

Terms & Conditions

Terms & Conditions: T&C B01

TERMS AND CONDITIONS FOR BROADBAND SERVICES

Fixed Broadband Services is provided by SmarTone Communications Limited.

Mobile Broadband Services is provided by SmarTone Mobile Communications Limited.

SmarTone Communications Limited or SmarTone Mobile Communications Limited is hereinafter individually referred to as **“the Company”**.

Fixed Broadband Services or Mobile Broadband Services is hereinafter individually referred to as **“the Services”**.

BROADBAND SERVICES EQUIPMENT

1. FOR SALE OF BROADBAND SERVICES EQUIPMENT

1.1 The Customer shall pay the Company the full purchase price or any balance thereof on the delivery of the Broadband Services equipment (“Broadband Equipment”). If the Broadband Equipment has been delivered to the Customer and the balance of the purchase price is not paid by the Customer, the Company shall have the right to forfeit the deposit paid by the Customer and repossess the Broadband Equipment.

1.2 Title to the Broadband Equipment shall remain vested in the Company until the Company has received full payment of the purchase price but risk shall pass to the Customer upon delivery of the Broadband Equipment to the Customer.

1.3 All delivery dates or times quoted by the Company are estimates only and the Company shall not be liable for the consequences of any delay whatsoever.

2. FOR RENTAL OF BROADBAND SERVICES EQUIPMENT

- 2.1 The Customer shall rent the Broadband Services equipment (“Rental Equipment”) from the Company for the use of the Services
- 2.2 The Rental Equipment shall at all times remain the sole and exclusive property of the Company and the Customer shall have no right, title or interest thereto.
- 2.3 The Rental Equipment is provided for the sole use of the Customer and shall not be assigned, transferred, conveyed or otherwise disposed of without the prior written consent of the Company.
- 2.4 The Customer shall:
- (i) use and operate the Rental Equipment in a proper manner and in accordance with the Company’s instruction and the relevant user guide;
 - (ii) not use the Rental Equipment or any part thereof in conjunction with other equipment, components, accessories or devices other than those supplied by the Company;
 - (iii) not share, attach, connect or permit to be shared, attached or connected to the Services any other personal computer, Local Area Network (LAN) or any other network of any form except such as may be supplied or approved by the Company;
 - (iv) use the Rental Equipment at the service address at which it was registered (only applicable to Fixed Broadband Services);
 - (v) not at any time or under any circumstances alter or tamper with the Rental Equipment nor repair nor attempt to repair nor permit any one to repair or maintain the Rental Equipment or any parts thereof which may affect the Services or the Company’s network.
- 2.5 The Company, its employees or authorized agent shall have the right to perform the installation of the Rental Equipment and reconfiguration on the Customer’s computer for the purpose of provision of the Services. The Company may charge the Customer a fee for the installation. The amount of the fee shall be determined by the Company at its sole discretion.

- 2.6 Prior to the installation of the Rental Equipment, the Customer has the responsibility to back up any data stored in its computer and inform the Company if any configuration or installation by the Company is likely to invalidate any support arrangements or other facilities stored in or of the Customer's computer.
- 2.7 The Company or its authorised agents shall have the right where necessary to disable any Local Area Network (LAN) card (which includes the removal of any network card and installation of its replacement) for the purpose of provision of the Services.
- 2.8 The Customer shall pay charges (if applicable) prescribed by the Company for rental of the Rental Equipment.
- 2.9 The Company will at the request of the Customer effect all necessary repairs to the Rental Equipment as may from time to time be necessary. It is expressly agreed between the Company and the Customer that the Company shall not be subject to any liability or responsibility by reason of any delay in effecting such repairs. The costs of repairs of the Rental Equipment shall be provided free of charge except repairs caused by any one of the following:
- (i) accidents, negligence, fault, improper use on the part of the Customer;
 - (ii) events of force majeure described in Clause 19;
 - (iii) the Customer's failure to maintain, use or operate the Rental Equipment properly.

All costs of repairs under this Clause shall be additionally charged to the Customer by the Company at the Company's prevailing rates.

- 2.10 Upon termination of the Services, the Customer shall at its own risk and expense return the Rental Equipment to the Company within fourteen (14) days after termination of the Services in the same condition as when delivered to the Customer ordinary fair wear and tear excepted. If the Customer fails to deliver the Rental Equipment or the Rental Equipment is found to be damaged upon return, the Customer shall indemnify the Company against all loss or damage to the Rental Equipment on a full indemnity basis (including the costs of any agent appointed by the Company for the recovery of the Rental Equipment).

