

Terms & Conditions for Messaging Service (T&C-SMS001)

Terms and Conditions:

1. The Service

- 1.1 SmarTone Mobile Communications Limited (“the Company”) agrees to provide Messaging Service (“Service”) 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 in the Agreement and due performance and observance of the other terms herein and in the Agreement.
- 1.2 The Service shall normally be provisioning within four (4) to six (6) weeks when the Company receive all necessary documents from the Customer. The service activation date will be actual date of delivery. The Customer should give the written notification to the Company for the account configuration or setting within three (3) weeks from the actual date of delivery. The Service will be deemed accepted automatically after three (3) weeks from actual date of delivery if there is no written notification to the Company
- 1.3 The Customer must keep all information relating to the Customer’s account (“Customer Account”) up to date at all times. The Customer is responsible for all activities that occur under the Customer Account, regardless of whether the activities are undertaken by the Customer, its employees or a third party and the Customer must keep all Customer’s Account information (including the Company’s password and account name) and authorization credentials confidential and secure at all times. Except to the extent caused by breach of this Agreement by the Company, the Company is not responsible for unauthorized access to the Customer’s Account. The Customer will contact the Company immediately if it believes an unauthorized third party may be using its account or if its account information is lost or stolen.

2. Customer’s Obligations

- 2.1 The Customer agrees to use the Service for a fixed period of time (“Term”). In the event of early termination of the Service for whatever reason, the Customer shall pay the Company liquidated damages as specified in the Agreement. Termination or change of service plan is not allowed within the Term.
- 2.2 The Customer undertakes to use the Service 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 relevant government department or other competent authorities.
- 2.3 Without limitation to the generality of the foregoing, the Customer undertakes not to use the Service:
 - (i) for the transmission of any messages which is or intended to be (a) for fraudulent or illegal purpose; or (b) a hoax call to emergency services; or (c) of a defamatory, offensive or abusive or of an obscene or immoral nature or menacing character; or (d) to disparage products or services supplied by the Company or invite customers to replace them; or (e) for mail-spanning; or (f) for unsolicited advertising or promotion information unless with the prior written consent of the recipient, or
 - (ii) in a manner which constitutes a violation or infringement of the rights of any person, firm or company (including but not limited to rights of copyright or confidentiality) or a violation or infringement of any statutory duty or obligation or any duty or obligation in contract, tort or otherwise, to any third party. The Customer shall indemnify and keep indemnified and hold free and harmless the Company against all liabilities, claims, damages, loss and proceedings arising out of or in any way connected with any such use.
- 2.4 If any free service relating to the Service is offered to the Customer under special offers and the Customer does not notify the Company of termination of such service prior to the expiry of the free service period, the Company shall automatically charge the Customer for the relevant service at the prevailing monthly fee for such service after the expiry of the free service period.

3. Customer Apparatus

- 3.1 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 for the use of the Service (collectively “Customer Apparatus”).
- 3.2 The Customer shall ensure at all times that the Customer Apparatus 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 and/or use of the Service without notice if the Customer does not fulfill the obligations under this Clause 3 or if in the opinion of the Company the Customer’s use of the Service would materially impair the quality of any of the Service or any telecommunication service provided by means of the Company’s network.

4. User ID and Password

- 4.1 The Company shall assign a User ID and Password to the Customer for the use of the Service.
- 4.2 The Company shall have the right to withdraw the User ID and Password and forthwith assign a new User ID and Password to the Customer at no extra charge where the Company has reason to believe the User ID and Password has been discovered and/or used by a person without the knowledge, consent, permission, expressed or implied, of the Customer, its servants, employees or agents and on such other occasion as the Company shall deem necessary in its reasonable opinion.
- 4.3 The Company shall have the right to withdraw the User ID and Password from the Customer:
 - (i) if the Agreement and/or this Supplemental Agreement is terminated; or
 - (ii) where in the Company's opinion there are reasonable grounds for believing the Customer has not complied, is not complying or is likely not to comply with its obligations under the Agreement and/or this Supplemental Agreement.
- 4.4 The Customer shall keep the User ID and Password confidential and shall not reveal or disclose the User ID and Password to any person except to its authorized employees or agents whose names have been prior notified in writing by the Customer to the Company.
- 4.5 The Customer shall:
 - (i) use the User ID and Password in accordance to the instructions given by the Company to the Customer from time to time; and
 - (ii) notify the Company immediately where there are grounds for suspecting or believing that a third party is using the User ID and Password without the knowledge, consent or permission of the Company, the Customer or its servants, employees or agents; and
 - (iii) be responsible for all charges incurred through use of the Service when use/access to the Service is obtained through the use of the User ID and/or Password.
- 4.6 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 unauthorized usage of the Service. This obligation of confidentiality shall survive the termination of the Agreement and/or this Supplemental Agreement.

