

## **General Terms and Conditions of M800 International Toll Free Service (ITFS) & Short Message Service (SMS)**

### **General Terms and Conditions**

The Customer shall observe and be bound by the following terms in relation to the provision of Services by M800: -

#### **1. Definitions and Interpretation**

1.1 Unless otherwise stated, the following words and expressions shall have the following meanings:

- “Agreement”** means these General Terms and Conditions (including the Schedules hereto) as may be supplemented and/or amended by M800 (defined herein below) from time to time;
- “Application”** means any written or on-line application or any other means of application as permitted by M800, made by the Customer requesting provision of the Services in accordance with this Agreement;
- “Cancellation Fee”** means a fee charged by M800 if M800 ends this Agreement due to the Customer’s conduct or if the Customer ends the Agreement within the Minimum Subscription Period. This fee may cover (without limitation) the Customer’s fixed periodic subscription fees for the remainder of the Minimum Subscription Period which are payable as liquidated damages, M800’s administrative costs, value of gift/discount provided by M800, costs incurred by M800 in connecting and disconnecting Services for the Customer, and/or M800’s payments to other M800’s Contractors or agents pursuant to this Agreement;
- “Contents”** includes (without limitation) any information, data, text, music, sound, graphics, photos, video, messages, hyperlinks or tags;
- “Customer”** means the customer of M800 named in the Application (including but not limited to service providers of telecommunication, channel agents/resellers, enterprises, individual party which may assign this Agreement to third parties subject always to M800’s prior written approval;
- “Hong Kong”** means the Hong Kong Special Administrative Region of the People’s Republic of China;
- “IP Rights”** includes (i) designs, design rights, trade marks, service marks, copyrights, patents, Internet domain names of any level, moral rights, rights in circuit layouts and topography rights, trade and business names whether registered or registrable (including the benefit of all registrations for the full period thereof and all extensions and renewals thereof and applications to register and rights to apply for registration of any of the foregoing), and all rights in the nature of any of the foregoing, anywhere in the world; (ii) unfair competition

rights and rights to sue for passing off; (iii) trade secret, confidential information and other proprietary rights, including rights to know-how, expertise, inventions, formula and other technical information; (iv) computer programs and software; and (v) licences and permissions in respect of any of the foregoing;

- “ITFS”** means International Toll Free Service;
- “International Toll Free Call”** refers to international public switched telephone network (PSTN) direct dial voice or facsimile traffic with a toll free number;
- “M800”** means M800 Limited, a company duly incorporated and existing under the laws of Hong Kong, and includes its successors in title and assigns;
- “Minimum Subscription Period”** means the minimum fixed contract period for the supply of Services to the Customer as agreed by M800 and the Customers in writing;
- “Recipient”** means a mobile phone user whose mobile phone(s) receives any International Toll Free Call(s) and/or Short Message(s) irrespective of whether they are the intended Recipients;
- “Services”** means the services (which may include any one or more of ITFS, SMS and Voice Calls) applied for by the Customer in the Application and such other services as otherwise ordered by the Customer and agreed to be provided from time to time in accordance with the terms and conditions of this Agreement;
- “Service Commencement Date”** means for the Service the earlier of the date when a Service (including all network and billing procedure) is first tested, and accepted in accordance with mutually agreed acceptance tests and made available to the Customer or the date when the Customer starts to use the Services;
- “Service Fees”** means all service fees, including but not limited to setup fee or charge, monthly recurring fee or charge, service fee or charge, Voice Usage Fees and other usage fees or charges), connection charges, other charges and Taxes (if any) payable by Customer to M800 in accordance with this Agreement;
- “M800’s Contractor”** means a third party (including telecom providers or operators or any other system or service providers) providing Services to or otherwise for and on behalf of M800 for the purpose of this Agreement;
- “SMS”** means Short Message Service;

<b>“Short Message”</b>	means the Contents sent by (or for and on behalf of) the Customer and/or its authorised persons, agents or representatives through M800’s System to any person wherever situate;
<b>“Sub-Customer”</b>	means a person, corporation or organisation to which a Customer provides the Services (whether in whole or in part or in conjunction with any other service) whether or not for profit;
<b>“System”</b>	means a telecommunications system operated by any person under any valid license or the like granted by any relevant governmental or other competent authority;
<b>“Taxes”</b>	Means all forms of tax, duty, rate, levy, charge or other imposition or withholding whenever and by whatever authority, and whether of Hong Kong or elsewhere, including (without limitation), and any liability to make a payment by way of reimbursement, recharge, indemnity or damages connected in any way with any Taxes and regardless of whether any such taxes, duties, rates, levies, charges, imposts, withholdings, interest, penalties or fines are chargeable directly or primarily against or attributable directly or primarily to you, whether any amount in respect of any of them is recoverable from any other person, and <b>“Tax”</b> shall be construed accordingly;
<b>“Voice Call”</b>	Means the international public switched telephone network (PSTN) direct dial voice or facsimile sent by M800 and/or M800’s Contractors for and on behalf of the Customer; and
<b>“Voice Usage Fees”</b>	means all service fees, charges (if any) in respect of Voice Call(s) made by M800 and/or its M800’s Contractors for and on behalf of the Customer;

1.2 Except as otherwise specified in this Agreement or where the context otherwise requires:

- (a) a reference to a **“person”**, includes an individual, a body corporate, a partnership, any other unincorporated body or association of persons and any state or state agency;
- (b) a reference to a **“right”** includes a power, discretion or remedy;
- (c) a reference to **“business day”** is to a day other than a Saturday, Sunday or public holiday on which commercial banks are open to conduct general banking business in Hong Kong;
- (d) a reference to **“use”** includes (without limitation) accessing, retrieving, downloading, logging on to or viewing a Service;
- (e) words importing the plural include the singular and vice versa;
- (f) words importing a gender include all genders;
- (g) headings are included in this Agreement for reference only and shall not affect its interpretation and construction; and
- (h) the words and expressions **“other”**, **“include”**, **“including”**, **“in particular”**, **“for example”**, **“such as”** and **“e.g.”** do not limit the generality of any preceding words and are not to be

construed as being limited to the same class as the preceding words where a wider construction is possible.

