

Terms & Conditions T&C-D030
emporiaELEGANCEplus Contract Term & Bonus



1) Term:

emporiaELEGANCEplus Contract Term = 24 months

Previous Contract Term = on the date of this Sales and Services Agreement, the Customer already signed a fixed term contract.

Term = Outstanding months under unexpired Previous Contract Term + emporiaELEGANCEplus Contract Term (if applicable).

2) Service Plan

2.1 The Customer shall use the following applicable Service Plan specified in the Sales and Services Agreement during the Term:

Monthly Service Plan	Local Data Charge	Voice Minutes		Thereafter Voice Call Charge	Free Value Added Services
		Basic	Intra		
emporiaELEGANCEplus \$168 Monthly Plan	\$10/5MB (capped at \$680/month)	1200	500	\$0.9 / min	<ul style="list-style-type: none"> • HelpNow on Mobile service • Intra SMS • Voice mail, call forwarding, caller number display, call waiting and conference call

2.2 If the Customer does not notify the Company of termination of the free services specified above prior to the expiry of the Term, the Company shall automatically charge the Customer for the free services specified above at the prevailing monthly fee after the expiry of the Term.

2.3 A refundable prepayment of \$980 is required, which will be credited to the Customer during the Term.

3) Rebate offer

3.1 Credit Amount to be rebated will be credited to the Customer during the Term according to the credit arrangement specified in the Sales and Services Agreement.

3.2 If, on the date of this Sales and Services Agreement, the Account is already subject to an arrangement (each a "Previous Credit Arrangement") under which any sums or charges prepaid by the Customer or the Company are to be credited by the Company to the Account, the crediting of the first installment to the Account by the Company under this Sales and Services Agreement shall be postponed to the date falling 30 days after the date of cessation of: (a) the Previous Credit Arrangement; or (b) if there is more than one Previous Credit Arrangements, the Previous Credit Arrangement with the latest expiry date. The date of cessation of the Previous Credit Arrangement will be deemed to be the date on which the last amount to be credited to the Account under the Previous Credit Arrangement is actually credited to the Account.

3.3 The Credit Amount paid by the Company will only be applied by the Company to meet the Customer's payment obligations to the Company in respect of the Account. However, the Customer cannot set-off any other sum payable to the Company against any part of the Credit Amount payable by the Company to the Account.

3.4 The Credit Amount cannot be exchanged for cash.

3.5 The Company shall not be under any obligation to pay any interest to the Customer on the Credit Amount.

3.6 The Customer shall not be entitled to the Credit Amount or any balance thereof and the free services specified above upon the occurrence of any of the following events before the expiry of the Term:

- a) if the Customer changes to a (i) service plan with monthly fee equal to or below the Service Plan amount specified in the Sales and Services Agreement or (ii) 2G Service Plan or (iii) PayGo Service Plan or (iv) IC2N Service plan; or
- b) if the Customer cancels the auto pay payment method; or
- c) if the Customer subscribes to other special offers, including handset or fixed term contract service plan; or

- d) if the Customer changes the mobile telephone number / the registered name for the mobile telephone number; or
- e) if the mobile telephone service is terminated/disconnected for whatever reason.

4) Liquidated Damages

4.1 Liquidated Damages under emporiaELEGANCEplus Contract Term

The Customer shall pay the Company liquidated damages (which is equivalent to the sum of the monthly fee of applicable Service Plan multiply by the remaining months of the emporiaELEGANCEplus Contract Term) upon the occurrence of any of the following events before the expiry of the iPhone Contract Term:

- a) if the Customer changes to a (i) service plan with monthly fee equal to or below the Service Plan amount specified in the Sales and Services Agreement or (ii) 2G Service Plan or (iii) PayGo Service Plan or (iv) IC2N Service plan; or
- b) if the Customer cancels the auto pay payment method; or
- c) if the Customer changes the mobile telephone number / the registered name for the mobile telephone number; or
- d) if the mobile telephone service is terminated/disconnected for whatever reason.

4.2 Liquidated Damages under Term (i.e. Outstanding months under unexpired Previous Contract Term + emporiaELEGANCEplus Contract Term)

4.2.1 (Where applicable) The Customer shall pay the Company liquidated damages (which is equivalent to the sum of monthly fee of applicable Service Plan multiply by 24) upon occurrence of any of the following events on or before the expiry date of the unexpired Previous Contract Term:

- a) if the Customer changes to a (i) service plan with monthly fee equal to or below the Service Plan amount specified in the Sales and Services Agreement or (ii) 2G Service Plan or (iii) PayGo Service Plan or (iv) IC2N Service plan; or
- b) if the Customer cancels the auto pay payment method; or
- c) if the Customer changes the mobile telephone number / the registered name for the mobile telephone number; or
- d) if the mobile telephone service is terminated/disconnected for whatever reason.