BROADBAND SERVICES

3. THE SERVICES

3.1 Subject to the terms and conditions set out herein, the Company shall provide and the Customer shall subscribe to the Services in accordance to the selected service plan ("Service Plan"). If the Service Plan specified a minimum commitment period ("Fixed Term Contract"), the Customer agrees to subscribe the Services for the Fixed Term Contract stipulated in the Company's Sales and Services Agreement or other relevant document as appropriate.

3.2 The Services provided to the Customer is subject to the Company's prevailing Service Plan and/or rate of charges for the Services from time to time. The Company reserves the right to vary the Service Plan and/or rate of charges for the Services at any time as it thinks fit by giving prior notice to the Customer.

3.3 The Customer shall select the features of the Services ("Service Features"). The Company reserves the right at any time to do all such things that is necessary to the Service Features to ensure the quality of the Services.

3.4 The following is applicable to Fixed Broadband Services:

a) The provision of Services by the Company is restricted to the home zone address specified in this Agreement ("Home Zone Address") including the area within the immediate vicinity of the Home Zone Address. The Customer shall notify the Company immediately of any change in the Home Zone Address, otherwise the Services will be disconnected. Unless otherwise expressly provided, the Customer shall pay the Company an administrative fee for the provision of the Services to a relocated Home Zone Address. The amount of the administrative fee shall be determined by the Company at its sole discretion.

b) The Company does not guarantee continuous or fault free provision of the Services as a result of a relocation of the Home Zone Address or the Services are available at the relocated Home Zone Address.

3.5 The Company shall have the right to determine the appropriate means of providing

the Services including without limitation the method, technology and the route of delivery of the Services to the Customer. The Company may at its sole discretion vary such method, technology and route of delivery at any time without notice to the Customer.

3.6 Unless otherwise notified by the Customer, the Customer agrees to receive information sent from the Company for any or all of the following purposes:

- (a) marketing of goods and/or services by the Company, its agents, affiliates or subsidiaries in relation to the Services;
- (b) improvement such as updates and upgrades of goods and/or services in relation to provisioning of the Services
- (c) any benefits arising out of or in connection with the Services;
- (d) facilitate, complete or confirm the provision of the Services by the Company to the Customer under this Agreement.

3.7 The Customer may be required at its own costs to install equipment, software or reconfigure the Customer's computer equipment or other equipment or devices in order to obtain access to the Services. Unless otherwise provided, the equipment is and will at all times remain the property of the Company and the Customer will not acquire any rights or title thereto.

4. CONTENT

4.1 The Company may make available data, information, diagram, symbol or other material in whatever languages including without limitation all textual, audio, video, still and moving images, graphical, musical or other content or information or goods or services supplied by third parties other than the Company that can be accessed by or through using the Services (collectively the "Content").

4.2 The Company reserves the right in its absolute discretion to prevent the Customer from accessing any of the Content from time to time.

4.3 Except for Content which is supplied by the Company as principal, the Company is

not responsible for exercising any editorial control over or to edit or amend any Content before it is transmitted or made available through the Services. The Customer hereby acknowledges, agrees and authorizes the Company to use, store, screen, edit, access, copy, amend or delete any content uploaded or otherwise provided by the Customer where any such content is, in the Company's opinion defamatory, in breach of copyright, illegal or otherwise not appropriate to be accessed by or through using the Services.

5. DEPOSIT/ADVANCE PAYMENT

- 5.1 The Company shall have the right at any time to require the Customer to pay a deposit and/or advance payment as security for the due performance and discharge by the Customer of his obligations and liabilities relating to the provision of the Services or otherwise under this Agreement. The amount of the deposit and/or advance payment shall be determined by the Company at its sole discretion. The Company reserves the right to increase the amount or vary its requirement of the deposit and/or advance payment from time to time. The deposit shall be retained by the Company free of any interest to the Customer.
- 5.2 Without prejudice to any other rights or remedies which the Company may have against the Customer, the Company shall be entitled to apply and set off the deposit and/or advance payment against any sum due or owing by the Customer under this Agreement or under any of the Customer's other account for the Services or for any loss or damage suffered or sustained by the Company as a result of any non-performance or non-observance by the Customer of any terms and conditions under this Agreement or under any of the Customers other account for the Services.
- 5.3 Subject to the above, the deposit shall be refunded to the Customer without interest after the termination of this Agreement or the settlement of the last outstanding claim by the Company against the Customer under this Agreement whichever shall occur later.
- 5.4 The payment of the deposit and/or advance payment does not relieve the Customer from his obligations to pay amounts to the Company as they become due and payable, nor does this enable the Customer to make allowance by way of set-off,

deduction or withholding from any such amount. The deposit and/or advance payment will not affect any right of the Company to suspend, cancel or terminate this Agreement for non-payment.

