

meaning when used in this Agreement unless otherwise specified in the Agreement.

1.2 The following terms used in this Agreement will have the following meanings, unless otherwise stated.

- “Affiliate” of a Party means an entity which controls, is controlled by, or is under common control with, that Party;
- “Code of Practice” means the code of practice on Inter-Operator Short Message Service as agreed by and and set out in Schedule 1 of this Agreement which may be amended or supplemented by the agreement of the Parties from time to time and in accordance with Clause 3.4;
- “Commencement Date” means 14th July 2003 or such other date as the Parties may agree in writing;
- “Contractor” means and/or other company as agreed between the Parties in writing from time to time that provides the Inter-Operator Short Message Service to the Parties;
- “Delivery” means the delivery through the Inter-Operator Short Message Service of SMS from the Terminals of the Originating Operator Subscribers to the Terminals of the Terminating Operator Subscribers;
- “Delivery Fee” means the fee described in Clause 4.1 payable by the Originating Operator to the Terminating Operator for each successful Delivery;
- “Force Majeure Event” in relation to a Party means an event which is beyond the reasonable control of that Party and hence rendering performance by that Party of obligations under this Agreement impossible, including but not limited to any act of God, fire, flood, war, revolution, act of terrorism, riot or civil commotion (excluding strikes and any failures of power or other utilities);

“FTNS”	means a fixed telecommunications network service operator who provides Services under a Fixed Telecommunications Network Services Licence;
“Inter-Operator Short Message Service” or “IOSMS”	means the service that: (a) receives a short message from the short message service center of a FTNS operator that is connected to the System, determines which mobile network of a MNO the message is destined for and then forwards this message to the short message service center of that MNO; or (b) receives a short message from the short message service center of a MNO, determines which FTNS operator the message is destined for and then forwards this message to the short message service center of that FTNS;
“Inter-Operator Short Message Service Agreement”	means the respective agreement entitled the “Contract for the Supply of Inter-Operator Short Message Service” between the Contractor and _____ ;
“MNO”	means a mobile network service operator who provides Services under a Public Radiocommunication Service Licence;
“Originating Operator”	means either _____ or _____ from whose network the SMS is sent by the Originating Operator Subscriber;
“Originating Operator Subscriber”	means the subscriber of the Originating Operator’s Services;
“Payment Operator”	means either _____ or _____ , which is making the payment of Delivery Fee pursuant to Clause 5;
“Payment Receiving Operator”	means either _____ or _____ , which is receiving payment of Delivery Fee pursuant to Clause 5;
“Services”	means Fixed Telecommunications Network

Services provided by _____ under its
_____ or the Public Mobile
Radiotelephone Services and/or Personal
Communications Services provided by
_____ under its respective

- “SMS” means a short message sent by the Originating Operator Subscriber to Terminating Operator Subscriber(s) utilising the Inter-Operator Short Messaging Service;
- “Successfully Delivered SMS” means an SMS that has been delivered through the IOSMS of the Contractor to the short message service center of the Terminating Operator and the System of the Contractor has received an acknowledgement signal of proper receipt of the SMS by that short message service center;
- “System” means the system comprising equipment, software and accessories for the supply of the IOSMS;
- “Terminals” means the devices of the Originating Operator Subscribers or the Terminating Operator Subscribers;
- “Terminating Operator” means either _____ or _____ which is in receipt of a SMS on its network from the Originating Operator Subscriber and delivers such SMS to the Terminating Operator Subscriber’s Terminal;
- “Terminating Operator Subscriber” means the subscriber of the Terminating Operator’s Services.

1.3 In this Agreement, unless the context otherwise requires:

- (a) any reference to a provision of any Ordinance is a reference to that provision as amended, extended or re-enacted from time to time;
- (b) words importing the singular number shall include the plural and vice versa, persons shall include bodies corporate and partnerships, references to any gender shall include all genders and references to any agreement or other instrument shall

be deemed to include references to such agreement or other instrument as varied or replaced from time to time; and

- (c) any reference to days are to calendar days unless stated as working days which are deemed to be the five (5) days Monday through Friday, and any reference to months or years are to calendar months or years.

2. Scope

- 2.1 The Parties agree that the scope of this Agreement shall enable the Originating Operator Subscriber to send short message to the Terminal of the Terminating Operator Subscriber except that a short message sent from an Originating Operator Subscriber who is a service/content/application provider and/or third party telecommunications network shall be excluded from the scope of this Agreement.
- 2.2 The SMS originating from the Originating Operator Subscriber and delivered to the Terminating Operator Subscriber through the System shall be in text form for person-to-person communications only and shall particularly exclude ringtones and logos.
- 2.3 The SMS originated whether by one Party or by the subscribers of the said Party to the subscribers of the other Party via the System shall not be generated by applications of any kind.
- 2.4 A Party shall not send any SMS to subscribers of the other Party through the System which constitute refileing or not originated from the subscribers of the said Party unless with the prior written consent of the other Party.
- 2.5 and agree that the delivery of IOSMS is subject to implementing the technical connection and successful completion of the tests between , and the Contractor.
- 2.6 agrees that its subscribers that make use of the IOSMS under this Agreement shall be direct exchange line subscribers of only and in the case of the SMS should be either originated from or terminated to direct exchange line.