## 2. **Agreement**

2.1 This Agreement between M800 and the Customer is effective upon the unconditional acceptance by M800 of the Application and actual receipt from the Customer of the requisite deposit or other sums as required by M800 (if any). This Agreement shall continue in force (notwithstanding the expiry of the Minimum Subscription Period) until terminated in accordance with the terms and conditions of this Agreement.

2.2 In consideration for the entry into this Agreement and the payment of the Service Fees by the Customer, M800 will:

- (a) provide (or where applicable, subject to Clause 2.3 below, procure its M800's Contractors to provide) the Services to the Customer; and
- (b) grant the Customer a non-exclusive right to use the Services pursuant to the terms and conditions of this Agreement.

2.3 M800 may in its absolute discretion procure its M800's Contractors to provide all or some of the Services to Customer from time to time. In those cases, the following conditions shall also apply:

- (a) the Services provided by the M800's Contractors shall be subject to the terms, conditions and limitations imposed by those M800's Contractors (if any), in which event those terms, conditions and limitations will be deemed to be incorporated into this Agreement but only to the extent that the same are not inconsistent with the terms and spirit of this Agreement;
- (b) if those M800's Contractors change, suspend or stop providing the Services for any reason whatsoever, M800 may similarly change, suspend, or stop providing the Services to Customer without notice, provided that M800 will use reasonable commercial efforts to provide the Services to Customer in another way or by using another M800's Sub-Contractor;
- (c) the Customer hereby agrees and authorises M800 to provide any of Customer Information (as defined in Clause 11) to those M800's Contractors (actual and potential) to the extent necessary to enable M800 and/or the M800's Contractors to provide the Services; and
- (d) to the extent that there is a conflict between M800's Sub-Contractor's terms and conditions and the terms and conditions in this Agreement, this Agreement shall prevail.

2.4 If Customer acquires and/or sells goods, uploads/downloads, files/software or otherwise uses/provides services from or to the Sub-Customers or any person or third party (other than one of the M800's Sub-Contractors) through any of the Services and/or in connection therewith, Customer understands and agrees that:

- (a) M800 may reject or refuse any third party services (other than the Services) used or provided by the Customer in conjunction with the Services;
- (b) M800 is not a party to the contract between Customer and that other third party (including the Sub-Customers) and the Customer enters into the said contract at its own risk and expense;
- (c) to the extent that there is a conflict between this Agreement and the contract/agreement

entered into between Customer and the Sub-Customer/ any third party, this Agreement shall prevail;

- (d) M800 does not have to and will not monitor the services used and/or provided by the Customer;
- (e) Customer shall be responsible for all obligations under the contract between itself and the Sub-Customers or any third party including warranties and guarantees therein;
- (f) Customer shall be responsible for evaluating the goods, software or services and the applicable terms and conditions before acquiring from and/or selling the same to the Sub-Customers or any third party; and
- (g) Customer shall defend, fully indemnify and hold harmless M800 and its officers, directors, employees, M800's Contractors and authorised agents/representatives from and against any and all loss, damage and expenses (including, without limitation, legal fees) incurred or which arise in relation thereto.

2.5 Customer is responsible for reviewing the amendments and/or updates to this Agreement, M800's rates and/or Services, which will be published on M800's website, provided that M800 shall be under no obligation to notify the Customer of any terms, conditions or limitations imposed by M800's Contractors (if any). Customer's continued subscription for and/or use of the Services, after M800's posting of any amended version of its terms of services, rates, and/or modifications to the Services on M800's website, constitutes Customer's full acceptance of and agreement with any and all amendments so made and such modifications/amendments shall supersede any previous agreements between Customer and M800 without any notice to Customer.

2.6 Without prejudice to any provision contained herein, M800 does not warrant the confidentiality or security of any Contents and data (whether personal or otherwise) transmitted by or on behalf of Customer through the Services. Customer shall, at its own expense, be solely responsible for protecting and backing up its Contents and data.

2.7 By subscribing to and/or using the Services, the Customer agrees that M800 may intercept, block, filter, read and monitor any Contents, Voice Call(s) Short Message(s), communication or electronic message made by Customer to the extent allowed by law for the purpose of conducting M800's business and securing its networks and Systems.