6. PAYMENT FOR THE SERVICES

6.1 The Customer agrees to pay charges ("Charges") in connection to the Services and/or Service Features as prescribed in the Company's tariff plan from time to time.

6.2 The Customer shall pay the Company the Charges which the Company's records attribute to the Customer.

6.3 Charges will be calculated by reference to data recorded or logged by the Company and not by reference to any data recorded or logged by the Customer. Records held and call logging procedures adopted by the Company will be conclusive evidence of the usage of the Services and/or Service Features and the Charges payable by the Customer.

6.4 Usage Charges for the Services and/or Service Features will be measured using such unit of measurement as is adopted by the Company for that Services or Service Features from time to time.

6.5 The Customer shall, forthwith upon signing this Agreement, pay in advance the first month's service charges for the provision of the Services and the first month's charges for such Service Features selected by the Customer and any other charges as the Company may require, each in such amount as the Company may in its sole and absolute discretion determine. Any sum so paid to the Company shall not bear interest for the Customer. All payments for the Charges are payable monthly in advance. Unless otherwise stated, all Charges are non-refundable under whatever circumstances.

6.6 The Company shall issue a monthly bill setting out the Charges for the relevant month. The amounts shown on the bill of all the Charges shall be final and binding on the Customer. The Customer shall pay and settle in full each bill on or before the due date for payment as specified in the bill or otherwise forthwith upon demand by the Company.

6.7 If payment of the Charges is by direct debit from the Customer's account for the

Services ("Service Account"), the following terms shall apply:

- a) the Customer expressly acknowledges that he agrees to the rates and charging mechanism before using the Services and/or Service Features. In particular, the Customer agrees to the minimum monthly Charges which shall be debited from the Service Account at the end of each billing cycle (details of the billing cycle shall be specified by the Company) irrespective whether or not the Customer has used the Services and/or Service Features up to the level of the minimum monthly Charges.
 - b) the minimum monthly Charges are subject to change from time to time. The Customer should regularly check the updated rate of Charges through the channel(s) specified by the Company.
 - c) all questions and disputes regarding the Charges, remaining credit in the Account will be decided by the Company at its sole discretion.
 - d) the Company does not provide refund or make any transfer of:
 - i) any unused portion of the monies in the Service Account:
 - ii) any monies in the Service Account directed to an incorrect account;
or
 - iii) any monies in the Service Account being utilized by fraudulent and unauthorized use of the Service Account.
- 6.8 The Company reserves the right to vary the billing frequency at any time without prior notice or issue an interim bill for accrued Charges, which will become immediately due and payable.
- 6.9 Unless otherwise stated, all monies paid by the Customer are non-refundable under whatever circumstances.
- 6.10 The Customer shall raise any dispute regarding any amount of the Charges within ten (10) days from the date of the monthly bill or the date of debit of the Charges from the Service Account; failing which the Customer shall be deemed to have waived all his right against the Company.

- 6.11 All sums payable to the Company hereunder shall be in full without any deductions or set-offs. All sums shall be paid in Hong Kong Dollars and in such manner as the Company may from time to time specify.
- 6.12 Payments made by post shall be at the Customer's risk and a payment shall not be deemed to have been paid until the payment is received by the Company.
- 6.13 Time of payment is of essence. The Company shall be entitled to charge interest at the rate of two percent (2%) per month on any overdue amount from the due date until the date on which payment in full is received by the Company. Such interest shall accrue from day to day.
- 6.14 Where the Customer has registered more than one Services in an account, the Company shall have the right to transfer any credit balance of charges paid under any one of the Services in the account to settle the outstanding charges of another Services in the account.
- 6.15 Where the Customer has registered more than one account in his name with the Company, the Company shall have the right to transfer any credit balance of charges paid under any one of the account to settle the outstanding charges in another account.
- 6.16 Where the Customer has registered more than one account in his name with the Company, the Company shall have the right to consolidate the outstanding balance of all accounts into one for payment settlement arrangement.
- 6.17 If a cheque or payment by direct debit is dishonored or cancelled, the Customer shall pay to the Company any (a) resulting bank or other charges incurred by the Company; and (b) associated administration charges imposed by the Company.
- 6.18 Should the Customer cancel the Services after this Agreement has come into effect but before the rendering and/or billing of any Services, the Customer shall notwithstanding the cancellation, be liable for all costs, expenses and/or fees incurred by the Company in connection with or in preparation for the provision of the Services to the Customer.
- 6.19 The Customer shall be liable for all Charges for the Services whether the Services

in relation to such Charges were used by the Customer or by any other third party with or without the Customer's authority, knowledge or consent.

