2.1 The Company shall make available data, information, 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 Company reserves the right in its absolute discretion to prevent the Customer from accessing any of the Content from time to time.
- 2.3 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. User ID and Password

- 3.1 The Company shall assign a User ID and Password to the Customer and any other person(s) as specified by the Customer with independent User ID and Password to access the Services ("Subsidiary Account User").
- 3.2 The Customer shall have the right to change his own User ID and/or Password and/or the User ID and/or Password of any of the Subsidiary Account User. The Company may at the request of the Customer assist the Customer in resetting the User ID(s) and/or Password(s).
- 3.3 The Customer shall not use any User ID and/or Password which in the Company's opinion is obscene, indecent, offensive, seditious, defamatory, immoral or unlawful.
- 3.4 The Company shall have the right to withdraw the User ID(s) and/or Password(s) from the Customer and/or the Subsidiary Account User:
- (i) if this Agreement is terminated; or
 - (ii) 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; or
 - (iii) where in the Company's opinion the Customer and/or the Subsidiary Account User is in breach of Clause 3.3.
- 3.5 The Customer and/or the Subsidiary Account User shall keep the User ID(s) and/or Password(s) confidential and shall not reveal or disclose the User ID(s) and/or Password(s) to any person except to its authorized employees or agents and/or the Subsidiary Account User whose names have been prior notified in writing by the Customer to the Company.
- 3.6 The Customer and/or the Subsidiary Account User shall use the User ID(s) and/or Password(s) in accordance to the instructions given by the Company to the Customer from time to time.
- 3.7 The Customer shall notify the Company immediately where there are grounds for suspecting or believing that the User ID(s) and/or Password(s) has been lost or stolen or that a third party is using the User ID(s) and/or Password(s) without the knowledge, consent or permission of the Company, the Customer or its servants, employees or agents 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 User ID and/or Password.
- 3.8 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 User ID(s) and/or Password(s) notwithstanding the use may be without the Customer's consent.

4. Software

- 4.1 The Company hereby grant to the Customer a non-exclusive and non-transferable licence to store, run and use the Software (i.e. software which is supplied to the Customer to access the Services) on the Customer's equipment in accordance with the terms and conditions of this Agreement and the software licence which accompanies the Software but not further or otherwise.
- 4.2 The Customer shall not, nor allow others to copy, sub-licence, distribute, sell, transfer, exploit, alter, modify, adapt or translate the Software nor decompile, disassemble or reverse engineer the same nor attempt to do such thing.

5. Customer's Obligations

- 5.1 The Customer undertakes:
- (i) to use the Services in accordance with such conditions as may be notified in writing to the Customer 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;
 - (ii) that each Subsidiary Account User complies with these terms and conditions;
 - (iii) not to use or allow others to use the Services for any purpose which the Company considers improper, immoral, defamatory, fraudulent or otherwise unlawful;
 - (iv) 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 or for mail-spamming and/or bulk transmission of messages to Internet users, service providers or newsgroup;
 - (v) 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 copy, distribute or disseminate or otherwise exploit any Content or use any Content other than for personal use, except to the extent otherwise expressly authorised;
 - (vi) 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;
 - (vii) not use, nor allow others to use the Services for voice transmission purposes without the prior written consent of the Company;
 - (viii) 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;
 - (ix) not resell the Services to any person by whatever means.
- 5.2 The e-mail address provided by the Company to the Customer or any of the Subsidiary Account User are solely for the Company's use in providing the Services. Neither the Customer nor any Subsidiary Account User shall acquire any right whatsoever in the e-mail address.

5.3 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.

6. Customer's Equipment

6.1 The Customer shall be responsible for obtaining, providing and paying for all telecommunication equipment, computer equipment and software (excluding the Software) or other access devices, necessary to connect to the Services (collectively "Customer Equipment").

6.2 The Customer shall ensure at all times that the Customer Equipment be approved for connection by the relevant government department or other competent authority and the Customer shall at all times comply with the conditions of such approval. The Company reserves the right to suspend access to the Services without notice if the Customer does not fulfil its obligations under this Clause 6 or if in the opinion of the Company it is liable to cause the death of, or personal injury to, or damage to the property of the Company or any person engaged in the running of the Company's network or materially to impair the quality of any of the Services or any telecommunication service provided by means of the Company's network.

7. Deposit

7.1 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.

7.2 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.

7.3 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.

8. Charges and Payment

8.1 In consideration of the provision of the Services, the Customer shall pay the following charges to the Company:

- (i) a once off Registration Fee, payable in advance (if applicable);
- (ii) monthly Service Charge, payable monthly in advance,
- (iii) Usage Charges, payable in arrears in respect of usage of the Services by the Customer, any Subsidiary Account User or other person accessing the Services through any of the User ID(s) and Password for that month.