### 3. **Service Fees and Charges**

3.1 The Customer agrees that:

- (a) should the Customer cancel all or any part of the Services after this Agreement has come into effect but before the rendering and/or billing of any Services by M800, the Customer shall, notwithstanding the cancellation, be liable for the Service Fees, Cancellation Fees, as well as all other Taxes, costs, expenses and/or fees incurred by M800 in connection with or in preparation for the provision of the Services to the Customers;
- (b) payment of Service Fees, Cancellation Fees and any other sums payable hereunder is due on the payment due date specified in M800's bill or, unless otherwise specified by M800, on the date falling fourteen (14) days after the issuing date of the bill by M800. The Customer shall pay the full amount of such bill without any set off or deduction. If full payment has not been made on the said due date, M800 may charge interest on all sums outstanding at the

rate of 2% per month on a daily basis from the date on which the payment was due until the date that full payment is received by M800, and M800 shall charge the Customer a collection agent fee and/or handling fee incurred by M800 as a result of the late payment of Customer as M800 shall deem fit;

- (c) M800 may bill Customer for subscription or monthly Service Fees in advance on monthly or quarterly or yearly basis and for Service Fees in arrears (if any). M800 reserves the right to amend the billing period and to serve interim bills on Customer. The setup fee or charge, connection charge (if applicable) will be included in the first bill to the Customer;
- (d) Customer shall be liable for all Service Fees irrespective of whether the Services to which such Service Fees relate have been used by the Customer or by any other third party with or without the Customer's authority knowledge or consent. Unless otherwise expressly agreed by M800 in writing, pre-paid Service Fees are non-refundable;
- (e) M800 may vary the Service Fees and introduce new Service Fees at any time and in accordance with the relevant licence (if applicable);
- (f) M800 may require Customer to provide a deposit as security for the Customer's payment of any sums due to M800 and may, at any time and from time to time, vary the amount of such deposit in M800's sole and absolute discretion. M800 may apply such deposit to reduce or pay any sums due to M800 by the Customer on whatsoever account at any time, in which event the Customer shall top up the deposit by paying an amount equal to the amount by which the deposit has been reduced (whether or not demanded by M800). No interest in favour of the Customer shall accrue on any deposit held by M800. Any deposit remaining following termination of this Agreement will be returned to the Customer after deducting any such sums due to M800, provided that any balance of deposit unclaimed by the Customer in writing within three (3) calendar months of the date of termination of this Agreement shall be forfeited absolutely;
- (g) M800 reserves the right to apply a credit limit from time to time for Service Fees incurred by the Customer and to suspend access to the Services, in whole or part, if the said credit limit is exceeded;
- (h) M800 may (but shall not be obliged to) transfer or apply any credit balance of the Customer to settle any amount owed by the Customer to M800 whether under this Agreement or any other arrangement between the Customer and M800. The Customer hereby authorises M800 to make payment on his or her behalf out of such credit balance (if any) to set off any amount in any account owed by the Customer to M800 from time to time. The Customer agrees that M800 may use/apply any credit or payment information of the Customer held by M800 for the purpose of this sub-paragraph (h);
- (i) upon receipt of M800's request for an additional security or credit, the Customer shall, unless otherwise specified by M800, have seven (7) days to provide or implement such security or credit, and if the Customer fails to comply with such request within the said period, then M800 shall be entitled to immediately suspend the delivery of the Services and/or terminate this Agreement without further notice or demand;
- (j) Customer acknowledges and agrees that M800's authorised person, agent or representative may bill the Customer on behalf of M800, and such bill shall be valid as if the same is rendered by M800 and that bill shall not prejudice any right of M800 to subsequently claim against the Customer;

- (k) Customer agrees that, unless otherwise expressly provided, no unused "free minutes/hours/talktime/SMS" (if any) as specified in the Application, tariff or service plan selected by the Customer (or otherwise allotted to the Customer) may be carried forward to the following month and that no credit or refund shall be available in respect of any time when all or part of the Services are inoperable, limited, suspended, or otherwise unavailable to the Customer;
- (l) in case of disputes over any usage of the Services and/or the Service Fees, M800's decision based on its records and/or those of the M800's Contractors shall be final and binding on the Customer (except where there is a manifest error);
- (m) unless otherwise specified by M800, any Service Fees stated in any bill that is not queried by the Customer within fifteen (15) days of the date of that bill, then the Service Fees will be deemed to be accepted in all respects by the Customer;
- (n) save where this Agreement is terminated pursuant to Clause 5 below, after the expiry of the Minimum Subscription Period the Customer agrees to continue to subscribe to the Services and to pay the Service Fees, charges and Taxes determined by M800 to be payable in accordance with M800's then prevailing price tariff;
- (o) Unless otherwise specified by M800, Voice Usage Fees and Service Fees for International Toll Free Call(s) shall be computed in one- (1) minute increments subject to an initial one (1) minute minimum per Voice Call, with partial minutes rounded up to the next full minute at the end of each Voice Call;
- (p) Unless otherwise specified by M800, Service Fees and charges for Short Message(s) shall be computed per Short Message sent irrespective of whether or not the Short Message has been delivered to the intended Recipient or at all; and
- (q) M800 reserves all its rights to charge the Customers at its absolute discretion any administration fee(s), suspension fee(s) and/or disbursement(s) incurred by M800 in connection with this Agreement.

#### **4. Provision of Service**

4.1 M800 will use its reasonable commercial efforts to provide (or procure M800's Contractors to provide) the Services to Customer, provided that M800 may suspend, disconnect and/or withhold the Services in whole or in part at any time immediately without notice if:

- (a) M800 considers necessary to safeguard provision of the Services or the integrity of the its networks/System; or
- (b) M800's networks/System and/or equipment fail, or require modification or maintenance; or
- (c) in M800's reasonable opinion, there is or has been an improper, unauthorised, unlawful or fraudulent use of the Services or the Customer's use of the Services is causing or may potentially cause damage or interference to M800's networks/Systems or equipment; or
- (d) it is necessary to comply with a direction or request of the Office of the Telecommunications Authority or other competent authority; or

- (e) the Customer does not comply with the letter and spirit of the terms and conditions of this Agreement; or
- (f) M800 is entitled to terminate this Agreement (whether under this Agreement, at law or otherwise),

and in any of the above circumstances, the Customer shall remain liable for all Service Fees during the period of suspension of Service unless M800 in its sole and absolute discretion decides otherwise.