6.20 The Customer will continue be liable for all Charges for the Services even though there is an interruption of the Services as a result of a relocation of the Customer's registered address as described in Clause 3.4 or the Broadband Equipment connected to the Services are not in operation.

6.21 The Company has the right to set a credit limit from time to time for the Charges in connection to the Services incurred by the Customer and to suspend access to or disconnect the Services, in whole or part, if the credit limit is exceeded.

6.22 The Customer agrees that unless otherwise expressly provided, any unused data usage as specified in the tariff or service plan of the Services selected by the Customer cannot be carried forward to the following month or transferred to another account.

6.23 The Customer agrees that no credit or refund is available to the Customer in respect of any time when all or part of the Services / Service Features are inoperable, limited, suspended or otherwise unavailable to the Customer.

6.24 The Customer shall pay all licence fees payable from time to time to the Government of Hong Kong in connection with the Customer's use of the Services (if applicable) to the Company at the time(s) specified by the Company.

7. USE OF THE SERVICES

7.1 The Customer shall:

- a) use the Services in accordance with this Agreement and all applicable laws, rules of regulation in Hong Kong, any lawful determination, decision or direction of any Government body in Hong Kong and any applicable information convention or agreement ("Applicable Law");
- b) not use the Services or the Company's facilities and associated equipment used in or in connection with the network ("Network") in any

manner that would cause the Company to be in breach any Applicable Law;

c) not be directly or indirectly involved in any Unauthorized Activity. For this purpose, "Unauthorized Activity" means any act or omission in relation to the Services or any translation, alteration, modification or deletion (whether through the use of any translation system or device or in any other manner whatsoever) of the number, code or signal associated with the Services;

d) not use the Services:

i) for any improper purpose or for the purpose of sending any unsolicited or unauthorized advertising material or any material of an obscene or indecent nature or junk or bulk e-mail (SPAM), chain letters or any other unsolicited commercial or non-commercial communication; or

ii) for operation of an internet service provider's business;

iii) in any manner which is unauthorized, fraudulent, suspicious or illegal, whether under any Applicable Law or otherwise; or

iv) in a manner which constitutes an infringement by the Customer or the Company of the rights of any person (including but not limited to copyright and other intellectual property rights and rights of confidentiality) or a violation or infringement of any duty or obligation in contract, tort or otherwise, to any third party; or

v) for uploading or downloading, transmitting, posting, publishing, disseminating, receiving, retrieving, storing or otherwise reproducing, distributing or providing access to information,

software, files or other material which: (a) are confidential or protected by copyright or other intellectual property rights, without prior authorization from the rights holder(s); (b) are defamatory, obscene, child pornography or hate literature; or (c) constitute invasion of privacy, appropriation of personality, or unauthorized linking or framing; or

- vi) to run any server type applications in providing any type of serviced to others in any way through the Services. Such server type application includes, but not limited to, email server, web server, ftp server, dhcp server, proxy, usenet news, multi-user interactive forums, irq and/or multi-user game host; or
 - vii) to download, send or upload data of an excessive size, quantity or frequency or in any manner which in the sole discretion of the Company may adversely affect the Company's ability to provide, complete or maintain the level or quality of the Network or other services; or
 - viii) in any manner which is designed to unfairly exploit the usage or to cause loss or damages to the Company such as reselling the Services; or
 - ix) in any manner or for any activity whatsoever which restricts or inhibits any other user from using or enjoying the Internet, or 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 the Services or any service provided by the Company; and
- e) not, and shall ensure that third parties do not, either by act or omission, interfere with or impede or impair use of, or operation of, or do anything likely to interfere with or impede the use of, or operation of, the Services or the Network or any service or network of a third party; and
 - f) not take or allow any other person to take any unauthorized action in relation to the Broadband Equipment (as described in Clause 1) the Rental Equipment (as described in Clause 2) or the Network or the Services; and

