

**AMENDMENT AGREEMENT TO
AGREEMENT FOR INTER-OPERATOR SHORT MESSAGE SERVICE**

THIS AMENDMENT AGREEMENT takes effect from

PARTIES:

1. _____ a company incorporated in Hong Kong with its registered office at _____
 2. _____ a company incorporated in Hong Kong with its registered office at _____
 3. _____ a company incorporated in Hong Kong with its registered office at _____
 4. _____ a company incorporated in Hong Kong with its registered office at _____
 5. _____ a company incorporated in Hong Kong with its registered office at _____
 6. _____ a company incorporated in Hong Kong with its registered office at _____
- (collectively referred to as "Operators").

RECITALS:

- A. The Operators have entered into the Agreement for Inter-Operator Short Message Service on _____
- B. The Operators have now agreed to amend the Agreement by inserting a new Schedule 1 on Code of Practice for Inter-Operator Short Message Service to the Agreement on the terms and conditions set out in this Amendment Agreement.

OPERATIVE PROVISIONS:

1. INTERPRETATION

- 1.1 A term which is defined in the Agreement and used in this Amendment Agreement but not defined in herein has the same meaning as used in the Agreement unless the context requires otherwise.
- 1.2 The terms and conditions of this Amendment Agreement are deemed to be an integral part of the Agreement and reference to "this Agreement" in the Agreement refers to the Agreement and this Amendment Agreement.
- 1.3 Nothing in this Amendment Agreement shall in any way vary the Agreement unless expressly stated in this Amendment Agreement, and the Agreement remains in full force and effect. The Operators agree that the variation set out in this Amendment Agreement will not affect and is without prejudice to the rights and remedies that a party may have accrued prior to the variation.
- 1.4 The amendments set out in this Amendment Agreement take effect from the Effective Date.

2. AMENDMENT

- 2.1 The Operators agree that the Agreement shall be amended as follows:-

2.1.1 Clause 1.2

Delete the definition of "**Code of Practice**" in clause 1.2 in its entirety and replace with the following:

"**Code of Practice**" means the industry code of practice on Inter-Operator Short Message Service agreed to by the Operators, as amended or supplemented from time to time. A copy of the Code of Practice agreed to by the Operators as at the Effective Date is set out in the attached Schedule 1."

2.1.2 Schedule 1

Insert a new Schedule 1 which is attached to this Amendment Agreement.

3. GOVERNING LAW

- 3.1 This Amendment Agreement is governed by the laws of the Hong Kong Special Administrative Region. The Operators hereby agree to submit to the exclusive jurisdiction of the courts of the Hong Kong Special Administrative Region.

IN WITNESS WHEREOF this Amendment Agreement has been signed by the duly authorised representatives of each party hereto.

Agreed and accepted by the authorised representative

For and behalf of

in the presence of

Agreed and accepted by the authorised representative

For and behalf of

in the presence of

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in the presence of

SCHEDULE 1
CODE OF PRACTICE ON
INTER-OPERATOR SHORT MESSAGE SERVICE

PREAMBLE

1. This Code of Practice has been drafted by the Public Mobile Radiotelephone Services and the Personal Communications Services operators and provides for a set of standard procedures for such Operators to follow in the implementation of the Inter-Operator Short Message Service.
2. For the avoidance of doubt, nothing in this Code of Practice shall absolve any Operator from the responsibility of operating in accordance with the terms of its licence issued by the Telecommunications Authority and legislation from time to time in force in Hong Kong.

3. SCOPE

- 3.1 This Code of Practice applies to all Operators and to all IOSMS originating from or received by Customers.

4. INTERPRETATION

- 4.1 In this Code of Practice, the following terms shall have the following respective meanings:

“Contractor” means the contractor engaged by the Operators to provide the IOSMS and the System;

“Customer” means:

- (a) a person (whether an individual, company, partnership, joint venture or other corporate or unincorporated body, association, or government agency):
 - (i) subscribing in Hong Kong to the mobile telecommunications services of the Operators;
 - (ii) acquiring IOSMS service from an Operator by having a connection to the Operator’s network/systems for the submission or reception of IOSMS. Connection can be any form of connection such as leased line, IP, Internet, C7 network and the like which does not go through the radio interface of the Operator’s mobile telecommunications services; or

- (iii) providing messaging services outside Hong Kong which are sent as short messages to recipients in Hong Kong; or
- (b) an Operator which initiates IOSMS.

“Hong Kong” means the Hong Kong Special Administrative Region of the People’s Republic of China;

“Operator” means an operator operating a mobile network and/or providing mobile telecommunications services under a licence issued under the Telecommunications Ordinance, and the term "Operators" shall be construed accordingly;

“Originating Operator” means the Operator from which an IOSMS is sent;

“IOSMS” means the Inter-Operator Short Message Service. For the avoidance of doubt, IOSMS does not mean short messaging service (SMS) provided within the network of the Originating Operator only;

“Promotional IOSMS” means IOSMS of promotional or similar nature sent by a Customer, irrespective of the means of sending the messages whether over the radio interface of the mobile network using a mobile terminal, over a web site and/or other system platform which connects to the Operator's network/system in a way as described in section 4.1 (a) (ii) above. For the avoidance of doubt, personal IOSMS (such as messages of personal communication nature) which is not of promotional or similar nature shall be excluded from the definition of Promotional IOSMS;

“System” means the system comprising equipment, software and accessories for the supply of the IOSMS;

“Terminating Operator” means the Operator which is in receipt of an IOSMS;

“Unsolicited IOSMS” means Promotional IOSMS which the recipient has not given his/her explicit prior consent to receive; and

“working day” means a day (other than Saturday, Sunday and a public holiday) on which banks are generally open for business in Hong Kong.

