

## **SHORTCODE MESSAGING SERVICES TERMS AND CONDITIONS**

### **1. DEFINITIONS AND INTERPRETATIONS**

#### **1.1 Definitions**

<b>Affiliate</b>	means in relation to a Party, (i) any entity under the Control of such Party; or (ii) any entity Controlling such Party; or (iii) any other entity under the Control of a controlling entity under (ii) hereof. For the purpose of this definition, the term "Control" (including the correlative meanings of the terms "Controlling", "Controlled by", and "under the Control of"), as used with respect to any Party, means a Party's (a) ownership, directly or indirectly, of equity securities or shares entitling it to exercise in the aggregate of more than fifty percent (50%) of the voting power of the entity in question; or (b) possession directly or indirectly, of the power to direct or cause the direction of the management policies of or with respect to the entity in question, whether through ownership of securities, by contract or otherwise;
<b>Agreement</b>	means these Shortcode Messaging Services terms and conditions, the Service Order Form, together with all addendum, annexures and schedules hereto as amended or supplemented in writing from time to time;
<b>Authorized Traffic</b>	refers to the A2P and/or P2A messages transmitted solely and strictly from Local Source to the Subscribers
<b>Bill</b>	means the statement issued by TM, in the format as determined by TM, to the Customer from time to time in respect of the Services and the term "Bill" shall also include invoice;
<b>Bill's Due Date</b>	means the due date on which payment of the Charges for the Services shall be made by the Customer to TM. For the avoidance of any doubt, the Bill's Due Date of the relevant Bill shall be determined as follows: (a) thirty (30) days from the Bill date; or (b) the date stipulated in the Bill, whichever is the later;
<b>Bulk SMS</b>	means the short messaging service (SMS) disseminated in large numbers via short code(s) assigned by MCMC and/or

the telecommunication service providers who are licensed with Network Service Provider (Individual) ["NSP(I)"] license to Customer for delivery to Subscribers' mobile phones or terminals which will be used by the Customer for the purpose of information on demand, mobile marketing, premium content and notifications only;

**Charges** means charges for the provision of the Services which are payable by the Customer to TM in accordance with the terms of this Agreement;

**CMA** is the acronym for Communications and Multimedia Act 1998, as amended or revised from time to time;

**Commencement Date** means the date when the Services have been activated by TM for use by the Customer;

**Content** means any product or service provided by any content provider;

**Content Code** means the Malaysian Communications and Multimedia Content Code including any subcodes and guidelines, as amended or revised from time to time;

**Commission Determinations** means the Commission Determinations prescribed under Chapter 2 of Part V (Determination) of the Communications and Multimedia Act 1998 including but not limited to Commission Determination on the Mandatory Standards for the Provision of Mobile Content Services and Commission Determination on the Mandatory Standards on Quality of Service (Public Cellular Service);

**Customer** means any person or legal business entity who subscribed for the Services;

**General Consumer Code** means the General Consumer Code of Practice for the Communications and Multimedia Industry in Malaysia, as amended or revised from time to time;

**Inappropriate Content** means any content that:

- (i) is unlawful and prohibited under Malaysian law;
- (ii) is unsolicited, including without limitation, junk mail, bulk e-mail, Spam or other unsolicited advertising

material;

- (iii) causes the introduction of viruses, worms, trojan horses, e-mail bomb, cancelbots, malware or other similar destructive computer programming routines into TM's Service Delivery Platform or the Subscriber's mobile communication devices which are used to access the Services;
- (iv) causes instability or technical damage to TM's Service Delivery Platform or interfere with, damage, disrupt or unlawfully gain access to any service, equipment, network or system owned or used by TM;
- (v) is fraudulent, indecent, obscene, offensive, abusive, threatening, defamatory, discriminatory, menacing, misleading, inaccurate, offensive or libelous;
- (vi) infringes the Intellectual Property Rights (as hereinafter defined) of any person or entity or rights of privacy and personal data protection;
- (vii) has negative impact on the quality of social life and order;
- (viii) which is against public interest, public order, national peace and security and/or national interest, social norms, culture, political and religious belief of the people of Malaysia or those which is socially, ethically or racially offensive; or
- (ix) is deemed inappropriate as announced and issued by the lawful, regulatory, governmental or statutory authority or TM from time to time;

**Intellectual Property Rights**

means all rights conferred under statute, common law and equity and in relation to trademarks, trade names, logos and get up, inventions, patents, designs, copyright, circuit layouts, Confidential Information, know how and trade secrets and all rights and interests in them or licenses to use any of them;

**Local Source**

refers to the source of Bulk SMS which fulfils the following criteria:

- (i) originating from within the geographical boundary of Malaysia; and

- (ii) transmitted for the benefit of the Customers provided that the use of the Services and Content of the Bulk SMS disseminated by such Customers is in accordance with the terms of the Agreement; and
- (iii) the Bulk SMS is not in any way transmitted for the benefit of any Prohibited International Brands as per Schedule 3 or its branches, outlets or subsidiaries;

**Minimum Subscription Period**

means the minimum period for which the Customer shall subscribe the Services, as stated in the Service Order Form or, the period of Twelve (12) months from the Commencement Date, whichever shall be the longer;

**MO**

is the acronym for Mobile Originating;

**MT**

is the acronym for Mobile Terminating;

**MSISDN**

is the acronym for Mobile Subscriber Integrated Services Digital Network-Number;

**PDPA**

means the Personal Data Protection Act 2010;

**Renewal Terms**

means this Agreement shall be renewed automatically upon the same terms and conditions for successive periods of one (1) year for each term, provided that the Customer shall not be in breach of any terms and conditions hereunder;

**Services**

means the Shortcode Messaging Services provided by TM to the Customer in accordance with the terms of the Agreement;

**Service Delivery Platform**

means TM's digital wireless network, servers, hardware, software, applications and/or any other equipment which TM uses to provide the Services;

**Service Order Form**

means TM's standard service order/application form for the relevant Services or such other alternative order/application form as shall be determined and accepted by TM, to be executed by the Customer and TM for the purpose of the subscription of the Services;

<b>Spam</b>	means unsolicited electronic messages sent through various communication modes including but not limited to email, SMS, MMS or instant messaging services regardless of existence of prior relationship between the sender and the recipient and regardless of content whether commercial, non-commercial or messages including malicious program and/or content and/or data including unsolicited messages, videos, advertising, marketing or promotional materials;
<b>Subscribers</b>	means the end user or receiver of the SMS from the Customer; and
<b>Short Messaging Services or SMS</b>	means Short Messaging Services, being short text message sent to and from mobile telephones which text comprises words or numbers or an alphanumeric combination in accordance with the prevailing standards prescribed by GSM Association.

## **2. PROVISION OF SERVICES**

- 2.1 TM agrees to provide the Services to the Customer using either Shortcode Messaging portal or via API integration in which the Customer shall be assigned a username. For API integration, the Customer shall be given access to the Service Delivery Platform to integrate with their own system/applications/database. The Customer agrees that access to the Service Delivery Platform is dependent upon the Customer's system/application/database conforming to the TM's required specifications.
- 2.2 TM shall assign a short code to the Customer and TM shall at its sole and absolute discretion to the best of its ability not change the Short-Code for the full term during which the Services are in force.
- 2.3 TM may, for operational or technical reasons or compliance with any requirement of the relevant Regulatory Authority or other authority, withdraw or change any of the Short-Code allocated to the Customer.

## **3. USE OF THE SERVICES AND PROHIBITION OF SALE/TRANSFER**

- 3.1 When a Short- Code is assigned to the Customer, the Customer will not have any rights to the Short-Code except for the sole purpose of using the Services in accordance with the terms herein. The Customer shall not sell, transfer, agree to sell or agree to transfer the Short-Code to anyone else. The Customer must not apply or try to apply for registration of the Short-Code as any Intellectual Property Rights including without limitation to trademark, whether on its own or with any word or any Mark.