3. Network Conditioning

- 3.1 To support the IOSMS, each Party shall be responsible for the conditioning of its own network and the cost incurred thereon shall be borne solely by that Party.
- 3.2 Subject to the maintenance of the IOSMS system by the Contractor and the obligations of the Contractor under the Inter-Operator Short Message Service Agreement, each Party agrees that it will use its reasonable endeavours to:
 - (a) ensure that the IOSMS will be available on a 24 hours per day and 7 days per week continuous basis and the capacity of the platforms and/or equipment in

relation to the provision of the IOSMS will be able to cope with the traffic demand of the IOSMS;

- (b) transmit and deliver the short messages sent by the subscribers of its Services and ensure that each such short message will be transmitted in full to the relevant Terminating Operator's Subscriber; and
- (c) ensure that the IOSMS includes the function of number portability so that a subscriber of either Party's Services who has ported his mobile or FTNS number, whichever is applicable, will still be able to utilize the IOSMS as provided under this Agreement.

3.3 Each Party agrees to comply with the Code of Practice relating to the provision of IOSMS.

3.4 Notwithstanding Clause 3.3, in the event that any provision of the Code of Practice is not applicable to the IOSM contemplated in this Agreement, the Parties may agree on such modifications to the applicability of the Code of Practice as necessary for the purposes of this Agreement.

3.5 Each Party agrees and acknowledges that the other Party shall not be liable to the first Party for any cost, expense, loss or damage arising from any incompleteness, inaccuracies, error, omission, misstatement or delay in the provision of the IOSMS by the Contractor and that it shall use reasonable endeavours to enforce the obligations of the Contractor under the Inter-Operator Short Message Service Agreement.

4. Delivery Fee

4.1 The Originating Operator shall pay the Terminating Operator Hong Kong Cents Thirty (HK\$0.30) only for each Successfully Delivered SMS.

5. Payment

5.1 On the eighth (8th) day of each month, and will each receive a monthly billing report from the Contractor, setting out details of the SMS sent and received by each party in the preceding month.

5.2 Any discrepancy between the monthly billing report and the records kept by or should be raised with the Contractor within fifteen (15) days of the receipt of the monthly billing report. If no discrepancy is raised within such period, the monthly billing report will be deemed to have been accepted by or

5.3 The amount of Delivery Fee to be charged by and against each other shall be set off based on the billing report received from the Contractor. The Payment Receiving Operator will on the fifteenth (15th) day of each month issue an invoice to the Payment Operator for the net balance of the Delivery Fee. The Payment

Operator shall settle the invoice within 30 days from the date of invoice ("the due date").

- 5.4 In the event that the discrepancy between the monthly billing report and the record of either or (as the case may be) cannot be reconciled after raising and checking with the Contractor, such discrepancy shall be waived if the aggregate amount thereof amounts to less than Hong Kong Dollars Two Thousand (HK\$2,000) or one percent (1%) of the total net amount of the Delivery Fee payable by the Payment Operator or due to the Payment Receiving Operator, whichever is lower. Notwithstanding the discrepancy, and shall set off the Delivery Fee to be charged against each other based on the monthly billing report received from the Contractor in the same manner as described in Clause 5.3.
- 5.5 The Parties agree to settle any dispute in respect of payment of the Delivery Fee in accordance to the following procedures:
- (a) if the Payment Operator wishes to raise a bona fide dispute, the Payment Operator must within thirty (30) days of the date of the invoice notify the Payment Receiving Operator in writing specifying the invoice in dispute, the amount in dispute and the reasons and facts for the dispute;
 - (b) in the event of a failure or non-availability of the Payment Operator's system, the Payment Operator must pay the invoiced amount in full pending resolution of the system failure or non-availability and any resulting bona fide dispute;
 - (c) the Payment Operator and the Payment Receiving Operator must use their best endeavors to investigate and resolve a bona fide dispute no later than 30 working days from the date of dispute notification according to Clause 5.5(a);
 - (d) if the dispute cannot be resolved within 30 working days from the date of dispute notification according to Clause 5.5(a) or any other period of time agreed by both Payment Operator and Payment Receiving Operator, then either Payment Operator or Payment Receiving Operator may refer the matter to arbitration in accordance with the Arbitration Ordinance;
 - (e) if the Payment Operator and Payment Receiving Operator are unable to agree on the appointment of an arbitrator, an arbitrator shall be appointed by the President for the time being of the Law Society of Hong Kong; and
 - (f) a decision of the arbitrator will be binding on the Payment Operator and the Payment Receiving Operator except in the event of manifest error or mistake of law.
- 5.6 The Payment Operator shall pay the Payment Receiving Operator by cheque unless otherwise agreed by writing.
- 5.7 If the Payment Receiving Operator does not receive the invoiced amount of Delivery Fee