- 4.2 Notwithstanding any suspension, disconnection or withholding of any of the Services by M800 and/or its M800's Contractors, the Customer shall be liable for all Service Fees prior to such suspension, disconnection or withholding of Service. M800 reserves the right to charge for the reconnection or resumption of Service and require revised terms and conditions, including terms of payment.

## **5. Termination of Agreement**

- 5.1 Without prejudice to any terms contained herein, M800 may terminate this Agreement by giving one month's written notice to the Customer.

- 5.2 Subject always to Clause 5.3 below, Customer may terminate this Agreement by giving one (1) month's written notice to M800. If the Customer terminates this Agreement before the expiry of the Minimum Subscription Period, the Customer shall, upon termination of this Agreement, pay to M800 all the Service Fees, the Cancellation Fee or any other charges payable hereunder, including but not limited to suspension fee, administration fee and/or disbursements.

- 5.3 M800 may, without prior notice, terminate this Agreement in whole or in part or any Services or any part thereof immediately, if in M800's opinion:

- (a) the Customer has failed to fully pay M800 any sums or Service Fees due to M800 on or before the payment due date under Clause 3.1(b); or
- (b) the Customer is in breach of any of the terms of this Agreement or fails to comply with any reasonable request of M800 in relation to the use of M800's networks/Systems or Services; or
- (c) the Customer becomes insolvent or bankrupt or M800 has reasonable cause to believe that the Customer is unable to pay the Service Fees or any other sums payable under this Agreement; or
- (d) there is any unauthorised or improper modification, alteration or tampering with M800's networks/Systems or equipment in conjunction with the Services; or
- (e) there is fraud, misuse or other unauthorised, illegal or improper use of the Services by any person, regardless of whether the Customer had consented to or had knowledge of such fraud, misuse, or unauthorised, illegal or improper use; or
- (f) M800 ceases to make the Services or any part thereof available for any reason; or
- (g) any of the information provided by the Customer under or pursuant to this Agreement is found to be false or M800 has reasonable ground to believe that such information is false or inaccurate.

- 5.4 If this Agreement is terminated by the Customer under Clause 5.2 or by M800 under Clauses 5.1 and

5.3 before the Minimum Subscription Period has expired, then the Customer shall, in addition to the Service Fees, pay M800 the Cancellation Fee on termination.

5.5 Where Customer has subscribed for more than one of the Services or has more than one account with M800, M800 shall have the right to forthwith terminate or temporarily disconnect the Services in whole or in part if any Service Fees for any of the Services rendered and/or under any of the Customer's accounts with M800 remain unpaid after becoming due.

5.6 Termination of this Agreement shall not affect any rights or liabilities of the parties to this Agreement, which have arisen prior to the date of termination.

5.7 Upon termination of this Agreement:

(a) M800 shall be entitled to disconnect, remove, delete, uninstall or dispose of any properties, materials, documents and elements which are developed by or licensed to M800 in relation to the Services while performing this Agreement from the Customer's network/System in its own discretion; and

(b) the Customer shall forthwith return to M800 (without limitation) all property, specifications, policies, guidelines, documents and information (including Customer Information as defined in Clause 11 below, if any) provided by M800 pursuant to this Agreement in any medium whatsoever and any copies, reprints, reproductions or notes thereof in any medium whatsoever.

## **6. Limitation of Liability**

6.1 M800 will make commercially reasonable efforts under the circumstances to maintain its overall network quality. However, M800 makes no representation or warranty about the Services provided hereunder, expressed or implied, including but not limited to any warranty of merchantability, completeness, quality or fitness for a particular purpose, title or non-infringement, or any warranty arising by usage of trade, course of dealing or course of performance. Accordingly, all services offered by M800 are provided on an "as is" and "as available" basis. No credit allowances or compensation are provided for interruption of the Service of any kind. In no event shall M800 be held liable to Customer nor any third party for any losses, claims or actions or any economic, direct or indirect, special, incidental, consequential, actual, punitive or exemplary damages, including, without limitation to, damages for loss of revenue, loss of profits, or loss of goodwill arising in any manner from the Services, the Customer's use of the Services, this Agreement and/or the performance or non-performance hereunder. M800 shall not be held liable for any delay or failure in its performance under this Agreement, other than for any delay or failure in any obligation to pay money, to the extent such delay or failure is not caused by fire, flood, explosion, accident, war strike, embargo, governmental requirement, civil or military authority, act of god, inability to secure materials or labour of any other causes beyond our reasonable control ("**Force Majeure**"). Any such delay or failure shall suspend this Agreement until the Force Majeure ceases. M800 does not represent, warrant or guarantee the reliability, up-time, quality and general performance of the Services. Further, M800 makes no representation or warranty that the Services provided to Customer will be uninterrupted or free of errors.

6.2 Without prejudice to the generality of Clause 6.1, M800 shall not be liable to the Customers, Sub-Customers or any third party for any losses, claims, actions or any economic, direct, indirect, special, incidental, consequential, actual, punitive or exemplary damages (whether foreseeable or not), including damages for loss of revenue, loss of profits or loss of goodwill resulting from any breach of this Agreement.