## **4. FEES, CHARGES AND PAYMENT/APPLICABLE TAXES**

- 4.1 The Services will be billed under TM Bill as a Value-Added-Service under the registered TM service number.
- 4.2 The Customer shall, upon the completion of the registration of the Services pay all Charges as may be due and payable in the immediate bill of the registered TM service number for the Services.
- 4.2 TM reserves the right to suspend, or disconnect the Services or any part thereof if any Bill or part thereof shall remain unpaid, provided there is no dispute or error in the Bill, after the Bill's Due Date, and TM shall not be liable to the Customer in any way for the suspension or disconnection thereof.
- 4.4 TM will charge the Customer for every SMS that is successfully sent from the Service Delivery Platform to the respective service provider's SMS gateway.
- 4.6 In the event that the Charges or any part thereof remains unpaid after the Bill Due Date, then notwithstanding other remedies or rights that TM may have under this Agreement, TM shall be entitled to impose late payment charges on the overdue payment at the rate of twelve per centum (12%) per annum , calculated on a yearly rest basis and based on a three hundred and sixty five (365) days and on the number of actual days elapsed beginning the next day of the Bill Due Date until the date of full and final settlement.
- 4.7 All Charges under this Agreement are exclusive of any taxes, levies, duties or similar governmental charges including but not limited to the service tax ("Taxes") required to be paid by law and this charges and Taxes shall be payable to TM by the Customer in full. In the event where Taxes are required to be paid by law, TM is obliged to charge and the Customer shall pay such Taxes in addition to the charges in full.

## **5. MINIMUM SUBSCRIPTION PERIOD**

- 5.1 Customer agrees to subscribe to the Services for the duration of the Minimum Subscription Period.

## **6. CUSTOMER'S OBLIGATIONS**

- 6.1 The Customer's use of the Services is subject to all applicable laws and regulations, and the Customer is solely responsible for the content of their communications through the Services. TM assumes no editorial responsibility for the Content, which shall remain entirely the Customer's responsibility and must adhere to the current laws and regulations of Malaysia.

Customer agrees and undertakes to abide fully with the Customer Content Policy as specified in Schedule 1 hereof.

- 6.2 The Customer agrees that TM exercises no control whatsoever over the Bulk SMS and is a passive conduit in transmitting and handling the Bulk SMS. The Customer shall bear sole responsibility for:
- (a) the Bulk SMS transmitted using the Services; and
  - (b) the acts, omissions or breaches of the Customer with respect to the use of the Services.
- 6.3 The Customer shall at all times adhere to any legislation and requirements of the authorities in connection with distribution of SMS advertising.
- 6.4 The Customer shall not include promotional or marketing messages promoting services provided under level 3 services in the Bulk SMS.
- 6.5 The Customer shall ensure that each Bulk SMS transmitted shall:
- (a) inform the Subscribers the author, source and/or sender of the Bulk SMS. Messages which are distributed shall contain the name of the party providing the Content;
  - (b) clearly describe any applicable price information for the Bulk SMS; and
  - iii. provide a valid contact number in the Bulk SMS text body to enable the Subscribers to contact the Customer and/or the author, source and/or supplier of the Bulk SMS as and when needed;
- 6.6 The Customer shall ensure that SMS is only transmitted between 8:00 a.m. to 7:00 p.m. Should the Customer require to transmit any SMS(es) outside the time frame specified herein, the Customer shall serve written notice to TM during application.
- 6.7 By using the Services, the Customer agrees to be solely responsible to:
- (a) obtain the consent of intended recipients/Subscribers prior to sending any messages or information via the Services or part thereof to such recipients/Subscribers;
  - (b) not use or permit to be used the Services to cause embarrassment, distress, annoyance, irritation or nuisance to any person;
  - (c) comply with all notices or directions relating to the Services as TM may see fit to issue from time to time or if TM has reason or cause to suspect that the Customer is not complying with its responsibilities and obligation under this Agreement;
  - (d) when requested by TM and/or any lawful, regulatory, governmental or statutory authority, provide or disclose any information, promptly provide or disclose the requested information to the respective authorities and/or bodies. In the event that the Customer is requested to disclose information by any lawful, regulatory, governmental or statutory body in relation to the Services, the Customer shall provide and disclose the same information to TM;

- (e) not resupply or resell the Services to any person;
- (f) not use or permit the use of the Services by installing, connecting, linking or permit the installation, connection, linking or use of any equipment in contravention of any law or which generates or is likely to generate traffic or usage which causes or is likely to cause congestion in or disruption to the provision or operation of any service by TM.
- (g) provide assistance to TM from time to time in relation to technical, administrative and service oriented issues relating to the Service;
- (h) ensure that all Bulk Message transmitted comply with any notices, instructions, guidelines or directives given by TM in connection with the Services from time to time;
- (i) ensure that the Services are used in accordance with the highest standards of professionalism;
- (j) ensure that only authorized personnel will have administrator privilege to manage the Services on Customer's end. Customer further acknowledges that any act or omission done by the administrator shall be considered as done by the Customer and Customer therefore shall be responsible for the same. Customer is fully responsible for any data transmitted or broadcasted using the Services (whether authorized by the Customer or not)
- (k) address all Complaint(s) and/or queries received from the Subscribers in respect of the Bulk SMS immediately and resolve the Complaint(s). In the event the Complaint(s) and/or queries are escalated by TM to the Customer to resolve, the Customer shall provide TM with the status of the Complaint(s) and/or queries within three (3) days and where requested by TM, the Customer shall provide TM with sufficient details of the Complaint(s) and/or queries;
- (l) assist TM in providing support services to the Subscribers with respect to the use of the Services, including but not limited to call centre services;
- (m) ensure that the Bulk SMS provided shall be of good quality measured in terms of ensuring that:
  - i. the Bulk SMS shall be of value to the intended Subscribers;
  - ii. the Bulk SMS shall not be delivered more times than what has been requested by the Subscribers; and
  - iii. the Bulk SMS shall not contain elements of advertisement or solicitation to make purchases without the consent of the Subscribers.

6.8 The Customer shall only send the Bulk SMS to Subscribers who have agreed to receive the quantity, frequency and types of Bulk SMS.



- 6.9 The Customer is responsible to ensure that the Subscribers are informed of and provided with obvious and clear means of opting out from receiving future Bulk SMS if they do not wish to continue receiving such messages;
- 6.10 It shall be easy for the Subscribers to be removed from the distribution lists. When such a request is received from the Subscribers, the said removal shall take effect without undue delay and no subsequent messages are to be forwarded to the said Subscribers.
- 6.11 The Customer shall cease to provide the Bulk SMS to Subscribers who no longer wish to receive the Bulk SMS as soon as possible or in any event no later than twenty-four (24) hours of the Customer or TM receiving a written request to do so.
- 6.12 The Customer shall ensure that all Bulk SMS transmitted comply with all applicable laws, ordinances, codes, rules, regulations, guidelines, notices, instructions, directives, directions and determinations of all the relevant lawful, regulatory, governmental or statutory authority including but not limited to the CMA, General Consumer Code, Content Code and Commission Determinations or with any notices, instructions, guidelines or directives given by TM in connection with the Services from time to time. Such applicable laws, codes or regulations shall include those relating to Inappropriate Content or any other matter which in the reasonable opinion of TM may adversely affect the use of the Services as a whole. Customer acknowledges that TM shall not be liable in any manner whatsoever for any penalties imposed by any relevant authorities resulting from failure by Customer to comply with any applicable laws, regulations, directives, determination or guidelines including MCMC guidelines or determination and/or arising from any misuse of the Services;
- 6.13 The Customer shall ensure that such Bulk SMS transmitted does not contain any messages the Subscribers did not specifically request for including but not limited to Inappropriate Content as detailed out but not limited to clause 6.14 below;
- 6.14 The Customer shall ensure the Bulk SMS transmitted does not contain any messages that:
- a) is unlawful, offensive on moral, religious, communal or political grounds, threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, tortious, contains explicit or graphic descriptions or accounts of sexual acts (including but not limited to sexual language of a violent or threatening nature directed at another individual or group of individuals), or otherwise violates rules or policies;
  - b) is against public interest, public order or national harmony
  - c) victimizes, harasses, degrades, or intimidates an individual or group of individuals on the basis of religion, gender, sexual orientation, race, ethnicity, age, or disability;
  - d) constitutes unauthorized or unsolicited advertising, junk, chain letters, any other form of unauthorized solicitation, any form of lottery or gambling activity.
  - e) infringes on any patent, trademark, trade secret, copyright, right of publicity, or other proprietary right of any party;

- f) is for scamming activity. "scamming" shall mean providing misleading information in any manner which may infringe the copyright, patent, trademark, trade secret or other proprietary rights of any third party or rights of privacy;
- g) impersonates any person or entity; or
- h) contains software viruses or any other computer code, files, or programs that are designed or intended to disrupt, damage, or limit the functioning of any software, hardware, or telecommunications equipment or to damage or obtain unauthorized access to any data or other information of any third party.

