

## **TERMS AND CONDITIONS FOR HOMETEL SERVICES (Terms & Conditions: T&C N005A)**

HomeTel Services is provided by SmarTone Mobile Communications Limited.

SmarTone Mobile Communications Limited is hereinafter referred to as “**the Company**”.

HomeTel Services is hereinafter referred to as “**the Service**”.

### **SERVICE EQUIPMENT**

#### **1. FOR SALE OF SERVICE EQUIPMENT**

- 1.1 The Customer shall pay the Company the full purchase price or any balance thereof on the delivery of the Service equipment (“HomeTel Equipment”). If the HomeTel Equipment has been delivered to the Customer and the balance of the purchase price is not paid by the Customer, the Company shall have the right to forfeit the deposit paid by the Customer and repossess the HomeTel Equipment.
- 1.2 Title to the HomeTel Equipment shall remain vested in the Company until the Company has received full payment of the purchase price but risk shall pass to the Customer upon delivery of the HomeTel Equipment to the Customer.
- 1.3 All delivery dates or times quoted by the Company are estimates only and the Company shall not be liable for the consequences of any delay whatsoever.

#### **2. FOR RENTAL OF SERVICE EQUIPMENT**

- 2.1 The Customer shall rent the Service equipment (“Rental Equipment”) from the Company for the use of the Service
- 2.2 The Rental Equipment shall at all times remain the sole and exclusive property of the Company and the Customer shall have no right, title or interest thereto.
- 2.3 The Rental Equipment is provided for the sole use of the Customer and shall not be assigned, transferred, conveyed or otherwise disposed of without the prior written consent of the Company.
- 2.4 The Customer shall:
  - (i) use and operate the Rental Equipment in a proper manner and in accordance with the Company’s instruction and the relevant user guidelines;
  - (ii) not use the Rental Equipment or any part thereof in conjunction with other equipment, components, accessories or devices other than those supplied by the Company;

- (iii) use the Rental Equipment at the service address at which it was registered;
  - (iv) not at any time or under any circumstances alter or tamper with the Rental Equipment nor repair nor attempt to repair nor permit any one to repair or maintain the Rental Equipment or any parts thereof which may affect the Service or the Company's network;
  - (v) be liable to the Company for any loss or damages to the Rental Equipment.
- 2.5 The Company, its employees or authorized agent shall have the right to perform the installation of the Rental Equipment and reconfiguration on the Customer's computer for the purpose of provision of the Service. The Company may charge the Customer a fee for the installation. The amount of the fee shall be determined by the Company at its sole discretion.
- 2.6 The Customer shall ensure that the Company, its representatives or agents have safe access to the Customer's premises at all reasonable times to install, inspect, maintain, repair, remove or recover the Rental Equipment or to do anything that is reasonably necessary for the provision of Service under this Agreement.
- 2.7 The Customer shall pay charges (if applicable) prescribed by the Company for rental of the Rental Equipment.
- 2.8 The Company will at the request of the Customer effect all necessary repairs to the Rental Equipment as may from time to time be necessary. It is expressly agreed between the Company and the Customer that the Company shall not be subject to any liability or responsibility by reason of any delay in effecting such repairs. The costs of repairs of the Rental Equipment shall be provided free of charge except repairs caused by any one of the following:
- (i) accidents, negligence, fault, improper use on the part of the Customer;
  - (ii) events of force majeure described in Clause 19;
  - (iii) the Customer's failure to maintain, use or operate the Rental Equipment properly.
- All costs of repairs under this Clause shall be additionally charged to the Customer by the Company at the Company's prevailing rates.
- 2.9 Upon termination of the Service, the Customer shall at its own risk and expense return the Rental Equipment to the Company within fourteen (14) days after termination of the Service in the same condition as when delivered to the Customer ordinary fair wear and tear excepted. If the Customer fails to deliver the Rental Equipment or the Rental Equipment is found to be damaged upon return, the Customer shall indemnify the Company against all loss or damage to the Rental Equipment on a full indemnity basis (including the costs of any agent appointed by the Company for the recovery of the Rental Equipment).