6.3 M800 is not and shall not be a party to any transaction, agreement or contract (if any) as made between

the Customer and Sub-Customers or third party as a result of the Customer's subscription to and/or use of the Services. M800 shall not be involved in or be in any way liable for any dispute between the Customer and the Sub-Customers or any third party.

- 6.4 M800's officers, directors, employees and authorised agents/representatives shall have the benefit of the rights, exclusions and limitations of the provisions contained in this Clause 6 as if such provisions were expressly for their benefit. To the extent of this Clause 6, M800 is entering into this Agreement not only on its own behalf, but also as agents and trustees for such officers, directors, employees and authorised agents/representatives.
- 6.5 Nothing under this Clause 6 shall limit or exclude M800's liability which is not permitted to be limited or excluded under the laws of Hong Kong and any other relevant jurisdictions. In the event that any limitation or exclusion of liability is not permitted by law, M800's liability (and that of its officers, directors, employees and authorised agents/representatives) will be limited as far as legally possible and permissible under the applicable laws, regulations and rules.

## **7 The Customer's Responsibility**

- 7.1 Customer represents and warrants that it is entitled to, and may lawfully, use the Services provided by M800 under the laws and regulations applicable to Customer's operations and/or business ("**Operations**"). Customer further agrees to use the Services provided by M800 for legal, legitimate and proper purposes only. Unlawful, improper and/or illegitimate use may be defined by M800 or by any official government police agency or authority, which notifies M800 of Customer's unlawful use of the Services. Customer further understands and acknowledges that M800 has acted in reliance upon these representations and warranties in deciding to enter into this Agreement with Customer.
- 7.2 Customer represents and warrants that it has never been subject to investigations or criminal complaints in connection with its Operations, other types of business and/or operations similar to the Operations or any other types of operations and/or business provided through public switch telecommunications networks. Customer further understands and acknowledges that M800 has acted in reliance upon this representation and warranty in deciding to enter into this Agreement with Customer.
- 7.3 Customer warrants that at the time of making the Application for the Services, it supplied to M800 all correct and complete information (including its name, address, telephone number, identity card number or business registration certificate number). The Customer undertakes to notify M800 of any future change or alteration to the aforesaid information in writing without delay.
- 7.4 Customer undertakes to comply with all laws, regulations and rules applicable to it and its Operations and to obtain and maintain (at its own expenses) all necessary licenses, permits and consents necessary to carry out its Operations and use the Services. In particular, Customer undertakes not to conduct and/or transact any Operations, or promote its Operations through use of the Services, which may be contrary to public order or good morals, or which are likely to violate any law or constitute any criminal offence, including:
- (a) Operations or any other business which are adult, sexual or pornographic in nature;
  - (b) Operations or any other business which is offensive or promotes or legitimates racism, sexism, ageism, revisionism or any other form of discrimination;
  - (c) Operations or any other business relating to the offering of gaming, betting and/or lotteries;

- (d) Operations or any other business encouraging, provoking or inciting hatred, violence, and/or terrorism;
- (e) Operations or any other business encouraging or provoking reprehensible or illegal actions;
- (f) infringing the IP Rights of any person;
- (g) interfering with or disrupts the networks/Systems connected to M800 or violate the regulations, policies or procedures of such networks;
- (h) attempting to gain unauthorised access to the Services or to other accounts, Systems or networks connected to M800;
- (i) making any misrepresentation to (i) deceive, mislead, defraud or otherwise make misrepresentations to any person regarding any fact or circumstance, (ii) impersonate or attempt to impersonate or otherwise misrepresent Customer's identity for whatever purpose, or (iii) forge or otherwise manipulate origination details and data on and/or in any Short Message, Voice Call, electronic data message or Contents with a view to disguising or deleting the origin of anything transmitted through the Services;
- (j) committing fraud or soliciting any person to participate in any commercial or non-commercial activities which are in the nature of an illegal activity (e.g. a financial scam, pyramid scheme); and/or
- (k) breaching any provision in this Agreement or doing or omitting to do anything that is otherwise inconsistent with the spirit of this Agreement.

7.5 Customer shall be liable for any and all Contents and Voice Calls transmitted to the Sub-Customers, all persons and third parties (irrespective of whether they are the intended Recipients of such Contents) through the Services (e.g. Short Message(s) and Voice Call(s)) provided by M800 and/or M800's Contractors. Customer is solely liable for the Contents of any and all Short Message(s), Voice Call(s), and other transmissions sent through the Services as a result of Customer's use of the Services (including any use that is otherwise than in accordance with this Agreement), regardless of whether or not such Contents are solicited or unsolicited.

7.6 Customer represents, warrants and undertakes that its Operations and the Contents transmitted to any person and third party (irrespective of whether it is an intended Recipients of such Contents) through the Services (e.g. Short Message(s) and Voice Call(s)) will not infringe the rights of any person or third party, including the right to privacy, the right to personal data protection and IP Rights.

