

Terms and Conditions T&C-V163
Contract Term for SmarTone **Phishing Alserter** Service

SmarTone

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The following terms and conditions (the “**Terms and Conditions**”) are supplemental to the Sales and Services Agreement and the terms and conditions of SmarTone Mobile Communications Limited (the “**Company**”) for Mobile Telephone Service (please refer to T&C 01 published at www.smartone.com). **By use of the Services (as defined below), the customer of the Company (the “Customer”) agrees to accept and be bound by the Terms and Conditions.** The Company reserves the right to revise the Terms and Conditions at any time, with or without prior notice. **By continuing to use the Service, the Customer agrees that the amended and restated terms and conditions will apply to him/her. The Customer must not subscribe to the Service if the Customer does not accept all of the Terms and Conditions:**

1. Service

- 1.1. The Service is only available to the Customers who have subscribed to the Company’s mobile monthly service plan and could satisfy any other requirements as the Company may impose from time to time for the purpose of activating the Service.
- 1.2. Notwithstanding anything contained in the Terms and Conditions, the Company reserves the right not to activate the Service for any reasons.
- 1.3. By subscribing to the Service, the Customer agrees that the Company may deliver an alert to the Customer any time when the Company reasonably suspects that the Customer receives a suspicious SMS (the “**Service**”). The Company does not support any personalized settings for the Service.
- 1.4. The Service is available for the period specified in the Sales and Services Agreement unless otherwise suspended or terminated earlier in accordance with the Terms and Conditions (the “**Term**”). The Term shall start from the service effective date. The Service fees are charged on a monthly basis and **are not refundable under any circumstances**. Fees relating to the Service will be reflected in the monthly bill.
- 1.5. **The Company will automatically renew the Service on a monthly basis upon the expiry of the Term and will charge the Service at the prevailing price that is specified by that time, unless (a) the Customer notifies the Company the otherwise before the expiry of the Term or any renewed term (if any); (b) the Company ceases to offer the same service plan and/or designated value-added service.** This auto-renewal arrangement shall be subject to the Company’s final and absolute discretion. **For the avoidance of doubt, Rebate (if any) (see clause 2 below) is not applicable to the Service during any renewed term.**
- 1.6. The Customer understands, confirms and agrees that the Service is provided by the Company on an “as is” and “as available” basis. The Company makes no representations or warranties of any kind (express or implied) with respect to the provision of the Service including but not limited to the suitability for a particular purpose, availability, quality, nature, accuracy and usefulness or the content or functions of the Service. The Company does not warrant the following:
 - 1.6.1. the Service will meet the requirements of the Customer;
 - 1.6.2. the Service will be uninterrupted or delivered timely, securely or error-free,
 - 1.6.3. the results or information that obtained from use of the Service will be accurate or reliable; and
 - 1.6.4. the quality of any services, information or other materials obtained through the Service will meet the Customer’s expectation.
- 1.7. The Customer understands and agrees that the provision of the Service is subject to availability and the discretion of Company, and is only available until such date as the Company may determine and may be rescinded at any time. If the Service is no longer available to be provided for whatever reasons, the Company reserves the right to terminate the Service, while the Company will strive to give reasonable and feasible notification 30 days prior to the change. Any refund shall be subject to the sole discretion of the Company.

2. Rebate (if applicable)

- 2.1. Any Credit Amount (if applicable) to be rebated to the Customer will be credited to the Customer during the Term according to the credit arrangement specified in the Sales and Services Agreement (or Supplemental Agreement to the Sales and Services Agreement).
- 2.2. The Credit Amount will be credited to the monthly bill of the Customer’s Account. The first Credit Amount will be credited to the first monthly bill after the service effective date unless otherwise specified.
- 2.3. If, on the date of the 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.
- 2.4. The Credit Amount paid by the Company will only be applied by the Company to meet the Customer’s payment obligations of 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.
- 2.5. The Credit Amount cannot be exchanged for cash or any other form of compensation, whether in kind or otherwise.
- 2.6. The Credit Amount shall not carry interest. The Company shall not be under any obligation to pay any interest to the Customer on the Credit Amount.
- 2.7. The Customer shall not be entitled to the Credit Amount or any balance thereof upon the occurrence of any of the following events under before the expiry of the Term:
 - 2.7.1. if the Customer changes to a (a) service plan with monthly fee equal to or below the Service Plan amount specified in the Sales and Services Agreement (or Supplemental Agreement to Sales and Services Agreement) or (b) non-

specified service plan in the Sales and Services Agreement (or Supplemental Agreement to Sales and Services Agreement); or

2.7.2. if the Customer cancels or changes the Service; or

2.7.3. if the Customer enjoys special phone offer; or

2.7.4. if the Customer changes the mobile telephone number / the registered name for the mobile telephone or broadband account; or

2.7.5. if the mobile service plan is terminated / disconnected for whatever reason; or

2.7.6. if at the request of the Customer or for whatever reason caused by the Customer, the mobile telephone services cannot be activated within 90 days from the date of the Sales and Services Agreement.

3. Early Termination Fee (if applicable)

3.1. **The Company reserves the right to charge an early termination fee (which is equivalent to the sum of the monthly fee of the Service multiplied by the remaining months of the Term) upon the occurrence of any of the following events before the expiry of the Term:**

3.1.1. if the Customer changes to (a) a service plan with monthly fee equal to or below the Service Plan amount specified in the Sales and Services Agreement (or Supplemental Agreement to Sales and Services Agreement) or (b) a non-specified service plan in the Sales and Services Agreement (or Supplemental Agreement to Sales and Services Agreement); or

3.1.2. if the Customer cancels the service; or

3.1.3. if the Customer changes the mobile telephone number or the registered name for the mobile telephone number; or

3.1.4. if the mobile service plan is terminated / disconnected for whatever reason; or

3.1.5. if at the request of the Customer or for whatever reason caused by the Customer, the mobile telephone services cannot be activated within 90 days from the date of the Sales and Services Agreement.