## HOMETEL SERVICES

### 3. THE SERVICE

- 3.1 Subject to the terms and conditions set out herein, the Company shall provide and the Customer shall subscribe to the Service in accordance to the selected service plan ("Service Plan"). If the Service Plan specified a minimum commitment period ("Fixed Term Contract"), the Customer agrees to subscribe the Service for the Fixed Term Contract stipulated in the Company's Sales and Services Agreement or other relevant document as appropriate.
- 3.2 The Service provided to the Customer is subject to the Company's prevailing Service Plan and/or rate of charges for the Service from time to time. The Company reserves the right to terminate a Service Plan, vary the Service Plan and/or rate of charges for the Service at any time as it thinks fit by giving prior notice to the Customer. The Company will endeavour to give thirty (30) days prior notice or any other period as reasonably practicable in advance of its effective date.
- 3.3 The Customer shall select the features of the Service ("Service Features"). The Company reserves the right at any time to do all such things that is necessary to the Service Features to ensure the quality of the Service.
- 3.4 The Customer may request for the provision of international communication service. The international communication service provided by the Company is subject to the terms and conditions set out herein and the terms and conditions prescribed by the relevant provider of such service from time to time.
- 3.5 The Customer understands that the Service shall only take effect after the Company has approved his/her application. The Company's decision on whether to accept the customer's application for the Service shall be final and conclusive.
- 3.6 The Company shall normally take not more than 7 Business Days (i.e. any Mondays to Fridays in Hong Kong except public holidays) upon receipt of relevant application from the Customer to process the registration of any Service Plan for the Service. Unless otherwise agreed by the Company, any Service Plan shall not be used in conjunction with other plans or other special offers as may be offered by the Company from time to time.
- 3.7 Value added services of the Service provided by the Company and/or third party service providers are subject to availability and discretion of the Company. The Customer understands and agrees to the relevant terms and conditions which are in force from time to time in connection with the use of such value added services.
- 3.8 The Company shall have the right to determine the appropriate means of providing the Service including without limitation the method, technology and route for delivery of the Service to the Customer. The Company may at its sole discretion

vary such method, technology and route of delivery at any time without notice to the Customer.

- 3.9 Unless otherwise notified by the Customer, the Customer agrees to receive information sent from the Company for any or all of the following purposes:
- (a) marketing of goods and/or services by the Company, its agents, affiliates or subsidiaries in relation to the Service;
  - (b) improvement such as updates and upgrades of goods and/or services in relation to provisioning of the Service
  - (c) any benefits arising out of or in connection with the Service;
  - (d) facilitate, complete or confirm the provision of the Service by the Company to the Customer under this Agreement.
- 3.10 The Customer acknowledges and agrees that in the course of providing the Service, the Company may record verbal instructions received from the Customer and/or any verbal communication between the Customer and the Company in relation to the Service.
- 3.11 The Company reserves the right at all times to suspend all or any of the Service without notice for system maintenance, upgrading, testing and/or repairs or otherwise as it deems appropriate. No credit or refund is available when all or any of the Service is suspended in any manner whatsoever.

#### 4. NUMBER PORTING

- 4.1 The Company will provide a new telephone number to the Customer. If Customer opts for porting his/her existing telephone number ("Existing Number") to the Company, the Company will provide a temporary telephone number to the Customer for temporary use until the Existing Number has been successfully ported to the Company.
- 4.2 If Customer terminates the Service as a result of the failure of the Existing Number to be ported to the Company (except if it is caused by the default of the Company), all payments already made by Customer shall not be transferable or refundable. The Customer shall pay an installation fee as prescribed by the Company (if applicable). If the Customer has subscribed the Service for a Fixed Term Contract (as described in Clause 3.1) the Customer shall pay the Service Charges for the entire Fixed Term Contract period to the Company as the liquidated damages (if applicable) and all offers will be terminated immediately.
- 4.3 In the event that the Existing Number cannot be ported to the Company within sixty (60) days upon successful installation of the Service due to the incomplete,

wrong or false information provided by the Customer or due to any ground beyond the reasonable control of the Company, the Company shall have the right to charge the Customer a service fee from the date of successful installation of the Service.