5. Billing and Settlement

- 5.1 The Service provided under this Agreement will be charged and settled. All Costs and Charges will be invoiced and paid in Hong Kong Dollars unless. The Customer will pay the Charges within thirty (30) days from the date of the Company's invoice.
- 5.2 The Costs and Charges set out are exclusive of any applicable taxes, tariff surcharges or other like amounts assessed by any governmental entity arising as a result of the provision of the Service under this Agreement (collectively "Taxes"). In addition to all other fees and amounts payable hereunder, the Customer shall pay any and all Taxes.
- 5.3 The Company and the Customer agree that the Charges will change from time to time. The Company may amend the Charges by giving fourteen (14) days prior written notice to the Customer.

6. Suspension of the Service

- 6.1 The Company may, without termination this Agreement and without liability, immediately suspend part or all of the Service until further notice if the Company:
 - (i) would be permitted to terminate this Agreement under Clause 7; or
 - (ii) is obliged to comply with an order, instruction or request of government, emergency services organization or other competent authority; or
 - (iii) needs to maintain or upgrade its network; or
 - (iv) repair a fault in its network or in any network equipment as a result of any unplanned outage or any other reason beyond the Company's control.
- 6.2 The Company will endeavor to give the Customer the maximum period of notice practicable in the circumstances if it needs to suspend the Service.
- 6.3 If the Company suspends the Service due to any event in Clause 6.1, this will not exclude its right to terminate this Agreement later in respect of that or any other event.

7. Termination/Disconnection of Service

- 7.1 Without prejudice to any other rights or remedies it may have (whether under this Agreement or at law), the Company may terminate this Agreement, or may disconnect the provision of the Service, immediately by serving written notice on the Customer if:
 - a) any license, consent or approval required in connection with the Service is revoked, withdrawn, suspended or expires (without a replacement license being granted immediately); or

- b) the Customer commits a breach of any of the terms and conditions of this Agreement and fails to remedy the same (if capable of remedy) within fourteen (14) days of being required in writing so to do; or
 - c) the Customer is unable to pay its debt as they fall due or enters into liquidation whether compulsory or voluntary or compounds with its creditors generally or has a receiver appointed of all or any part of its assets or suffers any similar action in consequence of debt; or
 - d) the Company suspects fraud or misuse of the Service by the Customer, or any person, regardless of whether the Company consented to or had knowledge of such fraud or misuse.
- 7.2 Data stored or saved at or by means of the Service will be erased without prior notice upon the termination or disconnection of the Service and the Company is not liable whatsoever for the loss of such data stored or saved at or by means of the Service.
- 7.3 The Company may upon the Customer's request reconnect the Service after termination or disconnection of the Service subject to the payment by the Customer of:
- (i) all sums due or owing to the Company;
 - (ii) 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 at its sole and absolute discretion.
- 7.4 Either Party may terminate this Agreement at any time without cause by giving 30 days written notice to the other Party.
- 7.5 If this Agreement is terminated by the Customer pursuant to Clause 7.4 or by the Company pursuant to Clause 7.1(b) or Clause 7.1(c) before the expiry of the Term (as described in Clause 2.1), then the Customer shall pay the Company liquidated damages as stipulated in the Company's Sales & Services Agreement. The liquidated damages is an agreed reasonable pre-estimate of the anticipated losses suffered by the Company if the Service is terminated before the expiry of the Term.
- 7.6 The expiration or termination of this Agreement shall not relieve either Party of any liability for breach of this Agreement or as may otherwise be established or affect the rights of the Parties which have accrued prior to the date of termination.