6.15 The Customer may not do any of the following:

- a) forward or propagate chain letters or malicious content or send or deliver harmful, disruptive, or destructive content;
- b) solicit content/mail from or for any other person, except with full consent of that person.

6.16 The Customer acknowledges and agrees that it is explicitly prohibited to send "spam" of any kind including without limitation, commercial advertising, political tracts, announcement etc. "Spam" means unwanted and unsolicited communication sent to the recipient without explicit consent of the recipient and without the option for the recipient to opt out from receiving such communication in the future.

6.17 The Customer shall keep secure any identification, password and other confidential information relating to their account and shall notify TM immediately of any known or suspected unauthorized use of their account or breach of security, including loss, theft or unauthorized disclosure of their password or other security information.

6.18 The Customer shall also use all precautions to prevent, and report immediately to TM upon the discovery of, any fraud, theft, loss, unauthorized usage, copying or any other occurrence of unlawful acts in relation to the Services. In this respect, the Customer agrees to lodge a police report whenever instructed by TM (if one has not already been lodged) and to give TM a certified copy of such report.

6.19 The Customer agrees and acknowledges that the Services shall only be used by the Customer and for the purpose of transmitting Bulk SMS from and/or for the benefit and interest of a Local Source via the Authorized Traffic.

6.20 The Customer shall not use the Services or permit the Services to be used by any other third party (where applicable):

- a) to transmit any Bulk SMS which is from and/or for the benefit and interest of any International Source; and
- b) as a means of payment of goods and/or services other than payment method authorized by legal authorities.

- 6.21 The Customer shall not mask the Short- Code(s) used for the provision of the Services in the name of any government agency and/or autonomous body and/or high commission and/or any embassy and/or foreign mission and/or other important bodies' names as the sender identity. Customer further acknowledges that any masking of sender identity shall be upon MCMC's approval and consent from TM. Customer shall be under the obligation to abide by the rules and regulations imposed by relevant lawful, regulatory, governmental or statutory authority in relation to masking of sender identity. TM shall not be liable for any issues arising from Customer's non-compliance of this clause.
- 6.22 The Customer shall be solely responsible for managing the use of the storage capacity for the Customer's data/information to ensure it is within the capacity allocated to the Customer or as may be stipulated by TM. TM shall have no obligation to back up or manage the data/information.
- 6.23 The networks used for the provision of the Services may be used only for lawful purposes. Transmission, distribution or storage of any material in violation of any applicable law or regulation is prohibited, including, without limitation, material protected by copyright, trademark, trade secret or intellectual property right used without proper authorization, defamatory, seditious, abusive or hateful, false, constitutes an illegal threat, or may constitute unauthorized advertising or harassment, invades anyone's privacy, or encourages conduct that would constitute a criminal offence, give rise to civil liability, or otherwise violate any local, state, national or international law or regulation.
- 6.24 The Customer acknowledges and agrees that violations of system or network security are prohibited, and may result in criminal and civil liability. Examples of system or network security violations include, without limitation, the following:
- a) unauthorized access to or use of data, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measure without express authorization of the owner of the system or network;
  - b) unauthorized monitoring of data or traffic on any network or system without express authorization of the owner of the system or network;
  - c) interference using the Services to any person, host or network including, without limitation, mailbombing, flooding, deliberate attempts to overload a system and broadcast attacks.
  - d) circumventing any user authentication or security of any host, network or account (referred to as "cracking" or "hacking")
- 6.25 Should the Customer fail to comply with the above-mentioned requirements, TM shall have the sole and absolute right and discretion to discontinue the Customer's use of the Services with immediate effect without giving any prior notice.

## **7. FORECAST**

- 7.1 The Customer shall as soon as is reasonable inform and furnish details to TM of any expected increase in transaction volume that is likely to be substantially higher than TM's expectations. Services that generate high transaction volumes within a limited time including but not limited to voting, polling and contests in collaboration with or in connection with television or radio shows, shall not be carried out without a prior written agreement from TM.
- 7.2 TM may at any time request additional or new transaction volume forecast from the Customer if TM believes that there will be a significant change in the transaction volume.
- 7.3 The Customer shall use reasonable commercial efforts to ensure that the Customer's Equipment has the capacity and performance capability to meet the expected increase in transaction volume. Upon TM's request, the Customer shall provide information detailing the capacity and performance specifications of the Customer's Equipment.

## **8. RESTRICTIONS ON USE OF SERVICES**

- 8.1 In addition to the other obligations of the Customer in this Agreement, the Customer shall not use the Services:
- (a) to transmit Bulk SMS containing Inappropriate Content;
  - (b) to transmit Bulk SMS which is harmful to TM or will bring disrepute to TM;
  - (c) to transmit any Bulk SMS which is from and/or for the benefit and interest of any International Source;
- 8.2 The Customer agrees and acknowledges that the Services shall only be used by the Customer for the purpose of transmitting Bulk SMS from and/or for the benefit and interest of a Local Source via the Authorised Traffic. For the avoidance of doubt, the Customer shall not transmit Bulk SMS from and/or for the benefit and interest of the Prohibited International Brands as per Schedule 3.
- 8.3 The Customer shall not mask the Short- Code(s) used for the provision of the Services in the name of any government agency and/or autonomous body and/or high commission and/or any embassy and/or foreign mission and/or other important bodies' names as the sender identity. Customer further acknowledges that any masking of sender identity shall be upon MCMC's approval and consent from TM.
- 8.4 The Customer shall be under the obligation to abide by the rules and regulations imposed by relevant lawful, regulatory, governmental or statutory authority in relation to masking of sender identity. TM shall not be liable for any issues arising from the Customer's non-compliance of this clause.

## **9. CONSEQUENCES OF BREACH**

9.1 The Customer hereby agrees that if TM, in its reasonable opinion, believes that the Customer is in breach of Clauses 6, 8 or any such breach that may result in disputes and/or Complaint(s) from any lawful, regulatory, governmental or statutory authority or the Subscribers and without limiting other rights TM may have under this Agreement, the Customer shall be liable to indemnify TM for such fines imposed by the lawful, regulatory, governmental or statutory authority including but not limited to MCMC over the said breach.

9.2 In addition to Clause 9.1 above, TM reserves the right to:

- (a) immediately suspend the related Short-Code(s) in accordance with the Complaints threshold specified in Schedule 2 by giving a written notice to the Customer, provided always that the Customer is given sufficient time to either rectify any issue that has led to the Complaint or investigate the validity of each Complaint raised; and/or
- (b) terminate this Agreement by giving a written notice to the Customer provided always that the Customer is given sufficient time to rectify any breach of Clause 6 and/or Clause 8.

## **10. TM'S RIGHTS**

10.1 Without limiting the other rights TM may have under the terms of this Agreement, TM shall not be responsible and shall not be held liable:

- (a) for SMS that are not delivered on time (as scheduled by the Customer) due to service downtime and/or connectivity and/or other issues beyond TM's control that might affect the performance of the Services;
- (b) for any delay in broadcasting the message(s). For the avoidance of doubt, the provision of SMS will be charged only upon successful delivery;
- (c) for any errors resulting from fraud perpetrated by any third party other than TM.

10.2 In the event TM believes that the Services has been provisioned by the Customer in breach of the terms and conditions of this Agreement, TM shall have the right to conduct investigations to audit and validate such transactions. In case the investigations are concluded in either Party's favour, the cost of such investigations shall be borne by the other party upon mutual agreement.

10.3 TM shall have the right to provide any information including in relation but not limited to the Services and/or Mobile Subscriber Integrated Services Digital Network-Number ("MSISDN") and/or details of the Content Management Platform ("CMP") to the law enforcing agencies as and when required and/or requested by any lawful, regulatory, governmental or statutory authority, to provide or disclose any information, promptly provide or disclose the requested information to the respective lawful, regulatory, governmental or statutory authority.

## **11. RIGHT TO REJECT**

- 11.1 The Parties agree that TM has the absolute right to reject any non-conforming Content supplied by the Customer, provided always that there shall be reasonable grounds for any rejection and that the Customer shall be given a reasonable time to ensure that the Content supplied is rectified and conforms to the terms of this Agreement. TM shall not be liable to the Customer for any losses or damages which the Customer may suffer or incur as a result hereof.