- 4.4 The Customer authorizes the Company to process the application for porting the Existing Number to the Company. If the information submitted by the Customer is incomplete or incorrect or if, due to reasons which are not controlled by the Company, the application for Port In of Existing Number is not successful within one hundred and eighty (180) days after installation of the Service, the application of porting in Existing Number will not be processed under this circumstance.
- 4.5 If the Customer chooses to use the Existing Number at the Company, the Customer shall not terminate the telephone service with original telephone service operator before the number porting service activates.
- 4.6 The Customer requests the Donor Network Operator ("DNO") and the Company to effect the porting of the Existing Number to the network of the Company with effect from the relevant requested cut-over time.
- 4.7 Subject to the successful porting of the Existing Number to the Company, the voice / data / fax services in relation to the Existing Number of the DNO will be terminated with effect from the requested cut-over time. The continuation of any other services provided by the DNO, if any, shall be subject to the applicable terms and conditions for such services of the DNO.
- 4.8 The Customer understands that the porting of the Existing Number does not affect his/her obligations to the DNO incurred prior to the successful porting of the Existing Number under the applicable service terms and conditions of the DNO.
- 4.9 The Customer understands that during the period for the Existing Number to be ported from the DNO to the Company, the Customer will not be able to use the Existing Number, including without limitation to dialing and receiving calls.
- 4.10 The requested cut-over time shall be subject to the DNO's confirmation of the information given hereunder and the technical arrangements between the DNO and the Company and all applicable rules and regulations including without limitation the procedures for handling number porting by database solution issued by the Communications Authority as updated from time to time.
- 4.11 The Company is hereby expressly authorized to change the requested cut-over time as the Company may reasonably consider as appropriate.
- 4.12 If Customer requests to cancel or modify the porting application one (1) business day before the requested cut-over time, the Customer would have to contact the DNO directly.
- 4.13 Except for any liability which cannot be excluded by law, the Customer agrees and confirms that the DNO and the Company will not be liable to him/her or any other party in contract, tort or otherwise for any loss or damage, whether directly or

indirectly, suffered by the Customer or any other party howsoever arising from or in relation to the Service and/or the number porting arrangements.

- 4.14 The Customer agrees that his/her personal data disclosed herein may be transferred to all relevant parties who shall have a need to have access to his/her personal data for the purpose of processing the service application and the Customer understands that he/she may access and/or correct any of his/her personal data.
- 4.15 The Customer confirms and declares that all information provided by him/her are accurate and correct and the Customer shall be wholly liable for and shall fully indemnify each of the Company and the DNO against any costs, claims, demands, liabilities and expenses resulting from his/her breach of this clause.

## 5. DEPOSIT/ADVANCE PAYMENT

- 5.1 The Company shall have the right at any time to require the Customer to pay a deposit and/or advance payment as security for the due performance and discharge by the Customer of his obligations and liabilities relating to the provision of the Service or otherwise under this Agreement. The amount of the deposit and/or advance payment shall be determined by the Company at its sole discretion. The Company reserves the right to increase the amount or vary its requirement of the deposit and/or advance payment 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 and/or advance payment against any sum due or owing by the Customer under this Agreement or under any of the Customer's other account for the Service 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 Customers other account for the Service.
- 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.
- 5.4 The payment of the deposit and/or advance payment does not relieve the Customer from his obligations to pay amounts to the Company as they become due and payable, nor does this enable the Customer to make allowance by way of set-off, deduction or withholding from any such amount. The deposit and/or advance payment will not affect any right of the Company to suspend, cancel or terminate this Agreement for non-payment.
- 5.5 Deposits for IDD (including 001 IDD and / or 1638 IDD services) will be waived if the Customer pays the monthly charges for the provision of the Services and Service Features by autopay by credit card. If for whatever reason, the Customer

changes to other payment methods which is not autopay by credit card, the Company shall automatically terminate the IDD (including 001 IDD and / or 1638 IDD and / or other IDD related services) without prior notice.