7.7 Customer shall not use the Services for transmitting Contents, Voice Call(s), Short Message(s) to any person (irrespective of whether that person is the intended Recipient of the Contents) that:

- (a) are contrary to any applicable law, regulation or codes of practice (whether in Hong Kong or elsewhere);
- (b) are abusive, threatening, harmful, obscene, fraudulent, harassing, infringing, libelous, defamatory, slanderous, or are otherwise unethical or objectionable;
- (c) contain viruses, Trojan horses, worms, time bombs, cancel bots, malicious code or any other harmful or deleterious programs;

- (d) are adult, sexual or pornographic in nature;
- (e) are offensive or promote or legitimate racism, sexism, ageism, revisionism or any other form of discrimination;
- (f) relate to gaming, betting and/or lotteries;
- (g) encourage, provoke or incite hatred, violence and/or terrorism;
- (h) encourage or provoke reprehensible or illegal actions;
- (i) infringe the IP Rights of any person;
- (j) contain any "spam" or "junk" elements;
- (k) contain any solicitations, chain letters, pyramid schemes, investment opportunities or schemes (save and except those which are expressly approved by a relevant competent authority or are otherwise fully compliant with all applicable laws and regulations);
- (l) contain any misrepresentation to (i) deceive, mislead, defraud or otherwise make misrepresentations to any person regarding any fact or circumstance; (ii) impersonate or attempt to impersonate or otherwise misrepresent Customer's identity for whatever purpose; or (iii) forge or otherwise manipulate origination details and data on any otherwise manipulate origination details and data with a view to disguising or deleting the origin of anything transmitted through the Services;
- (m) would disrupt or interfere with any services provided by M800 and/or M800's Contractors; and/or
- (n) breach any provision in this Agreement or be inconsistent with the spirit of this Agreement,

and in each of the above circumstances, it shall be immaterial whether the Contents were solicited or unsolicited by the recipient. Without prejudice to the generality of the foregoing, Customer undertakes to comply with the Unsolicited Electronic Messages Ordinance (Cap. 593 of the Laws of Hong Kong) and all subsidiary legislation(s) or regulation(s) (as may be amended from time to time).

7.8 The Customer further agrees and undertakes that:

- (a) it shall not sell, rent, lease, distribute, assign or otherwise dispose of its rights to the Services or any of its rights and obligations under this Agreement without the prior written consent of M800;
- (b) it shall comply with all reasonable instructions from M800 relating to its use of the Services;
- (c) it shall at its own expenses use and maintain only such System and equipment (e.g. computers, telephones, faxes and other communications equipment), software and network or Internet access as are necessary for and compatible with M800's System and the Services. The responsibility of complying with all applicable laws, regulations and/or codes of practice relating to the Services and Customer's use thereof shall at all times rest solely with Customer;
- (d) it shall not act in such a way that the Services and operation of the M800's networks or System or other lawful telecommunications services or equipment may be disrupted, jeopardised or impaired;

- (e) it shall not use the Services to harvest or otherwise collect information about any person without obtaining their express consent;
- (f) it shall not infringe any person's privacy rights when using the Services;
- (g) it will not disclose to any person any personal identification number or password or login ID issued by M800 to the Customer or any other access method authorised by M800 in writing from time to time, as the case may be, for use in conjunction with the Services. If the Customer becomes aware of any unauthorised access to the Services by any person using the personal identification number given to the Customer, or if the Customer believes that the personal identification number given to the Customer has been lost or stolen, the Customer shall notify M800 immediately. M800 shall not be liable for any loss or damage the Customer sustains by reason of any such access to the Services or any such use of the Customer's personal identification number, login ID or password, as the case may be;
- (h) it shall forthwith notify M800 in writing in the event that the Customer changes, suspends or ceases to use any ITFS number, telephone, mobile or personal number (whether it is assigned by M800 or not) which is registered with M800 for the purpose of enabling M800 to provide the Services. The Customer shall fully indemnify M800 (including M800's officers, directors, employees, M800's Contractors and authorised agents/representatives) against all costs, expenses, claims, demands, loss and damages suffered or incurred due to the Customer's failure to notify M800 as required herein; and
- (i) it shall not do or permit anything to be done, or omit to do anything that would or is likely to have the effect of harming, damaging or interfering with M800's business and/or interest in any way.

## 8 Suspension of Services

8.1 If the Customer wishes to request a temporary suspension of the Services for a period at any time, the Customer must give to M800 not less than fourteen (14) days' prior written request (unless otherwise specified by M800) duly signed by the Customer and in such format approved by M800 ("**Suspension Request**"). Suspension Requests shall not be accepted or processed by M800 unless and until the Customer has fully paid to M800 all outstanding Service Fees plus interest accrued thereon (if any). M800 may in its sole and absolute discretion either accept (with or without conditions) or reject a Suspension Request, and M800 may charge the Customer a fee for each Suspension Request. Even after the submission of a Suspension Request to M800, the Customer shall continue to be liable for all Service Fees incurred from the date of submission of the Suspension Request until such time that the Suspension Request is accepted by M800 (with or without conditions) and the Services are actually suspended. For the avoidance of doubt, any suspension of Services by M800 following a successful Suspension Request shall not absolve the Customer from its responsibility to fully pay all outstanding Service Fees incurred by it plus interest accrued thereon (if any).

8.2 M800 may immediately suspend all or part of the Services without notice if:

- (a) any of the events mentioned in Clause 5.3 occurs or there is breach of any of the provisions of this Agreement;
- (b) M800 is obliged to comply with an order, instruction or request of any authority, government, regulatory body, the police or other competent authority wherever situate;
- (c) M800 needs to suspend any of the Services for the purpose of carrying out maintenance, repairs and/or upgrades to its networks and/or System; or
- (d) M800, in its absolute discretion, determines it necessary or desirable to suspend the Services in

order to protect its interest, reputation and/or goodwill.