- g) promptly notify the Company of any fault in the Services or deterioration in the quality of the Services; and
- h) comply with directions given by the Company from time to time in relation to:
 - i) modifications required to any apparatus of the Services or other action necessary to be taken to eliminate any interference, impediment or impairment to the Services or the Network; or
 - ii) any use of the Services that is reasonable or prudent to ensure that the Customer complies with this Clause 7.
- i) The Company has the absolute discretion to forthwith suspend/terminate the Services without notice, upon the occurrence of any one or more of the circumstances specified in this Clause 7.
- j) The Company may monitor your usage of the Service. If the Customer fails to comply with any of the prohibitions or if in the reasonable opinion of the Company, the Customer's use of the Services is excessive or unreasonable, the Company may ask the Customer to moderate the usage. If the Customer fails to do so, the Company reserves the right to charge the Customer for the excessive usage at a rate specified by the Company, or suspend or terminate the Services, or the Company may take any steps it considers reasonably necessary or appropriate forthwith without notice.

8. ADVERTISEMENT AND DEALINGS WITH ADVERTISERS

8.1 The Customer understands and agrees that the Services may include advertisements.

8.2 The Company is not a party to and is not otherwise involved in any manner in any correspondence or business dealings with, or participation in promotion of, advertisers found on or through the Services, including payment and delivery of goods or services and any other terms, conditions, warranties or representations associated with such dealings which are solely between you and such advertiser. The Customer agrees that the Company shall not be responsible or liable for any

loss or damage whatsoever incurred as a result of any such dealings or as the result of the presence of such advertisers on the Services.

9. TERMINATION

9.1 Either the Company or the Customer may at any time terminate this Agreement by giving to the other party thirty (30) working days prior written notice to that effect.

9.2 In addition and without prejudice to other provisions contained in this Agreement, the Company shall be entitled to forthwith terminate this Agreement or disconnect the Services or any part thereof without notice, upon the occurrence of any one or more of the following events:

- a) if any charges or other sums whatsoever payable by the Customer hereunder remain unpaid after becoming due; or
- b) if the Customer fails to pay the deposit and/or advance payment specified in Clause 6; or
- c) if the value remaining in the Service Account at the end of a billing cycle is insufficient to cover the minimum monthly Charges or any charges due at the date of the billing cycle as specified in Clause 6.7.
- d) if the Charges for the use of the Services exceed the credit limit specified by the Company from time to time; or
- e) if the Customer commits a breach of any of the terms and conditions contained herein; or
- f) if the Customer fails to comply with any of its obligations under Clause 7 or
- 9) if the Customer furnishes information to the Company which he knows to be false, inaccurate or misleading; or
- h) if the Company is prohibited from supplying the Services pursuant to an order, instruction, determination or direction of a judicial body, government or regulatory authority; or

- i) in the case of a Customer that is an individual. the Customer dies; or
- j) in the case of a Customer that is a legal entity (including a partnership) that Customer becomes or there is evidence to show that the Customer is likely to become insolvent or bankrupt, subject to a winding up proceeding, has a receiver appointed, is dissolved or in the process of dissolution, makes any arrangement for the benefit of creditors, or initiates or becomes or there is evidence to show that the Customer is likely to become subject to any form of insolvency proceeding; or
- k) any Force Majeure event referred to in Clause 19 continues for more than ninety (90) days; or
- l) if the Customer uses the Services for any fraudulent or unlawful purposes or uses abusive, threatening, harassing, vulgar or obscene language to other Customers or employees of the Company through the Services, or allows, permits or authorizes any other person to do so.

9.3 If the Customer has registered more than one Services in an account or more than one account in his name, the Company shall have the right to forthwith terminate or disconnect all the other Services in the account(s) if any Charges under any one of the Services in the account remain unpaid after becoming due or if the Company terminates this Agreement pursuant to Clause 9.2.

9.4 Termination hereunder shall be without prejudice to any rights and/or claims that the Company may have against the Customer prior to the date of termination and shall not relieve the Customer from fulfilling his obligations including payment of all outstanding Charges prior to the date of termination. Any amount accrued and unpaid shall be due and payable forthwith upon termination.

9.5 In the case of termination pursuant to Clause 9.1 by the Customer, the Customer shall continue to be liable for all Charges payable hereunder until notice of termination is actually received by the Company and becomes effective.

9.6 If the Agreement is terminated by the Customer pursuant to Clause 9.1 or by the Company under Clause 9.2 (other than Clause 9.2(h) or (k) before the Fixed Term Contract (as described in Clause 3.1)) has expired, then the Customer, shall, on

termination pay the Company liquidated damages as stipulated in the Company's Sales and Services Agreement or the relevant Service Plan (where applicable) and all offer under the Service Plan shall terminate immediately. The liquidated damages are an agreed reasonable pre-estimate of the anticipated losses suffered by the Company if the Services is terminated before the expiration of the Fixed Term Contract.