## 6. PAYMENT FOR THE SERVICE

- 6.1 The Customer agrees to pay charges ("Charges") in connection to the Service and/or Service Features as prescribed in the Company's tariff plan from time to time.
- 6.2 The Customer shall pay the Company the Charges which the Company's records attribute to the Customer.
- 6.3 The Customer shall, forthwith upon signing this Agreement, pay in advance the first month's service charges for the provision of the Service and the first month's charges for such Service Features selected by the Customer and any other charges as the Company may require, each in such amount as the Company may in its sole and absolute discretion determine. Any sum so paid to the Company shall not bear interest for the Customer. All payments for the Charges are payable monthly in advance. Unless otherwise stated, all Charges are non-refundable under whatever circumstances.
- 6.4 Charges will be calculated by reference to data recorded or logged by the Company and not by reference to any data recorded or logged by the Customer. Records held and call logging procedures adopted by the Company will be conclusive evidence of the usage of the Services and/or Service Features and the Charges payable by the Customer.
- 6.5 Usage Charges for the Services and/or Service Features will be measured using such unit of measurement as is adopted by the Company for that Services or Service Features from time to time
- 6.6 The Company shall issue a monthly bill setting out the Charges for the relevant month. The amounts shown on the bill of all the Charges shall be final and binding on the Customer. The Customer shall pay and settle in full each bill on or before the due date for payment as specified in the bill or otherwise forthwith upon demand by the Company.
- 6.7 If payment of the Charges is by direct debit from the Customer's account for the Service ("Service Account"), the following terms shall apply:
  - a) the Customer expressly acknowledges that he agrees to the rates and charging mechanism before using the Service and/or Service Features. In particular, the Customer agrees to the minimum monthly Charges which shall be debited from the Service Account at the end of each billing cycle (details of the billing cycle shall be specified by the Company) irrespective whether or not the Customer has used the Service and/or Service Features up to the level of the minimum monthly Charges.
  - b) the minimum monthly Charges are subject to change from time to time. The

Customer should regularly check the updated rate of Charges through the channel(s) specified by the Company.

- c) all questions and disputes regarding the Charges, remaining credit in the Account will be decided by the Company at its sole discretion.
  - d) the Company does not provide refund or make any transfer of:
    - i) any unused portion of the monies in the Service Account;
    - ii) any monies in the Service Account directed to an incorrect account; or
    - iii) any monies in the Service Account being utilized by fraudulent and unauthorized use of the Service Account.
- 6.8 The Company reserves the right to vary the billing frequency at any time without prior notice or issue an interim bill for accrued Charges, which will become immediately due and payable.
- 6.9 Unless otherwise stated, all monies paid by the Customer are non-refundable under whatever circumstances.
- 6.10 The Customer shall raise any dispute regarding any amount of the Charges within ten (10) days from the date of the monthly bill or the date of debit of the Charges from the Service Account; failing which the Customer shall be deemed to have waived all his right against the Company.
- 6.11 All sums payable to the Company hereunder shall be in full without any deductions or set-offs. A sums shall be paid in Hong Kong Dollars and in such manner as the Company may from time to time specify.
- 6.12 Payments made by post shall be at the Customers risk and a payment shall not be deemed to have been paid until the payment is received by the Company.
- 6.13 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.
- 6.14 Where the Customer has registered more than one Service in an account, the Company shall have the right to transfer any credit balance of charges paid under any one of the Service in the account to settle the outstanding charges of another Service in the account.
- 6.15 Where the Customer has registered more than one account in his name with the Company, the Company shall have the right to transfer any credit balance of charges paid under any one of the account to settle the outstanding charges in another account.
- 6.16 Where the Customer has registered more than one account in his name with the Company, the Company shall have the right to consolidate the outstanding balance of all accounts into one for payment settlement arrangement.
- 6.17 If a cheque or payment by direct debit is dishonored or cancelled, the Customer



shall pay to the Company any (a) resulting bank or other charges incurred by the Company; and (b) associated administration charges imposed by the Company.