## **12. CONFIDENTIALITY**

- 12.1 Both Parties hereby agree that no Party hereto shall, without the prior written approval of the other Party, disclose the other Party's Confidential Information or any information, material or data which may be deemed to be confidential by both Parties from time to time and agree that the Confidential Information disclosed shall be used strictly only for the purposes of the terms of this Agreement.
- 12.2 A Party shall not be deemed to have been in breach of Clause 12.1 in circumstances where it is legally compelled to disclose such Confidential Information.
- 12.3 Both Parties hereby agree to take all reasonable steps necessary to ensure that its employees, agents, officers, directors and sub-contractors engaged for the purposes of the terms of this Agreement do not make public or disclose the other Party's Confidential Information.
- 12.4 Either Party may from time to time require the other Party to arrange for its employees, agents, officers, directors and sub-contractors engaged for the performance and purposes of the terms of this Agreement to execute a suitable confidentiality or non-disclosure agreement and the other Party shall arrange for the execution of such agreements by the respective persons within the timeframe reasonable specified.
- 12.5 Notwithstanding any provision of this clause, either Party may disclose the terms of this Agreement but not Confidential Information of a technical nature, to its related companies, solicitors, auditors, insurers and accountants.
- 12.6 The Parties shall not make news release, public announcement, advertisement or publicity concerning this Agreement or any information, document or know-how relating to this Agreement or the Services without the prior written consent from the other Party.
- 12.7 The obligations of either Party under this clause shall survive the termination of this Agreement.
- 12.8 The obligations of confidentiality shall be of no legal force or effect three (3) years after the expiration or termination of this Agreement. Despite anything contained in this Agreement, all Confidential Information relating to Personal Data shall be kept confidential at all times without limitation of time.

12.9 Each party further agrees, upon termination for whatever cause of this Agreement, to forthwith return to the other all documents and any materials received in connection with the Agreement containing any of the Confidential Information of the other party.

### 13. **PERSONAL DATA AND USE OF PERSONAL DATA**

13.1 Customer understand that by submitting the Service Order Form and subscribing to the Services, Customer is providing information to TM including where applicable, personal information. Customer hereby agrees and consent to TM's processing of Customer's information including personal information provided in the Service Order Form and/or further information and data that may be required by TM either from Customer or from any third parties especially from credit bureau, banks, credit reporting agencies and other businesses that provide like information or reference agencies from time to time. Customer understands and agrees that the purposes of such processing would include:-

- (a) assessing Customer's application and/or continued provisioning of the Services provided herein (whichever is applicable);
- (b) customizing advertisements and content on the website(s) and the sites of TM and its group of companies;
- (c) responding to Customer's enquiries;
- (d) research purposes including historical and statistical purposes;
- (e) general operation and maintenance of the Services or goods provided herein including audit and its related website(s);
- (f) matching any data held by TM or its group of companies relating to Customer from time to time;
- (g) provide Customer with regular communications (other than direct marketing materials) from TM relating to the Services or goods provided herein; and investigation of complaints, suspected suspicious transactions and research for the Services or goods improvement.

13.2 By submitting the Service Order Form and/or subscribing to the Services, Customer consent and authorises TM for the purpose of obtaining and verifying any information about Customer which TM may require in connection with Customer's application or subscription of TM's services and/or review of the existing account with TM from any third party, especially credit bureau or reference agencies. Such consent and authorization herein will extend to any information obtained from any of the account(s) presently maintained for Customer, any new application for any form of services rendered or goods provided by the Service Provider, such historical financial or credit records, data or information whether or not provided personally or by any other sources relating to Customer which was collected, gathered, received, captured, compiled, secured and/or obtained by TM through or by whatever means or methods or forms. The information as required herein (unless stated otherwise) is obligatory on Customer and failure by Customer to provide any information as required may affect Customer's application or the continued provisioning of the Services provided herein.

- 13.3 Customer agrees that in the course of processing Customer's application or during Customer's subscription of the Services, TM may disclose Customer's information including personal information to the following parties for the purposes stated above:-
- (a) TM or agents who are involved in providing the Services provided herein;
  - (b) third parties (including those overseas) who provide data processing services;
  - (c) any credit reference agencies or, in the event of default, any debt collection agencies;
  - (d) any person, who is under a duty of confidentiality to which has undertaken to keep such data confidential, which TM has engaged to fulfil its obligations to Customer and any actual or proposed assignee, transferee, participant or sub-participant of TM's rights or business.
- 13.4 TM may also disclose Customer's information including personal information if required to do so by law or in good faith, if such action is necessary to (i) comply with any law enforcement agency requirement, court orders or legal process or; (ii) protect and defend the rights or property of TM and its group of companies and their users.
- 13.5 If Customer would like to make any inquiries or complaints or request access or correction of Customer's information including personal information, Customer may also contact TM Contact Centre. Any request of access of correction of personal data may subject to a fee and also to any privacy or data protection laws.
- 13.6 Where Customer elect to limit TM's right to process personal information, Customer may contact TM in writing. For avoidance of doubt, the limitation does not include processing of mandatory personal data.
- 13.7 TM may review and update its privacy policy from time to time to reflect changes in the law, changes in TM's business practices, procedures and structure, and the community's changing privacy expectations. While it is not generally feasible to notify Customer of changes to TM's privacy policy, the latest version of the privacy policy may be available on TM's website.

#### **14. CUSTOMER'S WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS**

- 14.1 The Customer warrants and represents that they:-
- (a) are under no contractual or other legal obligation which will in any way interfere with their performance under this Agreement;
  - (b) shall at all times inform the Subscribers of the full charges to be levied on the Subscribers and for the Content;
  - (c) have all necessary rights to distribute, display, promote and provide the Content;
  - (d) Content does not and will not infringe any intellectual property rights of any third party and does not and will not constitute a defamation or invasion of the rights of privacy or publicity of any third party;



- (e) have all the necessary consents, licenses and approvals from the relevant regulatory authorities, bodies and organizations which supervises any of the Content and the distribution of such Content;
- (f) shall comply with all applicable laws, regulations and directives as may be issued from time to time by any governmental agency (including without limitation MCMC) in the provision of the Content under this Agreement including the Communications and Multimedia Act, 1998 and the PDPA relating to any Personal Data;
- (g) shall ensure that the Content is provided according to the highest standards of professionalism and skill and otherwise in accordance with instructions, specifications, procedures, standards, guidelines, timeframe, if any, as we may issue from time to time;
- (h) shall provide the Content in such a manner so not adversely affect our reputation;
- (i) shall maintain proper and accurate records relating to the conduct of the Content, if any, for duration required by law and shall at our request, copies of such records;
- (j) the Content is an original work and has not been copied and or otherwise reproduced, derived or adapted marginally, wholly or substantially from any other work or material belonging to any third party,
- (k) shall be responsible for the development, presentation, operations, and customer service of the Content and for notifying the Subscribers of the price for the use of the Content offered by the Customer.

## **15. MUTUAL REPRESENTATION AND WARRANTIES**

15.1 Each Party represents and warrants to the other Party that:

- (a) it is a company duly incorporated under the laws of Malaysia;
- (b) it has obtained the necessary license, right and/or approval by the relevant lawful, regulatory, governmental or statutory authority which supervises the Services and the distribution of the Services, including without limitation the Application Service Provider (Class) Licence (where relevant), issued by MCMC to provide the Services and shall comply with all applicable laws, rules and regulations;
- (c) it shall adhere to the codes (including the General Consumer Code and Content Code), rules, regulations, guidelines, notices, instructions, directives, directions and determinations (including but not limited to the Commission Determinations) as issued by MCMC or other relevant lawful, regulatory, governmental or statutory authority at all times;
- (d) it has the power and authority to enter into and perform its obligations under this Agreement and to carry out all obligations contemplated herein;

- (e) it has taken all necessary actions to authorise the entry into and performance of this Agreement and to carry out the transaction contemplated by this Agreement; and
  - (f) this Agreement constitutes legal, valid and binding obligations of the parties in accordance with their respective terms.
  - (g) the execution and performance of the terms of this Agreement does not and will not violate or conflict with any undertaking, contract or arrangement with the respective Parties may have with any third party or any law, regulation, ruling or requirements of any government authorities.
- 15.2 Each Party covenants with the other that during the Minimum Subscription Period and/or Renewal Terms of this Agreement, it shall act in good faith towards the other Party and use its best endeavours to give the other Party such assistance and co-operation as that other Party reasonably requests for the performance of the terms herein.