4.2.2 (Where applicable) The Customer shall pay the Company liquidated damages (which is equivalent to the sum of the monthly fee of applicable Service Plan multiply by the remaining months of the Term) upon the occurrence of any of the following events after the expiry of the unexpired Previous Contract Term but before the expiry of the Term:

- a) if the Customer changes to a (i) service plan with monthly fee equal to or below the Service Plan amount specified in the Sales and Services Agreement or (ii) 2G Service Plan or (iii) PayGo Service Plan or (iv) IC2N Service plan; or
- b) if the Customer cancels the auto pay payment method; or
- c) if the Customer changes the mobile telephone number / the registered name for the mobile telephone number; or
- d) if the mobile telephone service is terminated/disconnected for whatever reason.

5) Data Services for emporiaELEGANCEplus Monthly Plan (“Data Services”)

5.1 The data usage applies to local use only. Standard roaming data charge applies during roaming. The data usage is not applicable to BlackBerry handsets unless Customer subscribes to the specified Blackberry service plan.

5.2 The Customer must use the Data Services with settings [including but not limited to the APN setting (only applicable to data services)] and devices specified by the Company. Customer can check with the Company's front-line staffs for the latest information on setting and devices. If the Customer does not follow this specification in the use of the Data Services, the Company has the right to forthwith suspend / terminate the Data Services without notice. Also the Company has the right to charge the Customer use of the Data Services at the Company's prevailing rate.

6) HelpNow on Mobile Service (“HelpNow on Mobile”)

6.1 Please refer to the supplementary terms & conditions for HelpNow on Mobile (Exhibit A).

7) Fair Usage Policy

7.1 The following terms and conditions apply to telecommunication services ("Services") provided by SmarTone Mobile Communications Limited ("the Company").

- a) The Company will ensure the system resources of the Company's telecommunications network ("Network") is equitably allocated amongst users ("Users") of the Services.
- b) Customer who has reached the monthly local data fair usage level specified by the Company from time to time can still continue to use the Services. However, the Customer will be given lower priority to access the network resources for the remainder of the billing period, where the Customer's experience may be affected when the network traffic is busy, but in any event the data access speed (upload and download) will not be restricted to less than 128kbps.

Supplementary - Terms & conditions for HelpNow on Mobile Service

1) Usage Conditions

1.1 HelpNow on Mobile can only be used on Smartphones or mobile phones specified by the Company.

2) Scope of HelpNow on Mobile service (“the Service”)

- 2.1 The Service will provide the Customer or users designated by the Customer (“User”) with access to Cantonese, Mandarin and English speaking response team co-ordinators (“HelpNow Response Team”) via certain designated service numbers only.
- 2.2 The HelpNow Response Team shall provide assistance in response to request from the Customer or User and may call other service providers such as police, fire service, ambulance service or any other institution, organization or company that the HelpNow Response Team considers fit in the circumstances (“Third Party Service Providers”) by the quickest possible means to assist the Customer or the User. However, the Company does not guarantee that these Third Party Service Providers will respond in a timely manner or at all. The Company may also record and monitor the conversation between the HelpNow Response Team, the Customer or the User and the Third Party Service Providers.
- 2.3 It is the Customer’s / User’s responsibility to ensure the accuracy of the personal information provided to the Company and to immediately update any changes to the information via the Service application update tools.
- 2.4 The Customer or the User must give complete and accurate user information to the HelpNow Response Team when using the Service so that a comprehensive response and assistance can be provided by the HelpNow Response Team.
- 2.5 The Service is NOT A SUBSTITUTE FOR 999 or other EMERGENCY HELPLINES.
- 2.6 The Service is NOT a directory service.
- 2.7 The Service does not include voice minutes (local Hong Kong), Roaming / IDD charges or any data usage entitlement. The Customer or the User should activate voice call and data connection (GPS, data and other relevant features) on his/her phone for the use of the Service. The Customer is responsible for all charges for such voice and data usage whether in Hong Kong or outside Hong Kong.
- 2.8 The Customer must have Smart IDD and Data Roaming Services for use of the Services outside Hong Kong.
- 2.9 The User can designate person(s) (“User Authorized Person(s)”) to check on the User’s location. HelpNow Response Team will provide information on the location of the User in response to request from the User Authorized Person(s). The User must immediately notify the Company on any changes to the User Authorized Person(s).
- 2.10 The Company does not guarantee that the Service would be available everywhere at all times, given the nature of cellular, GPS coverage and other technical or non technical factors.