- 6.18 Should the Customer cancel the Service after this Agreement has come with effect but before the rendering and/or billing of any Service, the Customer shall notwithstanding the cancellation, be liable for all costs, expenses and/or fees incurred by the Company in connection with or in preparation for the provision of the Service to the Customer.
- 6.19 The Customer shall be liable for all Charges for the Service whether the Service in relation to such Charges were used by the Customer or by any other third party with or without the Customer's authority, knowledge or consent.
- 6.20 The Customer shall be liable for all Charges for the Service even though there is an interruption of the Service as a result of a relocation of the Customer's registered address or the service equipment connected to the Service are not in operation.
- 6.21 The Company has the right to set a credit limit from time to time for the Charges in connection to the Service incurred by the Customer and to suspend access to or disconnect the Service, in whole or part, if the credit limit is exceeded.
- 6.22 The Customer agrees that no credit or refund is available to the Customer in respect of any time when all or part of the Service / Service Features are inoperable, limited, suspended or otherwise unavailable to the Customer.
- 6.23 The Customer agrees that unless otherwise expressly provided, no unused "free minutes/airtime" (if any) as specified in the tariff or service plan of the Service selected by the Customer may be carried forward to the following month or transferred to another account.
- 6.24 On the porting in of the telephone number to the Company, the Customer shall pay the Company a number porting charge as prescribed in the Company's tariff plan from time to time.
- 6.25 If the telecommunication services of a third party are accessed by the Customer using the Service, the Company may require the Customer to pay to the Company the charges in respect of the telecommunication services of that third party if the Company is required to pay those third parties.
- 6.26 The Customer shall pay all licence fees payable from time to time to the Government of Hong Kong in connection with the Customer's use of the Service (if applicable) to the Company at the time(s) specified by the Company.

## 7. USE OF THE SERVICE

### 7.1 The Customer shall:

- a) use the Service in accordance with this Agreement and all applicable laws, rules of regulation in Hong Kong, any lawful determination, decision or direction of any Government body in Hong Kong and any applicable

information convention or agreement ("Applicable Law");

- b) not use the Service or the Company's facilities and associated equipment used in or in connection with the network ("Network") in any manner that would cause the Company to be in breach any Applicable Law;
- c) not be directly or indirectly involved in any Unauthorized Activity. For this purpose, "Unauthorized Activity" means any act or omission in relation to the Services or any translation, alteration, modification or deletion (whether through the use of any translation system or device or in any other manner whatsoever) of the number, code or signal associated with the Service;
- d) not use the Service:
  - i) for any improper purpose or for the purpose of sending any unsolicited or unauthorized advertising material or any material of an obscene or indecent nature or any other unsolicited commercial or non-commercial communication; or
  - ii) in any manner which is unauthorized, fraudulent, suspicious or illegal, whether under any Applicable Law or otherwise; or
  - iii) in a manner which constitutes an infringement by the Customer or the Company of the rights of any person (including but not limited to copyright and other intellectual property rights and rights of confidentiality) or a violation or infringement of any duty or obligation in contract, tort or otherwise, to any third party; or
  - iv) in any manner which adversely affects the Company's ability to provide, complete or maintain the level or quality of the Network or other services; or
  - v) in any manner which is designed to unfairly exploit the usage or to cause loss or damages to the Company such as reselling the Service; or
  - vi) in any manner or for any activity whatsoever which generates or is likely to generate telecommunications traffic or usage which causes or is likely to cause congestion in or disruption to the provision or operation of the Service or any telecommunications service provided by the Company.
- e) not, and shall ensure that third parties do not, either by act or omission, interfere with or impede or impair use of, or operation of, or do anything likely to interfere with or impede the use of, or operation of, the Service or the Network or any service or network of a third party; and
- f) not take or allow any other person to take any unauthorized action in relation to the HomeTel Equipment (as described in Clause 1), the Rental Equipment (as described in Clause 2) or the Network or the Service; and