## **16. INTELLECTUAL PROPERTY RIGHTS**

- 16.1 Each Party shall retain all Intellectual Property Rights and all materials, facilities, equipment, and other assets provided by such Party pursuant to this Agreement. No Party will have any Intellectual Property Rights or materials, facilities, equipment, or other assets provided by the other Party hereunder except as specifically provided in this Agreement.
- 16.2 In the event of any third party claims for infringement of such third party's Intellectual Property Rights, in connection with the Services TM shall defend and hold the Customer harmless from and against any such claim/action and shall pay all costs, damages, liabilities and all related expenses, that a court may finally award or as may be agreed in an out of court settlement.
- 16.3 Customer acknowledges that TM's obligations to perform the Services will be impacted when the Customer's materials, facilities, equipment, and other assets provided by the Customer are subject to an injunction or court order, precluding their use or infringes any third party's Intellectual Property Rights. Consequently, TM will use commercially reasonable efforts to continue performing the Services using non-infringing materials, facilities, equipment, and other assets to the extent the Customer makes such items available subject however that TM will not be liable or held responsible, in any manner whatsoever, for any damages caused by the affected items during the affected period.
- 16.4 Without derogating the Customer's representations and warranties under Clause 14 hereof, Customer warrants and represents to TM that:
- (a) the provision and use of the Services including the Content conforms to and is in compliance with all laws relating to property and/or proprietary rights including but not limited to Intellectual Property Rights and does not infringe the Intellectual Property Rights of any person or entity;
  - (b) it has been granted the license, right and/or approval to provide the Services and the

Content to the Subscribers by the owners of the Intellectual Property Rights of the Services, appointed collecting societies and/or any person or entity entitled to remuneration for use of the Content;

- (c) it has paid and shall continue to pay all the necessary license fees and royalties to the owners of the Intellectual Property Rights of the Content, appointed organisations and/or collecting societies and/or any person or entity entitled to remuneration for use of the Content;
- (d) it shall provide to TM on a yearly basis or upon request from TM proof of evidence that license, right and/or approval has been obtained and all license fees and royalties have been paid to the rightful owners of the Intellectual Property Rights, appointed organisations and/or collecting societies and/or any person or entity entitled to remuneration for use of the Services;
- (e) without prejudice to TM's right to defend a claim alleging infringement of the Intellectual Property Rights of a third party, Customer shall, upon the request of TM and at the Customer's expense, conduct the defence of such a claim by a third party which alleges the infringement of the Intellectual Property Rights. Customer shall not make any admission of guilt or liability on behalf of TM without TM's prior written approval;
- (f) without prejudice to TM's rights under this Agreement, Customer shall indemnify TM in respect of any and all damages, costs and expenses (including but not limited to loss of profit and reasonable solicitor's fees) in connection with any third party claim against TM that any of the Content provisioned by Customer or its use infringes any Intellectual Property Rights; and
- (g) without prejudice to TM's rights under this Agreement, if it is determined by an independent tribunal of fact or law or if it is agreed between the Parties to the dispute that an infringement of the Intellectual Property Rights has occurred, Customer shall immediately and at its sole expense: (a) modify the Services including the Content in order to avoid further or continuing infringement of the said Intellectual Property Rights; or (b) remove the infringing elements of the Content failing which this Agreement may be terminated in accordance with this Agreement.

## **17. LIMITATION OF LIABILITY**

- 17.1 Save for death or personal injury or damage to property, movable or immovable, caused by wilful misconduct and/or gross negligence of either Party, in no event will either Party be liable to the other Party or any other person for loss of profits, business, use of data or special, exemplary, indirect, incidental, consequential or punitive damages of any kind for any reason, including, without limitation, the breach of this Agreement, whether such liability is asserted on the basis of contract, tort (including negligence and strict liability) or otherwise, even if either Party has been advised of the possibility of such damages. The essential purpose of this provision is to limit the potential liability of each Party arising out of this Agreement.

- 17.2 Without limiting the generality of Clause 17.1 above, the Customer agrees that TM shall not be liable whether in contract, tort or otherwise, to the Customer or to the Subscribers or the Customer's clients or any third party authorized by or claiming through the Customer for:
- (a) any messages not delivered, regardless of the reason for non-delivery, including, without limitation, message processing, transmission errors, or TM Network and/or Services failure;
  - (b) information provided through the Services;
  - (c) any loss or damage caused to Customer or the Customer's clients as a result of the suspension or barring of the Services and/or the termination of the Agreement or due to the interruption and/or loss of the Services or any part therefore from any cause whatsoever;
  - (d) any loss, distortion or corruption of data arising from the Customer or Customer's clients usage of the Services to transmit or receive data at any stage of the transmission or receipt of such data; or
  - (e) causes beyond the reasonable control of TM.

- 17.3 Subject to clause 18, should any claim arising out of or in connection with the relationship established by this Agreement results in TM becoming liable for any loss or damage not capable of exclusion under the terms of this Agreement, then our liability shall be limited to the lesser of:
- (a) the fees paid to us by you over the twelve (12) months period prior to the date of the breach; or
  - (b) RM5000.

## **18. DISCLAIMER OF LIABILITY AGAINST THE CUSTOMER**

- 18.1 The Services are provided on an "As Is" basis and TM disclaims all liability and makes no express or implied representations or warranties of any kind in relation to the Services including but not limited to:
- (a) availability, accessibility, timeliness and uninterrupted use of the Services or secure access to the internet; and
  - (b) sequence, accuracy, completeness, timeliness or the security of any data, content or information transmitted using the Services or provided to the Customer as part of the Services.
- 18.2 The Customer is responsible for implementing sufficient procedures and checkpoints to satisfy the Customer's particular requirements for accuracy of data input and output, and taking

reasonable precautions to ensure that whatever method selected by the Customer for its use is free of viruses, hacking, spamming, worms, trojan horses and other items of a destructive nature.

## **19. INDEMNITY**

- 19.1 Each Party shall defend, indemnify and hold harmless the other Party and its respective officers, directors, employees, agents and permitted assigns from and against all claims, proceedings, actions, judgments, costs, damages and all related expenses in connection with: personal or bodily injury, illness or death of any person caused by the Party's negligent acts or omissions; damage to or the loss of use of tangible, personal or real property, to the extent that such injury or damage arises from the negligence of or breach of this Agreement by the indemnifying Party, any of its personnel or sub-contractor; claims for infringement, misuse, exploitation or misappropriation of any third-party Intellectual Property rights or breach of confidentiality caused by the indemnifying Party, any of its personnel or sub-contractor; imposition or claims by Government regulators or agencies for fines, penalties, sanctions or other remedies arising from or in connection with the Party's failure to comply with its regulatory obligations or on account of default of its tax obligations; or claims on account of any fraud, wilful misconduct, gross negligence, misrepresentation, breach of statutory duty.
- 19.2 The indemnified Party agrees to: (a) notify the indemnifying Party promptly upon becoming aware (and in any event within thirty (30) Days of any claim); (b) make no admissions or statements without the indemnifying Party's consent (not to be unreasonably withheld or delayed); (c) reserve for the indemnifying Party the right if it chooses to take exclusive control of the litigation and to conduct/settle litigation and negotiations as the indemnifying Party sees fit (subject to keeping the indemnified Party reasonably informed) and provided that the indemnifying Party's actions in this regard do not result in any expenses for the indemnified Party which it has not previously authorised; (d) give the indemnifying Party, at the indemnifying Party's cost, such assistance as may be reasonably required; (e) preserve and not waive legal professional or any other privilege attaching to any of the records, documents, or other information in relation to such claim without the prior consent of the indemnifying Party; and (f) not enter into any binding agreement or arrangement to settle such claim without the prior written consent of the indemnifying Party, such consent not to be unreasonably withheld or delayed.
- 19.3 In addition to Clause 19.1 hereof, the Customer agrees to indemnify and hold harmless TM, its Affiliates and any of its officers, directors, employees, agents and representatives from and against any loss, damage, expense or cost arising out of or in connection with any breach or violation by the Customer of applicable law or governmental regulation; any claims of whatever nature by third parties with respect to the Services provided to the Customer or the Customer's access or use of the Services; and any administrative or other costs associated with or arising from the Customer's failure to obtain or maintain the necessary approvals, consents, governmental authorizations, licenses and permits required of the Customer in order to access or use the Services.