4. Suspension and Termination

4.1. Subject to clauses 4.2 and 4.3, the Company may terminate the Service by providing the Customer with not less than three (3) working days' prior written notice.

4.2. The Company may terminate the Service with immediate effect and without notice: (a) if, in the Company's opinion, providing the Service to the Customer would cause the Company to be in breach of any applicable law, sanction or requirement of any competent authority; (b) if the Company is required to do so in compliance with any law, sanction or requirement of any competent authority or the Company's internal policy or (if applicable) (c) in the event the third party stops providing the Company with any part of the Service. Upon such termination, any obligation due by the Customer to the Company shall become immediately due and payable.

4.3. The Company may suspend or restrict the Service in whole or in part (without prejudice to its right under clause 4.2) for any reasons without prior notice to the Customer until the earlier of the end of the Term or any renewed term (if any) of the Service or such other date which the Company may determine, including without limitation where: (a) to carry out system maintenance, upgrading, testing and/or repairs; (b) if the Company is of the opinion that such action is appropriate as a result of your use of the Service; (c) for any reason the Company deems relevant to the management or the operation of any of the Service and the Company's business; (d) the provision of the Service and/or any other services provided by the Company is the subject of any dispute or third party claim; (e) the Customer could not comply with any of any other requirements which the Company may reasonably impose; (f) if the Company is required to do so in compliance with any law, sanction or requirement of any competent authority or the Company's internal policy; (g) (if applicable) the third party stops providing the Company with any part of the Service and (h) if the Company discovers or reasonably suspects that (i) any information which the Customer provides is inaccurate, incomplete, false or misleading in any respect; and/or (ii) the Customer might have participated in any illegal, fraudulent, suspicious, deceptive, abusive or unfair behaviours or otherwise breaching the terms and conditions of the Company or applicable laws and regulations.

4.4. **The Customer shall not claim any refund for any reason and the Company shall not be responsible for, or liable to, the Customer for any loss or damage, arising from the suspension or termination of the Service arising from this clause.** The Company reserves the right to charge for reconnection (if applicable).

5. Intellectual Property Right

5.1. The design of the Service along with any service features (the "Applications") and the trademarks, service marks and logos contained therein (the "Marks") are owned by the Company and are 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.

6. Privacy Policy

6.1. By using the Service, the Customer agrees and accepts that the Company collects, uses, discloses their personal data for the administration of the Service and all purposes related to the Service. The Customer has carefully read, understood and agreed to the content contained in the Company's Privacy Policy and agrees to be bound by them. For details please visit smartone.com/privacypolicyen.

6.2. The Company will do its best to keep the Customer's privacy safe, but the Customer is advised to protect his/her own personal information carefully.

7. The Customer's Undertakings

7.1. The Customer expressly agrees and undertakes that he/she:

7.1.1. must comply with the laws of Hong Kong Special Administrative Region ("**Hong Kong**") that apply to his/her use of the Service.

7.1.2. must only use the Service for his/her personal use;

- 7.1.3. must not use the Service for any of the following acts and/or purposes: (a) involves or allows any act or content that infringes the rights, copyrights or intellectual property rights of third parties; (b) involves or allows any unlawful, improper, obscene, indecent, immoral, defamatory, fraudulent or dishonest use, misleading, discriminatory, incitement to hatred, sedition, separatism, endangering public order or endangering national security; (c) involves or allows hacking, attacks, interference with or unauthorized access to, use of, or access to any other third party device, device, facility, system, website, web page, information or content; (d) receive, copy, publish, distribute, transmit or circulate or make any use of illegal or unauthorized content; or (e) involves or permits any storage, use or downloading of any tools or software for the purpose of collecting any address or IP address, any personal data or any unauthorized information.

8. Limitation of Liability

- 8.1. **The Company shall under no circumstances be liable whether in contract, tort, statute or otherwise (including but not limited to negligence, breach of contract and defamation) for any special, direct, indirect or consequential loss or damage (including but not limited to loss of revenue, loss of data or goodwill) which is suffered, sustained or incurred by the Customer, or any person (directly or indirectly) arising from or relating to the Service.**
- 8.2. The Customer expressly relieves the Company from any and all liabilities arising from the access or use of any part of the Service.

9. Force Majeure

- 9.1. The Company shall not be liable for any loss or damage resulting from delay or failure to perform the Terms and Conditions 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, lightening, earthquakes and other natural calamities.

10. Miscellaneous

- 10.1. If any provision of the Terms and Conditions is found to be invalid, illegal, or unenforceable in any applicable jurisdiction, such provision shall be deemed severed from the Terms and Conditions to the extent of such invalidity, illegality, or unenforceability, without affecting the remaining provisions hereof, which shall continue in full force and effect.
- 10.2. The Customer shall ensure its systems and equipment are compatible for the use of the Service. The Company shall not be liable to support the Service if the Customer's systems or equipment are incompatible with the Service.
- 10.3. Any person who is neither the Customer nor the Company shall have no right to enforce any term of the Terms and Conditions under the Contracts (Rights of Third Parties) Ordinance (Chapter 623 of the Laws of Hong Kong).
- 10.4. The Terms and Conditions and all matters related to the Terms and Conditions are governed by, and shall be construed in accordance with, the laws of Hong Kong and the Customer shall irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of Hong Kong for any claim or dispute with the Company relating in any way to the use of the Service.
- 10.5. If any dispute arises, the Company's decision shall be final.
- 10.6. **In the event of any discrepancy between the English and Chinese versions of the Terms and Conditions, the English version shall prevail.**