- g) promptly notify the Company of any fault in the Service or deterioration in the quality of the Service; and
  - h) comply with directions given by the Company from time to time in relation to:
    - i) modifications required to any apparatus of the Service or other action necessary to be taken to eliminate any interference, impediment or impairment to the Service or the Network; or
    - ii) any use of the Service that is reasonable or prudent to ensure that the Customer complies with this Clause 7.
  - i) the Customer must use the Service with settings and devices specified by the Company.
- 7.2 The Company has the absolute discretion to forthwith suspend/terminate the Service without notice, upon the occurrence of any one or more of the circumstances specified in this Clause 7.1.
- 7.3 The Service shall not be used under any one of the following circumstances, including but without limitation (i) using the Service in any manner which adversely affects the Company's ability to provide, complete or maintain the level or quality of its network or other services; and (ii) in any manner which is designed to cause loss or damage to the Company such as using the Service for commercial purposes or reselling the Service.
- 7.4 If the Customer fails to comply with any of the prohibitions specified in Clause 7.3; or upon the occurrence of any one or more of the circumstances specified in Clause 7.3; or if in the reasonable opinion of the Company, the Customer's use of the Service adversely affects the Company's ability to provide, complete or maintain the level or quality of its Network or other services or to cause loss or damage to the Company, the Company may forthwith take such steps it considers reasonably necessary or appropriate including but not limited to restricting, limiting, suspending or terminating the Service to the Customer without notice.
8. DEALINGS WITH THIRD PARTIES
- 8.1 The Customer understands and agrees that the Service may include advertisements, links or references to websites of third parties.
- 8.2 The Company is not a party to and is not otherwise involved in any manner in any correspondence or business dealings with, or participation in promotion of, third parties found on or through the Service, including payment and delivery of goods or services and any other terms, conditions, warranties or representations associated with such dealings which are solely between you and such third parties. The Customer agrees that the Company shall not be responsible or liable for any loss or damage whatsoever incurred as a result of any such dealings or as the result of the presence of such advertisements, links or references websites of these third parties on the Service.

## 9. TERMINATION

- 9.1 Either the Company or the Customer may at any time terminate this Agreement by giving to the other party thirty (30) working days prior written notice to that effect.
- 9.2 In addition and without prejudice to other provisions contained in this Agreement, the Company shall be entitled to forthwith terminate this Agreement or disconnect the Service or any part thereof without notice, upon the occurrence of any one or more of the following events:
- a) if any charges or other sums whatsoever payable by the Customer hereunder remain unpaid after becoming due; or
  - b) if the Customer fails to pay the deposit and/or advance payment specified in Clause 5; or
  - c) if the value remaining in the Service Account at the end of a billing cycle is insufficient to cover the minimum monthly Charges or any charges due at the date of the billing cycle as specified in Clause 6.7.
  - d) if the Charges for the use of the Service exceed the credit limit specified by the Company from time to time; or
  - e) if the Customer commits a breach of any of the terms and conditions contained herein; or
  - f) if the Customer fails to comply with any of its obligations under Clause 7 or
  - g) if the Customer furnishes information to the Company which he knows to be false, inaccurate or misleading; or
  - h) if the Company is prohibited from supplying the Service pursuant to an order, instruction, determination or direction of a judicial body, government or regulatory authority; or
  - i) in the case of a Customer that is an individual. the Customer dies; or
  - j) in the case of a Customer that is a legal entity (including a partnership) that Customer becomes or there is evidence to show that the Customer is likely to become insolvent or bankrupt, subject to a winding up proceeding, has a receiver appointed, is dissolved or in the process of dissolution, makes any arrangement for the benefit of creditors, or initiates or becomes or there is evidence to show that the Customer is likely to become subject to any form of insolvency proceeding; or
  - k) any Force Majeure event referred to in Clause 19 continues for more than ninety (90) days; or

- l) if the Customer uses the Service for any fraudulent or unlawful purposes or uses abusive, threatening, harassing, vulgar or obscene language to other Customers or employees of the Company through the Service, or allows, permits or authorizes any other person to do so.
- 9.3 If the Customer has registered more than one Service in an account or more than one account in his name, the Company shall have the right to forthwith terminate or disconnect all the other Services in the account(s) if any Charges under any one of the Service in the account remain unpaid after becoming due or if the Company terminates this Agreement pursuant to Clause 9.2.
- 9.4 Termination hereunder 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. Further, all hardware and/or equipment provided by the Company have to be returned or fully paid to the Company (if applicable).
- 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 If the Agreement is terminated by the Customer pursuant to Clause 9.1 or by the Company under Clause 9.2 (other than Clause 9.2(h) or (k) before the Fixed Term Contract (as described in Clause 3.1)) has expired, then the Customer, shall, on termination pay the Company liquidated damages as stipulated in the Company's Sales and Services Agreement or the relevant Service Plan (where applicable) and all offer under the Service Plan shall terminate immediately. The liquidated damages are an agreed reasonable pre-estimate of the anticipated losses suffered by the Company if the Service is terminated before the expiration of the Fixed Term Contract.
- 9.7 The Company shall have the right to assign the Customer's service number for the Service to another customer after the Service provided to the Customer is terminated or disconnected.
- 9.8 The Company shall not give any separate written notification on the effective date of termination of Service.
- 10. RECONNECTION
- 10.1 If the Service is disconnected for reasons set out in Clause 9 or upon the Customer's request, the Company may upon the Customer's request reconnect the Service 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.