- 8.3 If M800 suspends part or all of the Services in accordance with this Agreement, such suspension will not prejudice M800's right to terminate this Agreement at any time thereafter in respect of the same or any other event. Further, M800 shall not be responsible for any loss or damage whatsoever arising from any suspension of the Services.
- 8.4 Upon receipt of the Customer's request to reconnect the suspended Services, M800 may subject to its sole and absolute discretion reconnect all or any part of the suspended Services, but always upon full payment by the Customer of all outstanding Service Fees plus interest thereon (if any), an administration fee in an amount fixed by M800 from time to time and one month's Service Fees in advance.

## **9 Personal Information**

- 9.1 The Customer acknowledges and agrees that all information supplied to M800 in relation to this Agreement will be subject to M800's prevailing privacy policy and the Personal Data (Privacy) Ordinance (Cap. 486 of the Laws of Hong Kong).
- 9.2 The Customer agrees and undertakes to comply with all Hong Kong laws and regulations concerning protection of privacy and/or personal information, including but not limited to the Personal Data (Privacy) Ordinance (Cap. 486 of the Laws of Hong Kong).
- 9.3 If the Customer and/or its Operations (as defined in Clause 7 above) is and/or shall become subject to any foreign laws and regulations concerning protection of privacy and/or personal information in connection with the Customer's subscription for and use of the Services, the Customer shall also comply with the same.
- 9.4 In cooperation with any official or criminal investigation, the Customer authorises M800 to disclose any and all the information it holds on record for the Customer's account to any competent law enforcement authority or agency, police agency, legal entity and/or any other third party which issues us a subpoena, search warrant, court order or any other official demand for information. In the event that M800 receives a subpoena, search warrant, court order or any other official demand for information, M800 shall (without prejudice to any antecedent rights, remedies and powers hereunder or at law) have the rights to terminate the Services forthwith, repossess and reassign and ITFS number associated with the Customer's account (if any), and M800 shall not be held liable for any loss or damage arising therefrom.
- 9.5 M800 may (but shall not be obliged to) monitor the Customer's use of the Services. If M800 suspects that the Customer has breached this Agreement, M800 may take all such actions as it deems fit and necessary to protect itself from any damage, harm or loss of any kind, direct or indirect, tangible or intangible, imminent or not.
- 9.6 If M800 receives any complaint from any third party in connection with the Customer's use of the Services, M800 may require the Customer to promptly respond to, deal with or resolve the complaint, and in the meantime M800 shall have the right to suspend all or any part of the Services until the complaint has been properly responded to, dealt with or resolved. For the avoidance of doubt, M800 shall not be held liable for any loss or damage whatsoever arising from such suspension of Services.

## **10 Intellectual Property**

- 10.1 Nothing herein shall give the Customer any right in respect of any IP Rights or any other intellectual property right of any nature in or in relation to the Services, M800's network or System, or the goodwill

of M800, and the Customer shall not claim any right in respect of the same. The Customer hereby acknowledges, agrees and confirms that M800 shall have all rights, title and interest in and to all IP Rights, software, documentation, derivative works and other intellectual property rights that are acquired, developed, designed, created or contributed by M800.

10.2 The Customer undertakes and agrees to compensate M800 for any expense, damage or loss suffered by M800 as a result of any infringement or misuse of the IP Rights by the Customers, its agents, employees or authorized representatives.

## 11 Confidentiality

11.1 Each party to this Agreement agrees to keep and procure to be kept secret and confidential any and all written and/or oral information of any kind including that relating to the terms of this Agreement and the business of the parties obtained from the other party pursuant to this Agreement or prior to it through any conversation, meeting, discussion, and/or negotiation and to disclose the same only to those of its officers, employees, agents, contractors or subcontractors on a need-to-know basis and only to the extent necessary for each of them to perform such party's obligations under this Agreement.

11.2 Without prejudice to the generality of Clause 11.1, the Customer undertakes to treat as confidential all information and data supplied by M800 for the purpose of or pursuant to this Agreement in connection with the Services and their respective dealings with the other parties ("**Customer Information**"). The Customer shall limit access to the Customer Information to such of its officers, employees, agents, contractors or subcontractors on a need-to-know basis and only to the extent necessary for each of them to perform their respective obligations under this Agreement.

11.3 The foregoing obligations shall not apply, however, to any part of such information which:-

- (a) was already in the public domain or which becomes so through no fault of the recipient party;
- (b) was already known to the recipient party prior to receipt thereof;
- (c) was disclosed to the recipient party by a third party owing no duty of confidentiality towards the disclosing party in respect thereof; or
- (d) is required to be disclosed by law, regulatory authorities or pursuant to a judicial order.

11.4 Each party undertakes to the other party to use and handle all Customer Information subject to all laws, rules, regulations, codes, guidelines and directives in force from time to time applicable to confidentiality and personal data protection.

11.5 Each party shall procure all its officers, employees, agents, contractors and subcontractors to comply with the provisions in this Clause 11.

11.6 Subject to the provision in Clause 11.3, these obligations of confidentiality shall survive the termination or expiration of this Agreement (as the case may be).

## 12 Force Majeure

12.1 Neither party shall be in default under this Agreement if its failure to perform is caused by any event of Force Majeure. The Party claiming relief under this Clause 12 ("**Claiming Party**") shall promptly notify the other in writing of both (a) the existence of the event relied upon and (b) the cessation or termination of that event (where applicable). In any event, the Claiming Party shall at all times use all reasonable

endeavours to mitigate the effects of a Force Majeure on the performance of its obligations under this Agreement.

- 12.2 If any event of Force Majeure lasts for more than six (6) months from the date of its commencement, and that event prevents either party from performing all or a material part of its obligations during that period, either party may by giving fourteen (14) days' written notice to the other party terminate this Agreement.