- 9.7 The Company shall have the right to assign the Customer's service number for the Services to another customer after the Services provided to the Customer is terminated or disconnected.

10. RECONNECTION

- 10.1 If the Services is disconnected for reasons set out in Clause 9 or upon the Customer's request, the Company may upon the Customer's request reconnect the Services subject to payment by the Customer of all sums due or owing to the Company, a deposit requested by the Company and a reconnection charge. The amount of the deposit and the reconnection charge shall be determined by the Company in its sole and absolute discretion.

11. SERVICE ADDRESSING INFORMATION

- 11.1 The Customer acknowledges that the Services or service numbers or other network addressing information assigned by the Company to the Customer are governed by numbering plans and guidelines issued by the Telecommunications Authority and that the Customer has no title, goodwill or interest in any number assigned to the Customer.

- 11.2 If the Company withdraws or changes any number or network addressing information assigned to the Customer, it will endeavour to give the Customer such prior notice as may be reasonably practicable in the circumstances, unless the withdrawal is because of the termination or suspension of the Service in accordance with the Agreement.

12. PERSONAL IDENTIFICATION NUMBER

- 12.1 The Company may allocate a PIN to the Customer and may, at any time, vary the

PIN allocated to the Customer. The Company will notify the Customer of a change in the PIN allocated to the Customer where it is reasonably practicable to do so.

12.2 Each PIN issued to a Customer is confidential and personal to the Customer and the Customer is responsible for the security of his PIN.

12.3 The Customer undertakes to use his PIN in accordance with the reasonable directions given to him by the Company from time to time. The Customer shall notify the Company immediately if the Customer has grounds for believing that any person has discovered or is making use of his PIN without his knowledge or consent, and the Company will allocate a new PIN to the Customer.

12.4 If the Services is suspended, withdrawn, restricted or terminated or this Agreement is terminated the Company may withdraw the PIN.

13. VERIFICATION AND PROVISION OF INFORMATION

13.1 The Customer shall on the request of the Company provide all necessary documents which would verify the truth or correctness of the information furnished by the Customer to the Company. The Company reserves the right not to provide the Services until the Company has established the truth or correctness of the information from the documents furnished by the Customer. The Customer shall notify the Company of any change or alteration to the information provided to the Company as soon as practicable.

13.2 Individual Customer must be over the age of eighteen (18) to enter this Agreement.

13.3 The Company is not bound to verify the authenticity or authority of a signature or mark purportedly of or an behalf of the Customer. Any authorized signatory chop, business chop, personal seal, signature or mark appearing on the Agreement shall be binding on the Customer and the Company. The Company is irrevocably authorized to rely on any form, letter or document purportedly signed by or on behalf of the Customer.

14. USE OF CUSTOMER INFORMATION

14.1 The Company is hereby authorized, in relation to any information it has relating to the Customer or the authorized user under the Customer's account, to use and/or disclose such information for the purpose of the Company performing its obligation or enforcing its rights under this Agreement or any other purpose reasonably incidental thereto or in contemplation thereof.

15. LIMITATION OF LIABILITY

15.1 The Services and any other software and equipment provided by the Company is on an "as is" basis. Use of the Services and such software and equipment and information obtained through the Services is at the Customer's own risk.

15.2 Save and except for any liability of the Company which cannot be excluded by law, the Company shall not be liable for any cost, claim, expenses, damage or loss of whatsoever nature suffered, sustained or incurred by the Customer or any person arising from or out of or relating to the provision of the Services, the value added services and/or Service Features offered under the Services including without limitation:

- (i) any interruption or failure of the Services, the value added service and/ or the Service Features, or
- (ii) any failure, delay or mistake in establishing communication between the Customer and any other person, or
- (iii) any failure or delay while the Customer is communicating any message in the use of the Services; or
- (iv) any failure or delay in activating or deactivating the Services; or
- (v) any unauthorized use of the Customers communication equipment.

15.3 To the extent permitted by law, the Company disclaims any warranty or responsibility, whether expressed or implied:

- (i) as to the title, fitness for a particular purpose, merchantability, accuracy, standard of quality or performance of the Services;
- (ii) the Services will be uninterrupted, error free or free of any contaminating or destructive properties;
- (iii) as to any results obtained from using the Services.