## 11. SERVICE ADDRESSING INFORMATION

- 11.1 The Customer acknowledges that the Service or service number or other network addressing information assigned by the Company to the Customer are governed by numbering plans and guidelines issued by the Communications Authority and that the Customer has no title, goodwill or interest in any number assigned to the Customer.
- 11.2 If the Company withdraws or changes any number or network addressing information assigned to the Customer, it will endeavour to give the Customer such prior notice as may be reasonably practicable in the circumstances, unless the withdrawal is because of the termination or suspension of the Service in accordance with the Agreement.

## 12. PERSONAL IDENTIFICATION NUMBER

- 12.1 The Company may allocate a PIN to the Customer and may, at any time, vary the PIN allocated to the Customer. The Company will notify the Customer of a change in the PIN allocated to the Customer where it is reasonably practicable to do so.
- 12.2 Each PIN issued to a Customer is confidential and personal to the Customer and the Customer is responsible for the security of his PIN.
- 12.3 The Customer undertakes to use his PIN in accordance with the reasonable directions given to him by the Company from time to time. The Customer shall notify the Company immediately if the Customer has grounds for believing that any person has discovered or is making use of his PIN without his knowledge or consent, and the Company will allocate a new PIN to the Customer.
- 12.4 If the Service is suspended, withdrawn, restricted or terminated or this Agreement is terminated the Company may withdraw the PIN.

## 13. VERIFICATION AND PROVISION OF INFORMATION

- 13.1 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 Service until the Company has established the truth or correctness of the information from the documents furnished by the Customer. The Customer shall notify the Company of any change or alteration to the information provided to the Company as soon as practicable.
- 13.2 Individual Customer must be over the age of eighteen (18) to enter this Agreement.
- 13.3 The Company is not bound to verify the authenticity or authority of a signature or mark purportedly of or on behalf of the Customer. Any authorized signatory chop, business chop, personal seal, signature or mark appearing on the Agreement shall be binding on the Customer and the Company. The Company is irrevocably

authorized to rely on any form, letter or document purportedly signed by or on behalf of the Customer.

#### 14. USE OF CUSTOMER INFORMATION

14.1 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, including but not limited to installation, inspection and maintenance work at the Customer's premises, or enforcing its rights under this Agreement or any other purpose reasonably incidental thereto or in contemplation thereof.

14.2 All personal data supplied to the Company for the provision of the Service shall be subject to the Company's Privacy Policy Statement as may be amended from time to time, a copy is available upon request or retrieved from the Company's website [www.smartone.com](http://www.smartone.com).

#### 15. LIMITATION OF LIABILITY

15.1 The Service and any other software and equipment provided by the Company is on an "as is" basis. Use of the Service and such software and equipment and information obtained through the Service is at the Customer's own risk.

15.2 Save and except for any liability of the Company which cannot be excluded by law, the Company shall not be liable for any cost, claim, expenses, damage or loss of whatsoever nature suffered, sustained or incurred by the Customer or any person arising from or out of or relating to the provision of the Service, the value added services and/or Service Features offered under the Service including without limitation:

- (i) any interruption or failure of the Service, the value added service and/ or the Service Features due to whatever causes including power failure or any circumstances beyond the reasonable control of the Company, or
- (ii) any failure, delay or mistake in establishing communication between the Customer and any other person, or
- (iii) any failure or delay while the Customer is communicating any message in the use of the Service; or
- (iv) any failure or delay in activating or deactivating the Service; or
- (v) any unauthorized use of the Customer's communication equipment.