8. Use of Service

- 8.1 The Customer shall:
- (a) use the Service in accordance with the Agreement and all Relevant Law (For the purpose of this Agreement "Relevant Law" means any law, rule or regulation of Hong Kong or any country which is applicable to the Company, the Customer and the Customer's use of the Service; obligations and conditions under any Service; any lawful determination, decision or direction of a government agency in Hong Kong or any country which is applicable to the Company, the Customer and the Customer's use of the Service; and any applicable international convention or agreement); and
 - (b) not directly or indirectly use the Service in any manner that would cause the Company to be in breach of any Relevant Law; and
 - (c) not use the Service:
 - (i) for any improper purposes or for the purpose of sending any unsolicited advertising material or any material of an obscene, indecent or defamatory nature; or
 - (ii) in any manner which is unauthorised, fraudulent, suspicious or illegal, whether under any Relevant Law or otherwise; or
 - (iii) in a manner which constitutes an infringement of the rights of any person (including but not limited to copyrights 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; and
 - (d) 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 any telecommunication service or network of a third party; and
 - (e) promptly notify the Company of:
 - (i) any breach or unauthorised activity above, in relation to the Service of which the Customer becomes aware; and
 - (ii) any fault in the Service or deterioration in the quality of the Service; and
 - (iii) comply with directions given by the Company from time to time in relation to :
 - (iv) modifications required to any apparatus or other action necessary to be taken to eliminate any interference, impediment or impairment to the Service; or
 - (v) any use of the Service that is reasonable or prudent to ensure that the Customer complies with this Clause 8; and
 - (f) not resell the Service to any third party by whatever means.

9. Confidentiality

- 9.1 Each Party agrees to keep and procure to be kept secret all the Confidential Information obtained from the other Party pursuant to this Agreement or prior to it.
- 9.2 Each Party shall not at any time divulge, disclose or otherwise furnish to any third party any information relating to the affairs or business of the other Party.
- 9.3 Each Party shall reveal the Confidential Information only to its employees or contractors to whom disclosure is necessary for each of them to perform his duties for the purpose of this Agreement. Each Party shall impose the above obligation of confidentiality on its employees and contractors.
- 9.4 The foregoing obligations shall not apply, however, to any part of the Confidentiality Information which:
 - (a) was already known to the recipient Party prior to receipt thereof;
 - (b) was already in the public domain or becomes so through no fault of the recipient Party;
 - (c) was acquired by the recipient Party from a third party having the right to convey the Confidential Information to the recipient Party without any obligation of confidentiality not to disclose the same;
 - (d) is independently developed by the recipient Party;
 - (e) is approved for release by prior written authorization by the owner of the Confidential Information; or
 - (f) is required to be disclosed by law or pursuant to a judicial order.
- 9.5 Subject to Clause 9.4 above, these obligations of confidentiality shall survive without any limitation of time.

10. Application Data Retention and Usage

- 10.1 The Company will not reveal, share or distribute any application data of the Customer ("Customer Data") except as may be required by law. The Company may access Customer Data only for the purposes of providing the Service, preventing or addressing service or technical problems, at the Customer's request in connection with customer support matters or as may be required by law.
- 10.2 For general practice, all Customer Data will be kept for one (1) month. The Company will have no obligation to maintain or provide the Customer Data for export or download, and may thereafter delete or destroy all copies of Customer Data in the Company's systems or otherwise in the Company's possession or control.