15.4 Without prejudice to Clauses 15.2 and 15.3, the Company does not guarantee that the provision of the Services including those supplied by third party will be connected successfully or meet the Customer's requirements. The Company will not be responsible for the transmission of the Services over any other network or beyond the termination of the Company's network (which includes all facilities and associated equipment used in, or in connection with network).

15.5 The Company shall under no circumstances be liable for any loss (whether direct or indirect) of revenue, loss of profits or any consequential loss whatsoever suffered, sustained or incurred by the Customer or by other person arising (directly or indirectly) from or out of or relating to the provision of the Services or this Agreement.

15.6 Information supplied through the value-added services are supplied by third party information providers. The Company and the third party information provider make no warranties of any kind in relation to the information provided and accept no responsibilities for its accuracy or completeness and/or consistency or for any loss or damage whatsoever and howsoever suffered or incurred by any party. With the use or access to the information provided, the Customer or any party irrevocably and unconditionally accepts and agrees to be bound by this disclaimer.

16. VARIATION

16.1 The Company shall be entitled, at any time, or from time to time, by giving prior notice to the Customer, to vary all or any of these terms and conditions and to impose new terms.

17. ASSIGNMENT

- 17.1 The Customer shall not assign, transfer, convey, license or otherwise dispose of any of its rights and obligations under this Agreement to any other party without the prior consent of the Company.
- 17.2 Consent will only be given by the Company on condition that the Customer and the transferee signing a transfer agreement in the form specified by the Company and the Customer settling all outstanding charges under this Agreement.
- 17.3 The Customer shall not assign, transfer, convey, license or otherwise dispose of the service number which has been allocated by the Company to the Customer for the use of the Services.
- 17.4 The Company may appoint a third party to provide the Services to the Customer on the Company's behalf or to perform any of the Company's obligations under this Agreement.
- 17.5 The Company may appoint a third party, including an Affiliate, to provide the Services to the Customer on the Company's behalf or to perform any of the Company's obligation under this Agreement. For the purpose of this Clause, "Affiliate" means, an entity which directly or indirectly controls, is controlled by, or is under common control with the Company.

18. APPLICABLE LAW

- 18.1 This Agreement shall be construed in accordance With the laws of Hong Kong Special Administrative Region and the parties shall submit to the exclusive jurisdiction of the courts of Hong Kong Special Administrative Region in the event of dispute.

19. FORCE MAJEURE

- 19.1 The Company shall not be liable for any loss or damage resulting from delay or failure to perform this Agreement With in whole or in part where such delay or failure shall be due to causes beyond its reasonable control, or which is not occasioned by its fault or negligence, including but not limited to, war, the threat of imminent war, riots or other acts of civil disobedience, insurrection, acts of God, restraints imposed by governments or any other supranational legal authority or

any other industrial or trade disputes, fires, explosions, storms, floods, lightening, earthquakes and other natural calamities

20. NOTICES

20.1 Any notice or consent to be given by the Company to the Customer may be given by the Company either personally to the Customer or by post, facsimile to the address specified in the Agreement or any address as notified by the Customer or by electronic means addressed to the Customer. Such notice or consent shall be deemed to have been received by the Customer immediately if transmitted by facsimile or electronic means or when personally delivered and twenty-four (24) hours after despatch if sent by post.

21. NON-WAIVER

21.1 No failure or delay on the part of the parties hereto to exercise any right, power or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise by either of the party of any right, power or remedy. The rights, powers and remedies provided herein are cumulative and are not exclusive of any rights, powers or remedies by law.

22. SEVERABILITY

22.1 If any provisions 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.

23. ENTIRE AGREEMENT

23.1 This Agreement embodies the entire understanding between the parties and there are no promises, terms or conditions, oral or written expressed or implied other than those contained herein.

23.2 Save for Clause 16, this Agreement may only be amended in writing and signed by or on behalf of the Company and the Customer.

24. INTERPRETATION

24.1 Reference to the plural shall include the singular and vice versa; words importing a gender shall include every gender; references herein to any person shall include references to individual, firm, body corporate or unincorporate.

24.2 The terms and conditions of this Agreement are written in both English and Chinese. A copy of the terms and conditions are available upon request at any of the Company's stores or by calling the Company's hotline or retrieved from the Company's web site.

Terms & Conditions: T&C B02

AUTHORIZATION FOR CREDIT CARD DIRECT DEBIT

1. The Customer hereby authorize SmarTone Communications Limited / SmarTone Mobile Communications Limited ("The Company") to charge his card account ("Card Account") for all monthly service charges and liquidated damages ("the relevant amounts") incurred in connection with The Company's services, which should not exceed the relevant amounts.