15.3 To the extent permitted by law, the Company disclaims any warranty or responsibility, whether expressed or implied:

- (i) as to the title, fitness for a particular purpose, merchantability, accuracy, standard of quality or performance of the Service;
  - (ii) the Service will be uninterrupted, error free or free of any contaminating or destructive properties;
  - (iii) as to any results obtained from using the Service.
- 15.4 Without prejudice to Clauses 15.2 and 15.3, the Company does not guarantee that the provision of the Service including those supplied by third party will be connected successfully or meet the Customer's requirements. The Company will not be responsible for the transmission of the Service over any other network or beyond the termination of the Company's network (which includes all facilities and associated equipment used in, or in connection with network).
- 15.5 The Company shall under no circumstances be liable for any loss (whether direct or indirect) of revenue, loss of profits or any consequential loss whatsoever suffered, sustained or incurred by the Customer or by other person arising (directly or indirectly) from or out of or relating to the provision of the Service or this Agreement.
- 15.6 Information supplied through the value-added services are supplied by third party information providers. The Company and the third party information provider make no warranties of any kind in relation to the information provided and accept no responsibilities for its accuracy or completeness and/or consistency or for any loss or damage whatsoever and howsoever suffered or incurred by any party. With the use or access to the information provided, the Customer or any party irrevocably and unconditionally accepts and agrees to be bound by this disclaimer.
- 15.7 The Service cannot run properly in case of power failure, hence it is not suitable for connection to Personal Emergency Link Service or for users relying on Personal Emergency Link Service.
- 15.8 The Service will be failed, interrupted, delayed or suspended in case of power failure or such any other situation beyond the Company's reasonable control. The Company shall in any such case resume the provision of the Service as quickly as practicable. In such situation, calls may temporarily not be able to be connected to, including, without limitation, 'Subscriber Input Terminal' of Hong Kong Jockey Club and emergency numbers through the Service. The Company accepts no liability for any loss and damage thereof (whether direct or indirect).
16. VARIATION
- 16.1 The Company shall be entitled, at any time, or from time to time, by giving prior notice to the Customer, to vary all or any of these terms and conditions and to impose new terms.
17. ASSIGNMENT



- 17.1 The Customer shall not assign, transfer, convey, license or otherwise dispose of any of its rights and obligations under this Agreement to any other party without the prior consent of the Company.
- 17.2 Consent will only be given by the Company on condition that the Customer and the transferee signing a transfer agreement in the form specified by the Company and the Customer settling all outstanding charges under this Agreement.
- 17.3 The Customer shall not assign, transfer, convey, license or otherwise dispose of the service number which has been allocated by the Company to the Customer for the use of the Service.
- 17.4 The Company may appoint a third party to provide the Service to the Customer on the Company's behalf or to perform any of the Company's obligations under this Agreement.
- 17.5 The Company may appoint a third party, including an Affiliate, to provide the Service to the Customer on the Company's behalf or to perform any of the Company's obligations under this Agreement. For the purpose of this Clause, "Affiliate" means, an entity which directly or indirectly controls, is controlled by, or is under common control with the Company.

## 18. APPLICABLE LAW

- 18.1 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.

## 19. FORCE MAJEURE

- 19.1 The Company shall not be liable for any loss or damage resulting from delay or failure to perform this Agreement 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, lightening, earthquakes and other natural calamities

## 20. NOTICES

- 20.1 Any notice or consent 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 the Agreement or any address as notified by the Customer or by electronic means addressed to the Customer. Such notice or consent shall be deemed to have been received by the Customer immediately if transmitted by facsimile or electronic means or when personally delivered and twenty-four (24)

hours after despatch if sent by post.

## 21. NON-WAIVER

21.1 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.

## 22. SEVERABILITY

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

## 23. ENTIRE AGREEMENT

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

23.2 Save for Clause 16, this Agreement may only be amended in writing and signed by or on behalf of the Company and the Customer.

## 24. INTERPRETATION

24.1 Reference 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.

24.2 The terms and conditions of this Agreement are written in both English and Chinese. A copy of the terms and conditions are available upon request at any of the Company's stores or by calling the Company's hotline or retrieved from the Company's web site.