## 20. SUSPENSION

20.1 Without limiting other rights TM may have under this Agreement, TM may suspend immediately, in whole or in part, with or without notice, the Services if:

- (a) the Customer uses the Services in contravention of any law, code or regulation governing the Services;
- (b) the Customer does not comply with the terms and conditions of this Agreement or uses the Services in contravention of the terms and conditions of this Agreement;
- (c) the Customer does not comply with any instruction or directive issued by TM from time to time in compliance with the relevant laws;
- (d) it is necessary to address emergency repairs on TM's Service Delivery Platform or threats or actual breach of the security of TM's Service Delivery Platform or other circumstances beyond TM's control;
- (e) such suspension is necessitated by any order or directive from any lawful, regulatory, governmental or statutory authority having jurisdiction over the matters herein including but not limited to MCMC;
- (f) the number of Complaint(s) exceeds the threshold stipulated in [Schedule 2](#) or as determined by TM from time to time;
- (g) the Customer or any of its agents, officer, directors or employees has committed any act of fraud, misrepresentation, negligence or dishonesty (including the provision of any false or misleading information or the making of any misrepresentation to TM or the Subscribers in connection with the Services);
- (h) any amount owing to TM is not paid by the Bill's Due Date, and TM gives the Customer notice requiring payment of such amount but the Customer fails to pay such amount in full within thirty (30) days after TM gives the Customer such notice; or
- (i) TM is otherwise entitled to do so under this Agreement.

20.2 If the Services are suspended by TM due to the default of the Customer, the Customer shall continue to be responsible for and pay all charges for the suspended Services relating to any period of suspension.

20.3 TM shall not be liable to the Customer or any third party for any damages, loss or expenses incurred as a consequence of any such suspension.

20.4 TM may restore the suspended Services:

- (a) after the condition relating to the suspension has been rectified by the Customer to TM's satisfaction;

- (b) upon TM's receipt of instruction from the lawful, regulatory, governmental or statutory authority having jurisdiction over the matters herein, including but not limited to MCMC.

## **21. TERMINATION AND CONSEQUENCES**

21.1 TM may terminate this Agreement and/or the provision of the Services by giving at least one (1) month's prior written notice to the Customer for convenience/ without assigning any reason whatsoever and without compensation or liability.

21.2 TM shall be entitled by written notice to the Customer to immediately terminate this Agreement forthwith if:

- (a) the Customer ceases to operate as a provider of the Services or changes substantially the size and/or scope of its business; or
- (b) in the event of suspension pursuant to Clause 20 above, the Services are not restored within three (3) months from the date of suspension;
- (c) there is reasonable suspicion of infringement of Intellectual Property Rights of the Services by the Customer;
- (d) the Customer does not comply with any of the obligations and restrictions under this Agreement or is in breach of its warranties, representations and undertakings under this Agreement and that breach is not capable of remedy or if that breach is capable of remedy the Customer does not remedy that breach within fourteen (14) days after TM gives the Customer written notice requiring the Customer to do so; or
- (e) the Customer fails to pay the Charges as and when it falls due and that the Customer does not remedy such breach within fourteen (14) days after TM gives the Customer written notice requiring the Customer to do so and if the Customer has more than one account with TM, TM has a right to terminate any or all of the Customer's accounts should any charges remain unpaid under any one of the Customer's accounts;
- (f) if the Customer's use of the Services is likely, in TM's reasonable opinion to create imminent physical harm (including but not limited to interruption, disruption or congestion) to TM's network and/or TM's Service Delivery Platform or the use of the Services by the Customer for any purpose other than what TM intended it to be used for under these terms and conditions, without first obtaining TM's prior written consent or if TM reasonably suspects fraud by the Customer in connection with the Services;
- (g) If the number of Complaint(s) exceeds the threshold stipulated in Schedule 2 or as determined by TM from time to time;

- (h) the Customer convenes a meeting of its creditors or suffers a meeting to be convened or other action to be taken with a view to its liquidation or dissolution; or
- (i) the Customer if, for any reason whatsoever, is struck off the Companies Commission of Malaysia; or
- (j) proceedings are commenced, including but not limited to winding-up proceedings whether voluntary or involuntary, for the appointment of a receiver or receiver and manager or judicial manager over the Customer or over any of its assets; or
- (k) any distress or execution is levied against the Customer or upon the goods or assets thereof and such distress or execution is not discharged within twenty-one (21) days thereafter; or
- (l) Customer makes or seeks to make any composition or arrangements with its creditors

21.3 In addition, and without prejudice to any other provision herein, this Agreement shall be terminated forthwith by TM without liability if:

- (a) such termination is necessitated by law or by any order or directive or request from any lawful, regulatory, governmental or statutory authority or any other competent authority having jurisdiction over the matters herein including but not limited to MCMC due to illegal, improper or any activities by the Customer or on grounds of public interest or otherwise; or
- (b) such aforementioned directive or regulation expressly prohibits either party from performing its obligations under this Agreement.

21.4 During the Minimum Subscription Period, the Customer shall not terminate the Services prematurely. In the event the Customer terminates the Services during the Minimum Subscription Period, the Customer shall be liable to pay the rental portion of the Charges for the unexpired period remained in the Minimum Subscription Period, the payment of which shall be made to TM within thirty (30) Days from the date of termination. The Customer acknowledges and agrees that such payments to be made are agreed and reasonable liquidated damages and not a penalty for premature termination. The Customer shall further be liable for the charges for Services rendered to it by TM up to and including the date of termination.

21.5 Upon termination of this Agreement:

- (a) the Customer's access to TM's Service Delivery Platform shall immediately cease;
- (b) the Customer shall disconnect the Customer's Service Delivery Platform from TM's Service Delivery Platform immediately;
- (c) all rights granted by TM to the Customer will terminate immediately;



- (d) the Customer shall cease to be entitled to use the TM's name and/or refer to TM in all its subsequent messages, notices, promotions or advertisements;
- (e) neither Party shall have any further claim against the other Party save in respect of any antecedent breach of this Agreement; and
- (f) the Customer shall be responsible to settle all outstanding amounts due to TM in relation to this Agreement including but not limited to the Charges incurred up to the date of such termination.

21.6 Expiration and termination of this Agreement shall be without prejudice to any then existing rights and/or claims that either Party may have against the other Party, and each Party shall fulfil its obligations including payment of all outstanding charges to the other Party, including but not limited to administrative and legal charges prior to the date of termination or expiration.

## **22. GOVERNING LAW AND JURISDICTION**

22.1 This Agreement shall be governed by and construed in accordance with the laws of Malaysia and Parties hereby submit to the exclusive jurisdiction of the Malaysian courts.

## **23. FORCE MAJEURE**

23.1 Event of Force Majeure

“Event of Force Majeure” means an event beyond the reasonable control of the Parties which prevents either Party from complying with or performing any of its obligations under this Agreement, including but not limited to:

- (a) act of God (such as, but not limited to, epidemic, pandemic or quarantine fires, explosions, earthquakes, drought, tidal waves and floods);
- (b) war (rebellion, revolution, insurrection, military or usurped power, civil war), hostilities (where war be declared or not), invasion, act of foreign enemies, mobilisation, requisition, or embargo;
- (c) riot, commotion, strikes, go slows, lock out or disorder;
- (d) acts or threats of terrorism;
- (e) power failure, cable cut, industrial action, criminal damage or destruction to equipment of TM or disruption to any network service of TM caused by any software virus, worms, the inability of any equipment belonging to TM to operate optimally due to any unauthorized action such as spamming, sabotage acts, hacking attacks or omissions of person or bodies for whom TM has no control or any other cause whether similar or dissimilar outside TM's control; and

- (f) Governmental acts or directives.