11. Exclusion of Liability

- 11.1 The Company will not reveal, share or distribute any application data of the Customer ("Customer Data") except as may be required by law. The Company may access Customer Data only for the purposes of providing the Service, preventing or addressing service or technical problems, at the Customer's request in connection with customer support matters or as may be required by law.
- 11.2 The Company makes no warranty, express, statutory or implied, including without limitation, the warranties of satisfactory quality of the Service provided hereunder, merchantability or fitness for a particular use or purpose.
- 11.3 The Company do not warrant or guarantee a fault free Service and give no warranties or guarantees as to network coverage, quality or availability. In the event of a fault, upon becoming aware of the fault or upon receipt of notice of the existence of such a fault by you, we shall use reasonable efforts to promptly correct the fault.
- 11.4 The Company makes no warranty, express, statutory or implied, including without limitation, the warranties of satisfactory quality of the services provided hereunder, merchantability or fitness for a particular use or purpose.
- 11.5 The Customer shall indemnify the Company, its employees and agents against any loss or damages which the Company suffers or incurs in connection with the Agreement, including but not limited to loss or damage resulting directly or indirectly from:
 - (a) any act or omission (whether or not negligent) of the Customer;
 - (b) any claim by any person relating to supply of the Service or its use by the Customer or any other person or any delay or failure to provide the Service;
 - (c) a breach of the Customer of the Agreement;
 - (d) any claim by any person or liability of the Company under any Relevant Law in relation to the supply of the Service including in relation to any content transmitted using the Service (including any claim for infringement of any intellectual property right in any trade mark or design) or any claim arising directly or indirectly out of or relating to the use of the Service to carry material of obscene, indecent or defamatory nature, other than to the extent that it is the result of the wilful breach of the Agreement by the Company.
- 11.6 The Company shall indemnify the Customer, its employees and agents against any loss or damages which the Customer suffers or incurs in connection with the Agreement, including but not limited to loss or damage resulting directly or indirectly from:
 - (a) any act or omission (whether or not negligent) of the Company;
 - (b) any claim by any person relating to supply of the Service or any delay or failure to provide the Service;

- (c) a breach of the Company of the Agreement;
- (d) any claim by any person or liability of the Customer under any Relevant Law in relation to the supply of the Service.

- 11.7 Nothing in the Agreement excludes or restricts a Party's liability for death or personal injury resulting from the negligence of that Party.
- 11.8 Notwithstanding any other provision of this Agreement, the Company shall not be liable to the Customer, if changes in any of the Company's facilities, operations procedures or services:
- (a) render obsolete any equipment or software provided by the Company or the Customer in conjunction with its use of the Service; or
 - (b) require modification or alteration of such equipment or software; or
 - (c) otherwise affect the performance of such equipment or software.
- 11.9 The Customer acknowledges that the Service is dependent on the interconnection of the Company's services with the services of third parties and third parties' products and services. The Company does not warrant that the Service will work with such third party's services or products. The Company shall under no circumstances be responsible for any consequential, indirect or special loss or damage incurred by the Customer which are caused directly or indirectly by any act, omission, fault or conduct on the part of such third party.

12. Applicable Law

- 12.1 The validity and interpretation of this Agreement shall be governed in all respects by 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.

13. Force Majeure

- 13.1 Neither Party shall be liable to each other for loss or damage resulting from delay or failure to perform this Agreement, either in whole or in part, where any 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 for 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, explosion earthquakes and other natural calamities.

14. Assignment

- 14.1 Neither Party shall assign, transfer convey, license or otherwise dispose of, wholly or partially any of the obligations under this Agreement except with the prior written consent of the other Party.

15. Entire Understanding

- 15.1 This Agreement embodies the entire understanding between the Parties in relation to the subject matter hereof and there are no promises, terms conditions or obligations, oral or written expressed or implied other than those contained herein.
- 15.2 No amendment or variation of this Agreement shall be effective unless it is in writing and signed by the Parties hereto.

16. No Partnership/Agency

- 16.1 This Agreement does not constitute one Party as an agent or partner of the other Party for any purpose whatsoever and neither Party is authorised to make any contract agreement warranty or representation on behalf of the other Party or to create an obligation express or implied on behalf of the other Party.

17. Privacy Policy

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

18. Notices

- 18.1 Any notice which either Party is required or authorised by this Agreement to give or make to the other shall be:
- (a) delivered personally; or
 - (b) made by post in a pre-paid letter; or
 - (c) made by facsimile transmission, confirmed by post in a pre-paid letter.
- 18.2 Any notice addressed to the other Party at the address set out in Clause 16.3 or such other address subsequently notified in writing by either Party to the other and shall be deemed for the purpose of this Agreement to have been given.

- (a) in the case of personal delivery, when received;
- (b) in the case of a pre-paid letter on seventh (7th) business day following its dispatch (in the absence of evidence of earlier receipt); and
- (c) in the case of facsimile transmission, when such facsimile transmission is received, unless received after 4 p.m. in which case it shall be deemed received on the next business day.