3) Use of Service

- 3.1 The Customers agrees:
- 3.1.1 to use the Service for personal and non commercial use only;
- 3.1.2 not to use the Service for any fraudulent, unlawful, or abusive purpose or in anyway that interferes with the Company provision of the Service to other customers. The Customer shall be solely liable for any consequences, losses, damages, to the Company and any other person directly or indirectly by behavior described in this clause;
- 3.1.3 that the use of the Service is associated with the designated service number connecting to the device equipped with access to the Service method stated on Clause 1.1. Customer is responsible for any use of the Service associated to the device whether or not the Customer is the person using the device. The Customer is solely responsible for the safe-keeping of the device with access to the Service and responsible for the use of the Service through the device whether by the Customer or the User or by any other person with or without the

Customer's consent;

3.1.4 not to use the Service for any fraudulent or unlawful purpose.

4) Customer User Location

- 4.1 The Service is able to track the Customer's / User's approximate location. The Customer and the User hereby give their explicit consent that the Company can collect the Customer's / User's appropriate location information for the provision of the Service and use and transfer such information to third parties including but not limited to government department, police, fire services, ambulance services, hospital, the Customer's / User's registered emergency contact persons, User Authorized Person(s) during the course of emergency situations and, whenever and whatever is needed to provide the Service.
- 4.2 Information on the Customer's / User's location will be collected by the Company on a periodic or regular basis whenever the Customer's / User's device is turned on.
- 4.3 Information on the Customer's / User's location provided by the Company only serve as a reference of the Customer's / User's approximate location. The Company does not guarantee the accuracy of the location. Further, availability of the location information depends on various factors including but not limited to GPS, cellular network coverage, weather and other technical or non-technical factors.

5) Personal Data (Privacy) Ordinance

- 5.1 The privacy of the Customer is important to the Company. The Company has developed a Privacy Policy that covers how it collects, use, discloses, transfers and stores customers' information. Please visit the website at smartone.com for full details of the Company's Privacy Policy.

6) Intellectual Property Rights

- 6.1 The design of the Service along with service features specified above ("Applications") and the trademarks, service marks and logos contained therein ("Marks") are owned by the Company and is protected by applicable intellectual property laws including but not limited to copyright. Except to the extent permitted by law, the Customer shall not use such Applications and/or Marks in any way whatsoever except for use of the service. The Customer shall not modify, rent, lease, loan, sell, distribute or create derivative works based on the Applications in any manner.

7) Rights of the Company

- 7.1 The Company reserves the right at its absolute discretion to terminate the Service without notice for any breach or non-compliance of the terms and conditions herein.

8) Limitation of Liability

- 8.1 The Company undertakes to exercise due care and diligence when contacting the Third Party Service Providers to assist the Customer or the User. The Company assumes no responsibility for any advice given by such Third Party Service Providers and the Customer and the User shall not have any recourse against the Company by reason of its contact with the Third Party Service Providers or other determination resulting therefrom.
- 8.2 The Company does not assume any liability for:
 - 8.2.1 any interpretation of coverage of the Service;
 - 8.2.2 fraud committed by or misrepresentation made by the Customer/User;
 - 8.2.3 any information or data given by a Customer or the User;
 - 8.2.4 any errors, defects, problems or mistakes in the data or information provided by the Company or the Third Party Service Provider through the Service.
- 8.3 The Company shall under no circumstances be liable whether in contract, tort, statute or otherwise (including without limitation for negligence, breach of contract, defamation) for any special, direct, indirect or consequential loss or damage (including without limitation, loss of revenue, loss of data, goodwill) which is suffered, sustained or incurred by the Customer, or any person arising (directly or indirectly) from or out of or relating to the Service.



9) Applicable Law

- 9.1 Customers should comply with the laws of the Hong Kong Special Administrative Region applicable for the use of the Service.
- 9.2 The Customers expressly agree to the exclusive jurisdiction of the courts of Hong Kong Special Administrative Region for any disputes over the use of the Service.