#### 23.2 Notice of Event of Force Majeure

- (a) If a Party wishes to claim protection in respect of an Event of Force Majeure, it shall, as soon as reasonably practicable but no later than fourteen (14) days following the occurrence or date of commencement of such Event of Force Majeure, notify the other Party in writing of the nature and expected duration of such Event of Force Majeure and shall thereafter keep the other Party informed until such time as it is able to perform its obligations. The Parties shall use their reasonable endeavours to:
  - (i) overcome the effects of the Event of Force Majeure;
  - (ii) mitigate the effect of any delay occasioned by any Event of Force Majeure, including by recourse to alternative mutually acceptable (which acceptance shall not be unreasonably withheld by either Party) sources of services and materials (if applicable); and
  - (iii) ensure resumption of normal performance of this Agreement as soon as reasonably practicable and shall perform their obligations to the maximum extent practicable.
- (b) Subject to Clause 23.2 (a), as soon as reasonably practicable following the date of commencement of an Event of Force Majeure, and within seven (7) days following the date of termination of the Event of Force Majeure, any Party invoking the Event of Force Majeure shall submit to the other Party reasonable proof in writing of the nature of the Event of Force Majeure and of its effect upon the performance of the Party's obligation under this Agreement.

#### 23.3 Consequence of Event of Force Majeure

- (a) Neither Party shall be considered in breach of this Agreement to the extent that performance of their respective obligations (excluding payment obligations) is prevented by an Event of Force Majeure that arises after the Commencement Date.
- (b) In the event that the Event of Force Majeure prevents a Party from performing its obligations under this Agreement for an aggregate period of thirty (30) days during the Minimum Subscription Period and/or Renewal Terms of this Agreement, the other Party shall be entitled to terminate this Agreement by giving a seven (7) day's written notice.
- (c) Upon the exercise by the other Party of the option to terminate the Agreement and the performance of the Parties' respective obligation under this clause, neither Party shall have any further claim against the other in respect of this Agreement except for antecedent breach.

### 24. MISCELLANEOUS

#### **24.1 Entire Agreement**

This Agreement (including any attached schedules and appendix) contains the full and complete understanding between the Parties and supersedes all prior agreements and understanding whether written or oral. The Parties acknowledge that no representation or promise not expressly contained in this Agreement has been made by either Party or any of their agents, employees or representatives.

#### **24.2 Assignment and Novation**

Customer shall not assign or novate or attempts to assign all or any part of the rights or the benefit or obligations of this Agreement without the prior written consent of TM. TM may assign or novate the whole or any part of this Agreement or any of its rights, benefits or interest or liabilities hereunder or novate this Agreement or any part thereof to its Affiliates or any body or corporate which is within TM's group of companies and consent for the aforementioned is hereby given by the Customer. If so required, the Customer shall execute such document required for the novation within seven (7) days from the date of presentation thereof by TM

#### **24.3 Third Party Services**

In the event the Customer allows and authorizes a third party to use the Services, either in whole or in part relating to this Agreement, the Customer shall be responsible for the performance, acts and/or omissions of the third party as if the performance, acts and/or omissions are of its own performance, acts and/or omissions, provided always that TM's prior written approval shall be obtained and TM shall be notified about the details and status of such arrangement at all times.

#### **24.4 Waiver**

- (a) No waiver by a Party of any failure of the other party to keep any covenant or comply with any condition of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of covenant or condition or shall be deemed a continuing waiver.
- (b) No right under this Agreement shall be deemed waived except by prior written notice signed by both Parties.
- (c) The failure or neglect of either Party to enforce at any time any of the provisions of this Agreement shall neither be construed nor shall be deemed to be a waiver of that Party's rights hereunder nor does it in any way affect the validity of the whole or any part of this Agreement nor does it prejudice the rights of that Party to take subsequent action if it so chooses.

#### **24.5 Severability**

Any provision in this Agreement which is illegal, prohibited or unenforceable in any jurisdiction, shall, as to that jurisdiction, be ineffective to the extent of such illegality, prohibition or unenforceability without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

In the event that any or any part of the terms, conditions or provisions contained in this Agreement be determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall to that extent be severed from the remaining terms and conditions which shall continue to be valid and enforceable to the fullest extent permitted by law.

#### **24.6 Time is of the Essence**

Time whenever expressly provided in this Agreement shall be of the essence.

#### **24.7 Legal Costs and Stamping**

The Parties shall bear their respective costs and expenses in connection with and incidental to the preparation, execution, delivery and completion of this Agreement, including but not limited to all legal fees and out-of-pocket expenses incurred. All stamp duties payable on this Agreement shall be borne by the Customer.

#### **24.8 Notices**

A notice or other communication under or in connection with this Agreement including, but not limited to, a directive, a request, demand, consent or approval to or by a Party to this Agreement:

- (a) shall be in writing in the English Language and delivered to such Party's address specified in Service Order Form or at such other address as such Party may have informed the other Party in writing;
  
- (d) The initial contact representatives of each Party are as set out in the Service Order Form.

#### **24.9 Binding Agreement**

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

#### **24.10 No Partnership**

The position of TM under this Agreement shall be of an independent contractor. The Customer and TM shall not at any time be construed to have a relationship of principal and agent, master and servant or a joint venture.

#### **24.11 Order of Precedence**

The documents comprising this Agreement shall be read in the following order of precedence:

- (a) the clauses of this Agreement;
- (b) the schedules of this Agreement (if applicable);
- (c) the duly signed Service Order Form.

Where any conflict occurs between the provisions contained in two or more of the documents forming this Agreement, the document lower in the order of precedence shall where possible be read down to resolve such conflict. If the conflict remains incapable of resolution by reading down, the conflicting provisions shall be severed from the documents lower in the order of precedence without otherwise diminishing the enforceability of the remaining provisions of this Agreement

#### **24.12 Bribery, Corruption and Fraudulent Acts and Inducement**

- (a) Both Parties shall comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption and not engage in any activity, practice or conduct which would be considered as 'Prohibited Act' for the purpose of this Agreement. "Prohibited Act" means committing any offence under any applicable legislation which creates offences in respect of bribery, corruption and/or fraudulent acts. Parties agree to ensure that anyone employed by or acting on its behalf shall not commit, or procure third parties to commit, any Prohibited Act in relation to this Agreement and promptly report to the other party of any requests for bribes by officials or business intermediaries in relation this Agreement, as soon as it becomes aware of any such requests. Any Party shall have the right to terminate this Agreement with immediate effect by written notice to the other if the other Party has been declared guilty for a breach of the anti-corruption, anti-corruption legislation or is found in breach of any of the terms set out in this clause.
- (b) Where required and applicable by law, Customer undertakes to provide adequate procedures designed to prevent associated persons of the Customer from undertaking corrupt practices. Customer further acknowledge its awareness in that where organisation commits an offence, the directors, officers and management thereof may be deemed to have committed the same offence unless they are able to prove that the offence was committed without their consent and that they exercised due diligence to prevent the offence.

- (c) Either Party shall not under any circumstances offer, promise or make any gift, payment, loan, reward, inducement, benefit, or other advantage to the other Party's employees, members of its board of directors, representatives and/or agents. Parties recognise that such practice is in violation of their respective policies, procurement ethics, and applicable laws and regulations and hereby warrants and undertakes not to utilize any such information or assistance offered by such persons or companies or allow the existence or the continuation of such practice for purposes of this Agreement

#### **24.13 Covenant on Anti-Compete**

The Parties shall co-operate in order to ensure that their respective performance under this Agreement does not bring about any anti-competitive prohibition within the meaning as provided under the Competition Act 2010 or the Communications and Multimedia Act 1998 or any rules or regulations made in pursuant thereto, as the case may be. If any provision of this Agreement is deemed unenforceable due to any anti-competitive restriction pursuant to the operation of the Competition Act 2010 or the Communications and Multimedia Act 1998 or any rules or regulations made in pursuant thereto, the Parties shall in good faith consult with each other to agree an alternative provision which achieves a result as similar as possible to the result which would have been achieved by the provision deemed unenforceable.

#### **24.14 Review of Agreement**

The Parties herein agree to negotiate, as soon as practicable and in good faith such amendments, variations, changes or modifications to this Agreement as may be necessary or appropriate to ensure compliance of this Agreement with the requirements of the Communications and Multimedia Act 1998 ("the CMA") or any other laws, by-laws, regulations, rules or others of a similar nature or any the Service Provider license condition in any of the following events:

- (a) the CMA and/or any other rules, regulations, by-laws, acts or ordinances, are amended;
- (b) the introduction of any new laws in connection with the provision of the Services;
- (c) any instrument and any amendments made thereto pursuant to the CMA, including, but not limited to any directions, determinations or declarations issued thereto; or
- (d) any condition of TM's license which grants TM the right to provide any of the relevant services is amended, modified, changed, deleted or a new condition or requirement is imposed.