5. PROMOTIONAL IOSMS AND PROCDEURES FOR HANDLING UNSOLICITED IOSMS

- 5.1 Each Operator shall obtain, and shall procure in the agreements with its Customers that the Customers obtain, the recipient’s explicit consent to receive Promotional IOSMS prior to sending any Promotional IOSMS to such recipient. Each Operator shall incorporate such terms and conditions in the service agreement with their respective Customers to enable the exercise and implementation of the rights of suspension, termination and disclosure pursuant to this section 5.
- 5.2 Each Originating Operator has the right to stop the delivery of Unsolicited IOSMS as soon as it becomes aware thereof.

- 5.3 Each Originating Operator shall stop the delivery of Unsolicited IOSMS in accordance with section 5 hereof.
- 5.4 (a) In the event that the Terminating Operator receives a complaint from a recipient, the Terminating Operator shall collect such necessary information on the Unsolicited IOSMS, including without limitation, the mobile telephone number of the recipient, the date and time on which the Unsolicited IOSMS was received, the full originating address and the contents of the Unsolicited IOSMS.
- (b) Upon receiving complaints against the same sender (identified by the originating address) the Terminating Operator shall forward the complaints on behalf of the recipients to the Originating Operator for its investigation.
- (c)
- (d)
- (e) The Originating Operator and the Terminating Operator shall use their best endeavours to discuss and resolve the matter in good faith. In the event that the parties do not resolve the matter, either party may raise the matter to the Telecommunications Authority for his consideration.
- 5.5 Notwithstanding anything to the contrary herein contained and to the extent technically feasible, the Terminating Operator shall have the right to, at any time upon the request of the recipient,
- 5.6 The Terminating Operator shall handle complaints from the recipients against Unsolicited IOSMS via the channels as specifically designated by the Terminating Operator for that purpose and in accordance with the guidelines set out herein.
- 5.7 Each Operator shall establish a contact point with telephone number, facsimile number and e-mail address for referral of such complaints from other Operators.

- 5.8 To the extent permitted under the relevant laws, the Terminating Operator shall keep records of all the Unsolicited IOSMS complaints for a period of
- 5.9 Each Operator shall not directly or indirectly initiate any Unsolicited IOSMS which makes reference to its name or business with the intention to solicit business or Customers from other Operators.

6. PROCEDURES FOR NOTIFYING OTHER OPERATORS OF SYSTEM MAINTENANCE AND RELATED PROBLEMS

- 6.1 As soon as (and in any event any Operator identifies a problem or fault in its network which is likely to affect the sending or receipt of IOSMS, such Operator shall notify the other Operators and the Contractor of the same first by phone to be followed by confirmation in writing. The Operators shall follow the procedures to be agreed between the technical representatives of each Operator.
- 6.2 The other Operators and the Contractor shall be notified of any scheduled IOSMS system maintenance involving total outage of the IOSMS of the relevant Operator.
- 6.3 Each Operator shall establish a contact point and an alternative contact point (in case the first person cannot be reached) with telephone numbers, facsimile numbers and e-mail addresses for the above system maintenance and network problem notifications.

7. ORIGINATING ADDRESS AND DESTINATION ADDRESS

- 7.1 The originating address and destination address should be capable of maximum 20 digits.
- 7.2 For the purposes of the operation of the System, the originating address and destination address of each IOSMS shall follow the mobile number format as specified in the latest Numbering Plan for Telecommunication Services in Hong Kong as issued by the Telecommunications Authority, or such mobile number prefixed with "852", or other number format as may be agreed from time to time by the Operators.
- 7.3 The remaining digits, if any, in the originating address and destination address shall be made up of numbers.
- 7.4 The Originating Operator must ensure that the mobile number contained in the originating address of the sender is owned by the Originating Operator.
- 7.5 Whenever the originating address in the IOSMS received conforms to the format specified in this section 7, the Operator shall allow the message to be replied to that address.

8. NEW SERVICES

- 8.1 While it is the obligation of each Operator to comply with the provisions under this Code of Practice, it is expressly acknowledged that this Code of Practice is not intended to impede or inhibit in any way the provision of new short message services employing new technology or innovative ideas by the Operators. To keep this Code of Practice abreast of the time and future developments in the telecommunications market, this Code of Practice may be reviewed and/or relaxed from time to time in accordance with section 9.

9. AMENDMENTS

- 9.1 The Operators jointly shall have the right to amend and approve amendments to this Code of Practice, as and when necessary.