by the due date, the Payment Operator must pay interest in respect of the overdue amount calculated at two percent (2%) per month from the due date until the full payment of the amount of the overdue amount is received.

6. Confidentiality

- 6.1 Each Party agrees to keep and procure to be kept secret all written and/or oral information of any kind (hereinafter called the "Confidential Information") obtained from the other Party pursuant to this Agreement or prior to it.
- 6.2 Each Party shall not at any time divulge, disclose or otherwise furnish to any third party any information relating to the affairs or business of the other party.
- 6.3 Each Party shall reveal the Confidential Information only to its employees, agents, contractors or Affiliates to whom disclosure is necessary for each of them to perform his duties for this purpose of this Agreement. Each Party shall require the above obligation of confidentiality from its employees, agents, contractors and Affiliates.
- 6.4 The foregoing obligations shall not apply, however, to any part of the Confidential Information which:
- (a) was already known to the recipient Party prior to receipt thereof;
 - (b) was already in the public domain or becomes so through no fault of the recipient Party;
 - (c) was acquired by the recipient Party from a third party having the right to convey the Confidential Information to the recipient party without any obligation of confidentiality not to disclose the same;
 - (d) is independently developed by the recipient Party;
 - (e) is approved for release by prior written authorization by the disclosing Party;
 - (f) is required to be disclosed by law, regulatory authorities or pursuant to a judicial order or in order to comply with any rule or regulation of any internationally recognised securities exchange.
- 6.5 Subject to the provisions in Clause 6.4 above, these obligations of confidentiality shall survive two years after the termination of this Agreement.
- 6.6 The terms of this Agreement shall remain private and confidential between the Parties and neither party shall, without the prior written consent of the other party, divulge to any third party (other than professional or financial advisers of either Party) or use for any purpose other than for the performance of its obligations under this Agreement, any information concerning this Agreement save for the purpose of any filing of information

with or requirement of government bodies under statutory requirements, or a stock exchange in which either party's shares are traded.

7. **Term**

7.1 This Agreement shall commence from the Commencement Date and shall continue in force subject to the provisions of termination contained in Clause 8.

8. **Termination**

8.1 Either Party shall have the right to terminate this Agreement forthwith at any time by giving to the other Party notice in writing to that effect in any of the following events:

- (a) if the other Party is in breach of any of its material obligations hereunder and fails to remedy such breach (if capable of remedy) within ten (10) days of receiving a written notice so to do;
- (b) if the other Party is subject to the law as to insolvency and/or bankruptcy or makes any arrangements or composition with its creditors or has a Receiver appointed or enters into liquidation (other than a voluntary liquidation for the purpose of reconstruction or amalgamation); or
- (c) if either Party's Inter-Operator Short Message Service Agreement expires or is terminated; or
- (d) if either Party no longer has the appropriate licence issued by the Hong Kong Telecommunications Authority for provisioning of SMS to its customers.

9. **Review**

9.1 The Parties shall review the terms and conditions of this Agreement six (6) months after the Commencement Date. Thereafter, the Parties shall review the terms and conditions on each anniversary date from the Commencement Date.

10. **Applicable Law and Settlement of Dispute**

10.1 The validity and interpretation of this Agreement shall be governed in all respects by the laws of Hong Kong Special Administrative Region. Save for the dispute procedure set out in Clause 5.5, the Parties shall submit to the non-exclusive jurisdiction of the courts of Hong Kong Special Administrative Region for settlement of any dispute.

11. **Limitation and Exclusion of Liability**

11.1 Nothing in this Agreement shall operate to exclude or restrict either Party's liability for death or personal injury resulting from negligence, or from fraud.

11.2 Notwithstanding any other provisions contained elsewhere in this Agreement but subject to Clause 11.1, under no circumstances whatsoever (including other negligence or breach of statutory duty) shall either Party be liable to the other party or to any other person, body of persons or corporation for any indirect or consequential loss including but not limited to loss of revenue, business or profits suffered or alleged to have been suffered by the other Party or any other party or any other person, body of persons or corporation resulting from any reason or cause whatsoever under this Agreement.