#### **24.15 Press Release**

The Parties shall discuss and agree before any public announcement is made in regard to their discussion, the existence of any agreement between or involving them, their plans and all similar matters. No press release shall be issued by either Party in regard to the matters

addressed herein, which has not also been approved by the other Party. Each Party shall use its best efforts to provide immediate feedback and approval/request for change for any press release, which is proposed for issuance. Notwithstanding the above, Customer agrees that TM reserves the right to disclose, advertise or otherwise publicise in good faith on the Customer's subscription to the Services from TM in general.

#### **24.16 Rules and Regulations**

This Agreement is made expressly subject to all present and future valid orders, approvals, directives and regulations of any regulatory body having jurisdiction over the subject matter hereof and to the laws of the Malaysia. In the event that this Agreement, or any of its provisions, shall be found contrary to or in conflict with any such order, rule, regulation, directive or law, this Agreement or such provision(s) shall be deemed modified to the extent necessary to comply with any such order, rule, regulation, directive or law and shall be modified in such a way as is consistent with the form, intent or purpose of this Agreement.

#### **24.17. Relationship between Parties**

It is hereby acknowledged that the relationship between TM and the Subscribers is separate, distinct and independent from the relationship between TM and the Customer and between the Customer and the Subscribers.. In the premises, TM shall not be liable for any loss or damage, cost or expense, howsoever incurred in respect of or arising out of:

- (a) any claim by the Subscribers; or
- (b) any claim between the Customer and the Subscribers

relating to the Services or otherwise.

## **SCHEDULE 1 - CUSTOMER CONDUCT POLICY**

### **IMPORTANT NOTICE**

When providing your Content to the Subscribers, you must comply with:

- your obligations under applicable laws, regulations, industry codes (voluntary and involuntary) and standards including the Communications and Multimedia Act, 1998 and the Personal Data Protection Act 2010 relating to any Personal Data (“Laws”);
- your obligations under the Agreement; and
- this Policy.

It is your sole responsibility to be fully conversant with all Laws and to comply at all times with all Laws in respect of the provision of marketing messages and the advertising and provision of your Content. Compliance with this Policy may not always ensure compliance with all Laws. Our rights under the Agreement may not be limited or excluded in any circumstances, including for example by the content of this Policy and your use or interpretation of this Policy.

### **1. COMPLIANCE WITH INDUSTRY CODES**

1.1 You must comply with any industry codes as amended from time to time. Any breach of such codes is a breach of this Policy and the Agreement.

### **2. SUBSCRIBER CONSENT FOR CONTENT**

2.1 You must not provide any Content to a Subscriber unless you obtain the Subscriber’s prior consent to receiving that service. Consent will be deemed not to have been obtained if the Subscriber was not clearly informed in advance of the nature, content and cost of that Content.

2.2 You must implement procedures to enable the Subscriber to easily, conveniently and without cost opt out of receiving any Content or marketing message.

2.3 Where a Subscriber notifies you of their wish to opt out of any Content or opt out of receiving marketing messages, the request must be complied with immediately and you must confirm by return message, at no charge to the Subscriber, that the Subscriber’s request has been acted upon.

### **3. SUBSCRIBER CONSENT - MARKETING MESSAGES**

3.1 You must not provide any marketing messages to a Subscriber unless that Subscriber has consented to opt in to receiving marketing messages.



#### 4. **YOUR CONTENT**

- 4.1 Advertising for your Content must clearly and prominently set out the material terms, nature and cost of the Content.
- 4.2 Pricing information must include any sign-up cost and where applicable, a per message price.
- 4.3 Messages which are distributed shall contain the name of the party providing the Content.
- 4.4 SMS shall only be transmitted between 8:00a.m. to 7:00p.m or such other times as may be imposed by any relevant Laws unless notified to TM during application

#### 5. **CUSTOMER CARE AND COMPLAINTS HANDLING**

- 5.1 You must provide satisfactory Subscriber complaint and inquiry processes and procedures to address any issues raised in relation to the supply of your Content or marketing messages to the Subscribers.
- 5.2 You must train your staffs who are involved in the marketing, sales, customer care and complaints handling of your Content in relation to the requirements of this Policy and ensure that consistent factual information is provided to Subscribers by your staff.
- 5.3 Where a complaint is not resolved by you, we may resolve the complaint in a manner it considers appropriate, based on available information, and you must cooperate with us in doing s

## SCHEDULE 2 - SUSPENSION DUE TO COMPLAINT(S)

1. Customer agrees and acknowledges that TM may suspend or terminate the Services or the related short code(s) according to the number of Complaint(s) received as follows:

Suspension	Source of registered Complaint	No. of Complaint Per Month*	Period of Suspension (Months)
1st	TM Customer Service MCMC**	30 2	2
2nd	TM Customer Service MCMC	30 2	3
3rd	TM Customer Service MCMC	30 2	Permanent Suspension (Termination)

\*whichever comes first

\*\*refers to MCMC or other lawful, regulatory, governmental or statutory authority.

Example: Customer subscribed for three (3) short codes under this Agreement which is A, B and C. TM receives 32 Complaint(s) from TM Customer Service with regards to short code A in one month. Only short code A will be suspended.

2. Customer further acknowledges that suspension will be uplifted upon the Customer having completely served the suspension period and settlement of Complaint(s) received or breach discovered. Notwithstanding the foregoing, the final decision to uplift the suspension shall be subject to MCMC's and TM's satisfaction upon investigation.

### **SCHEDULE 3 -LIST OF PROHIBITED INTERNATIONAL BRANDS**

A. Parties acknowledge and agree that this list is neither comprehensive nor exclusive and TM reserves the right to amend or vary the list from time to time.

B. The list of the Prohibited International Brands is as follows:

Facebook, Twitter, Instagram, Google, Apple, LinkedIn, Microsoft, Yahoo, Dropbox, Hike, Tinder, Waze, Whatsapp, WeChat, Viber, Snapchat, IMO, Skype, KakaoTalk, Telegram, Line, ICQ, WhatsCall, Truecaller, World Phone, Libon, BeeTalk, YeeCall, Vodi, Tratsup, Hotmail, Norton, Netflix, AirBnB, Paypal, Uber, Alibaba.com, Amazon, eBay, Booking.com, Agoda, Traveloka , TransferTo, PayGo, Tango, Trans-fast, WorldRemit, Freelancer.com, Truelancer, Cash Express, Bigo, Adobe, Dingtone, Skrill, Tencent QQ, mCent, Zalo, Yandex, Practo, BBM, McAfee, CamScanner, Symantec, Electronic Arts, ArenaNet, Smule, Bitly, Nexmo, Coinbase, mail.ru, DHL, Xiaomi, Bigo, YuppTv, Wordpress, Indoona, Zoco, Badoo and LinkApp, BBM, Microsoft Live, Microsoft Office 365, YouTube, Evernote, Investec, AgentMail, AppMe, ATC Cable, Authy, Avast, Azure, BingoHall, bitcoinwallet, btree4u, catchall, ChatOn, Chitchat, Clean Master, Clicksure, Coco, Confide, Cornercard, cubie, Ding, Ezyclooud, Firechat, Flipkey, Fotoplace, Glide, GO SMS, GroupMe, Hive, HomeAway, Hotspot Shield, Keeper, Leomaster, Life 360, Logmein, Lyft, M4Marry, Mayzus, MeetMe, meitu, mgm, Mico, Mirage, Mo+, Mob, Money Map, Monsoon, Mql5, Mxit, Namecheap, netcode, NetQin, Nobelapp, Not a brand, numberbook, Nymgo, oamc, oDesk / Upwork, OKPay, Olala, Omlet, OTO Global, Pal+, Path, Payeer, Paytoo, Phhphoto, Pine Club (betting), PowerGold, ringhop, Seven Luck, Shots, Shpock, Skout, smartcycle, Space VoIP, Steam, Talkray, tapeacall, Target Hero, Telintel, Trading Central, Tribe, Trium, v2uclub, videocallfriend, Vippie, VK, Vonage, Voxofon, Wasabee, Whoscall, Wire, WOW, Xapo, Xender, Yolla