8.2 The Customer shall pay the Registration Fee, first Monthly Service Charge upon the signing of this Agreement or subscription of the Services. The Registration Fee and all monthly Service Charges are not refundable.

8.3 The Company shall invoice the Customer by e-mail or by post (as determined by the Company in its discretion) for charges specified in Clause 8.1 and other charges under this Agreement. If the Company has issued an invoice by e-mail and the Customer requests the Company to send a hard copy of that invoice or the Customer requests for any itemised invoice (whether by post or by e-mail), the Company may charge for any such invoice as determined by the Company from time to time.

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

8.5 The Company reserves the right to increase the monthly Service Charge, the rate of the Usage Charge at any time and the Customer shall pay on demand such increase in the monthly Service Charge or Usage Charges.

8.6 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.

8.7 The Customer shall raise any dispute regarding any amount shown on any invoice within ten (10) days from the date of such invoice; failing which the Customer shall be deemed to have waived all his right against the Company.

8.8 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.

8.9 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.

8.10 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.

8.11 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.

8.12 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.

8.13 The Company may apply a credit limit for the Usage Charge 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.

9. Termination

9.1 Either party shall have the right to terminate this Agreement by giving to the other party not less than thirty (30) days notice in writing to that effect.

9.2 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:

- (i) if any charges or sums payable by the Customer under this Agreement remain unpaid after becoming due; or
- (ii) if the Customer commits a breach of any of the terms and conditions contained herein; or
- (iii) 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
- (iv) if the Customer fails to pay the deposit specified in Clause 7; or
- (v) if the Customer furnishes information to the Company which he knows to be false or misleading.

9.3 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.

9.4 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.

9.5 In the case of termination pursuant to Clause 9.1 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.

9.6 Upon termination of this Agreement for whatever reason, the Customer

- (i) shall immediately cease to use the e-mail address(es), User ID(s) and Password(s) and return the same to the Company;
- (ii) erase all the Software and cease to use the Services; and

- (iii) has no right to any data, stored or saved at or by means of the Services and the Company will be under no obligation to make such data or any copies of it available to the Customer in any form whatsoever. Further, the Customer's data stored or saved at or by means of the Services will be erased without prior notice
- 9.7 Subject to Clause 10.2, the Company shall have the right to assign the e-mail address(es), User ID(s) and Password(s) of the Customer to another customer of the Services upon termination of this Agreement.
10. Reconnection
- 10.1 If the Services is disconnected for reasons set out in Clause 9 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.
- 10.2 If the Services is not reconnected within thirty (30) days after disconnection of the Services under Clause 10.1, the Company shall have the right to dispose of the Customer's e-mail address(es), User ID(s) and/or Password(s) at its sole discretion without any liability whatsoever to the Customer.
11. Verification
- 11.1 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.
- 11.2 The Company reserves the right to request the Customer to produce a copy of its business registration certificate.
12. Use of Customer Information
- 12.1 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.
- 12.2 Where any personal data other than personal data of the Customer is disclosed to the Company 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 12.1.
13. Privacy Policy
- 13.1 Your privacy is important to the Company. The Company has developed a Privacy Policy that covers how it collects, uses, discloses, transfers and stores your information. Please visit www.smartone.com for full details of the Company's Privacy Policy.
- 13.2 The Company will do its best to keep your privacy safe, but do not guarantee that the Service will be safe or secure. You should protect your own personal information at your own risk.
14. Limitation of Liability
- 14.1 To the extent permitted by law, the Company disclaims any warranty or responsibility, whether express or implied:
- (i) as to the title, fitness for a particular purpose, merchantability, accuracy, standard of quality or performance of the Services or the Software;
- (ii) that the Services and/or the Software will be uninterrupted, error free or free of any contaminating or destructive properties;
- (iii) as to any results obtained from using the Services.
- 14.2 The Company 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.
- 14.3 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.
- 14.4 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 or omissions. 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.
- 14.5 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).
- 14.6 The Company's total liability under this Agreement shall in any event not exceed the total monthly Service Charges paid by the Customer for the immediately preceding twelve (12) months prior to any incident giving rise to a claim.
15. Indemnity
- 15.1 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:
- (i) the Customer, any Subsidiary Account User or any other person's use of the Services where any User ID(s) and/or Password(s) has been used (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 absence or offensive material;
- (ii) 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;
- (iii) any breach or non-observance of any provision contained in this Agreement by the Customer, any Subsidiary Account User or any other person.
16. Assignment
- 16.1 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.
17. Governing Law
- 17.1 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.

18. Force Majeure
18.1 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.
19. Notices
19.1 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 addressed 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.
20. Entire Agreement
20.1 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.
20.2 Subject to Clause 20, this Agreement may only be amended in writing and signed by or on behalf of the Company and the Customer.
21. Variation
21.1 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.
22. Non-Waiver
22.1 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.
23. Severability
23.1 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.
24. Interpretation
24.1 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.