11.3 Subject to Clause 11.2, each Party limits its aggregate liability in any calendar year arising out of this Agreement to an amount that does not exceed the Delivery Fee payable to that Party in that calendar year under this Agreement.

12. No Partnership and Force Majeure

12.1 Nothing in this Agreement shall constitute or be deemed to constitute a partnership between the Parties hereto or constitute or be deemed to constitute that one Party act as an agent of the other for any purpose whatsoever and neither party shall have the authority or power to bind the other or create a liability against the other in any way or for any purpose.

12.2 If a Party (the "Affected Party") is prevented, hindered or delayed from or in performing any of its obligations under this Agreement by a Force Majeure Event, the Affected Party's obligations under this Agreement are suspended while the Force Majeure Event continues and to the extent that it is prevented, hindered or delayed. The Affected Party shall, as soon as reasonably practicable after the occurrence of a Force Majeure Event, notify in writing the other Party of that occurrence and the circumstances which gave rise to the Force Majeure Event.

13. Assignment

13.1 Neither Party shall assign, transfer, convey, license or otherwise dispose of, wholly or partially, the rights and obligations under this Agreement except with the prior written consent of the other Party not to be unreasonably withheld.

13.2 Notwithstanding the provisions of Clause 13.1, in the event of an assignment being made as a result of a reconstruction or merger within the group of companies of either Party, the consent of the other Party to the assignment is not necessary. Prior notification of any such assignment shall be given.

14. Entire Understanding

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

15. Notices

15.1 Any notice required to be given hereunder to a party shall be sufficiently given if sent by facsimile or registered post address of that Party as specified below. Any such notice shall be deemed to have been received and given at the time when in the ordinary course of transmission it should have been delivered at the address to which it was sent.

For :

Address:

Attention:

Fax No.:

For :

Address:

Attention:

Fax No.:

16. Severability

16.1 If any provision of this Agreement shall be construed to be illegal or invalid, they shall not affect the legality validity and enforceability of the other provisions of this Agreement. The illegal or invalid provision shall be deleted from this Agreement and no longer incorporated herein but all other provisions of this Agreement shall continue.

17. Paragraph Headings

17.1 The headings of the Clauses or paragraphs contained herein are for convenience only and do not define, limit, describe or constitute the contents of such paragraphs.

SCHEDULE 1

CODE OF PRACTICE ON INTER-OPERATOR SHORT MESSAGE SERVICE

PREAMBLE

1. This Code of Practice has been adopted by _____ and _____ and provides for a set of standard procedures for such Parties 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 _____ and _____ 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 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;

“IOSMS” means the service that receives a short message from the short message service center of a FTNS operator that is connected to the System, determines which mobile network of a MNO the message is destined for and then forwards this message to the short message service center of that MNO; or receives a short message from the short message service center of a MNO, determines which FTNS operator the message is destined for and then forwards this message to the short message service center of that FTNS. For the avoidance of doubt, IOSMS does not mean short messaging service (SMS) provided within the network of the Originating Operator only;

“Operator” means an operator either operating a mobile network and providing mobile telecommunications services or operating a fixed telecommunications network and providing fixed telecommunications services (“FTNS”) 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;

“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 PROCEDURES 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 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 10 or more complaints against the same sender (identified by the originating address) within the same day, the Terminating Operator shall forward the complaints on behalf of the recipients to the Originating Operator for its investigation. The Terminating Operator has also the right to block the sender from sending any IOSMS to its network until the matter has been resolved.
- (c) Upon receiving the complaints, the Originating Operator shall notify (in writing if possible) the sender of the complaints within 3 working days and request the sender to respond to the complaints. The Originating Operator may also, where necessary, immediately suspend the sender's IOSMS until the matter has been resolved.
- (d) The Originating Operator shall notify the Terminating Operator within 7 days after receiving the complaints from the Terminating Operator of the result of its investigation and the action, where required, the Originating Operator has taken to prevent the sender from further sending Unsolicited IOSMS. In the event that the Originating Operator has not completed its investigation within 7 days, and the complaints against the sender accumulate (irrespective of their number), the Originating Operator shall, unless it has already done so pursuant to section 5.4(c), suspend the IOSMS of the sender to its network for not less than 14 days or until the matter has been resolved, whichever is earlier.

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, temporarily implement point-to-point blocking against the sender of Unsolicited IOSMS in respect of which complaint has been lodged under Section 5.4.

- 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 1 year.
- 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 within thirty (30) minutes) 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 in writing at least 3 working days in advance 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 telephone number format as specified in the latest Numbering Plan for Telecommunication Services in Hong Kong as issued by the Telecommunications Authority, or such telephone number prefixed with "852", or other telephone 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 telephone 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.