2. Credit Card means VISA or Master.

3. The Credit Card must be valid for 4 months or above from the date of signing the Sales & Services Agreement between The Company and the Customer.

4. The Customer's signature on The Company's Sales & Services Agreement should be the same as shown on the Credit Card.

5. The Credit Card holder must be the registered customer of The Company's services.
6. The Customer agrees that his card issuing bank (the "Bank") shall debit the relevant amounts from his monthly Card Account statement, and the Bank shall not be obliged to ascertain whether or not notice of any such debit has been given to the Customer.
7. If there is insufficient credit available in the Customer's Card Account to meet the debit, the Bank shall nonetheless be entitled, in its discretion, to effect such debit.
8. The Customer accepts full responsibility for any consequences of the existing limit applicable to his Card Account being exceeded,
9. This authorization shall become effective upon the signing of The Company's Sales & Services Agreement until otherwise notified in writing by the Customer

Terms & Conditions: T&C B03

POLICY ON PERSONAL DATA SMARTONE COMMUNICATIONS LIMITED / SMARTONE MOBILE COMMUNICATIONS LIMITED

1. SmarTone Communications Limited / SmarTone Mobile Communications Limited ("The Company") value all personal information provided by their customers, and this circular sets out The Company's policy and practices in relation to personal data and The Personal Data (Privacy) Ordinance ("the Ordinance").
2. The Ordinance protects the privacy of the individual by controlling the manner in which personal data may be collected, held, processed and used. Any personal information collected and recorded by us in relation to a customer, from which the identity of the customer can be ascertained, will be subject to regulation by the Ordinance.
3. From time to time, it will be necessary for customers to supply The Company with personal data in connection with the opening or continuation of services provided by The Company. ('the Services')

4. Failure to supply such personal data may result in The Company being unable to open or continue the Services for a customer.
5. Personal data will be used by The Company for considering a customer's application to obtain the Services and, subject to The Company agreeing to provide the Services, personal data and information relating to all or any transactions or dealings involving such Services, will be used in connection with The Company's provision or termination of such Services and without limiting the foregoing for the following purposes:
 - i) in connection with the recovery of any monies owed or liabilities incurred by a customer in relation to the Services;
 - ii) in connection with matching for whatever purpose any such personal data with other personal data concerning a customer in The Company's possession;
 - iii) in connection with credit rating and billing verification;
 - iv) in connection with any verification or exchange of information;
 - v) in connection with any system or facility for payment by electronic means or via other communication media in which The Company participates;
 - vi) promoting, improving and furthering the provision of the Services by The Company to a customer generally;
 - vii) in connection with the marketing of products and services to a customer and/ or the solicitation of donations or contributions for charitable or other purposes; and/or
 - viii) all other incidental and associated purposes relating to the above and any other purpose which a customer may from time to time agree.
6. The Company may transfer (whether within or outside Hong Kong) and/or exchange personal data of a customer to and/or with all such persons and/or entities as The Company may consider necessary including, without limitation, the following persons and entities:
 - i) any subsidiary, affiliate or partner of The Company;
 - ii) any agent, contractor, supplier and/or third party goods and/or service provider of telecommunications, credit information, debt collection, direct marketing, banking or financing or others in connection with the operation of the Services;
 - iii) government and statutory bodies;
 - iv) any law enforcement agency or related entity; and/or
 - v) any charity.

7. Any of the persons or entities referred to above may utilize the personal data in the course of any business carried on by such person or entity.
8. A customer is entitled to request The Company to cease to use personal data for the purpose specified in 5(vii) above and on receipt of such a request The Company will cease to use personal data for such purpose.
9. In accordance with the terms of the Ordinance and subject to exemptions specified in the Ordinance, any customer:
 - i) has the right to check whether The Company's holds personal data about him or her and has a right to receive copies of such data;
 - ii) has the right to require The Company to correct any personal data relating to him or her which is inaccurate; and
 - iii) has the right to ascertain The Company's policies and practices in relation to personal data and to be informed of the kind of personal data held by The Company.
10. In accordance with the terms of the Ordinance, The Company has the right to charge a reasonable fee for processing a data access request.
11. Requests for access to personal data, correction of personal data and information relating to the kind of data held, may be made in writing by fax or post to:

The Data Protection Officer
SmarTone Communications Limited /SmarTone Mobile Communications Limited
P. O. Box 68864
Kowloon East Post Office,
Kowloon Fax: 3128 2266