### **13 Directory Information**

- 13.1 The Customer is deemed to have consented to the inclusion of its name, address, business and telephone number(s) in M800's internal directory in any medium for providing directory enquiry services unless the Customer requests in writing that such information not be listed in M800's directory and directory enquiry database when making the Application or at any time thereafter.
- 13.2 M800 shall not be liable to the Customer or any other person for loss or damage (whether direct or indirect) resulting from delay or failure to provide directory information services or a public emergency call service or in connection with number porting arrangements excepts to the extent necessary and required by law.

### **14 General Provisions**

- 14.1 This Agreement forms a binding agreement between the Customer and M800, and the Customer agrees to be bound by this Agreement with respect to the subject matter hereof. The Customer further agrees that this Agreement is the complete, entire and exclusive statement of the agreement between the Customer and M800 in relation to the Services subscribed to by the Customer. This Agreement supersedes all prior understandings, agreements and arrangements (whether oral or written), as well as all representations or other communications between the Customer and M800 in relation to the Services.
- 14.2 The Customer agrees to fully indemnify and keep indemnified M800 and its officers, directors, employees, M800's Contractors and authorised agents/representatives for all losses, damages and expenses incurred in connection with the subscription to and/or use of the Services by the Customer, any breach of this Agreement and the enforcement of any of the provisions of this Agreement against the Customer.
- 14.3 M800 will not be bound to verify any information provided by Customer (whether in the Application or otherwise) nor the authenticity or authority of a signature or mark purportedly of or on behalf of the Customer. Any authorised signatory chop, business chop, personal seal, signature or mark appearing on this Agreement shall be binding on the Customer and M800 is irrevocably authorised to rely on any form, letter or document purportedly signed by or on behalf of the Customer.
- 14.4 Any bill or written notice from M800 to the Customer will be sent to the address, facsimile number or e-mail address shown in the Application or such other address, facsimile number or e-mail address as the Customer may subsequently notify M800 in writing. A bill or notice shall be deemed received by the Customer within forty-eight (48) hours of posting, or immediately upon faxing if the transmission report indicates that the fax transmission was successful, or immediately upon sending the e-mail (as the case may be).
- 14.5 No failure or delay on the part of M800 to exercise any right, power or remedy under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise by M800 of any right, power or remedy operate as a waiver thereof. The rights, powers and remedies provided herein are cumulative

and are not exclusive of any rights, powers or remedies afforded by law.

- 14.6 Any waiver, concession, indulgence or extra time which M800 may allow the Customer is limited to the specific circumstances in which it has been given and shall not affect M800's rights under this Agreement, at law or in any other way.
- 14.7 If a term or condition of this Agreement is prohibited or unenforceable by law, it shall be ineffective only to the extent of the prohibition or unenforceability. All other terms and conditions shall remain in full force and effect.
- 14.8 M800 reserves the right to vary, delete, amend or add to the terms and conditions of this Agreement from time to time and such revision and/or addition shall become effective when notified to the Customer by publication of the said modifications/amendments on the M800 website in any manner as M800 thinks fit, irrespective of whether the Customer has actual notice or knowledge thereof. Continued use of the Services after the effective date will constitute full acceptance and agreement by the Customer of all modifications/amendments made to this Agreement.
- 14.9 This Agreement shall be governed by the laws of Hong Kong and the Customer and M800 agree to submit to the non-exclusive jurisdiction of the Hong Kong courts.
- 14.10 This Agreement is available in English language only.

## **15 Additional Terms and Conditions Applicable to International Toll Free Service (ITFS) and Short Message Service- (SMS)**

If the Customer subscribes to ITFS, the Customer agrees that these Additional Terms and Conditions Applicable to International Toll Free Service (ITFS) following hereinafter shall supplement and form an integral part of the preceding General Terms and Conditions (as amended from time to time). Unless otherwise indicated or where the context otherwise requires, terms and expressions defined in the General Terms and Conditions shall carry the same meaning in the Additional Terms and Conditions Applicable to International Toll Free Service (ITFS). Unless the context otherwise requires, the defined term “**Agreement**” shall wherever used hereinafter be taken to mean the General Terms and Conditions and these Additional Terms and Conditions Applicable to International Toll Free Service (ITFS).

### **15.1 Obligations**

- (a) The Customer shall (at its own cost and expense):
- (i) (where applicable) provide the Contents to the Recipient in such format and/or via such media as M800 may require from time to time;
  - (ii) complete appropriate development of Customer's System at its own costs to enable the International Toll Free Call and Short Message to be sent to and/or received by and/or M800's System/Services;
  - (iii) provide the means through which the Sub-Customers and the Recipients of the Contents (irrespective of whether they are the intended Recipients of such Contents) can indicate to the Customer whether they wish to receive or cease receiving the Short Message(s) at any time, and the Customer shall forthwith comply with any such indication of the said Sub-Customers and Recipients;
  - (iv) provide such assistance as M800 may require from time to time in connection with the

testing and connection of M800's System and Customer's System for the purpose of the provision of the Services;

- (v) do all such other acts and give all reasonable assistance and support to M800 as may be required to enable M800 to perform its obligations under this Agreement;
  - (vi) provide to M800 the forecasted traffic of International Toll Free Call(s) and Short Message(s) on a 6-month basis, so as to enable M800 to plan for future hardware and software expansion;
  - (vii) forthwith report to M800 any system outages and downtime of Customer's equipment or System, which may affect the service level of the International Toll Free Call(s) and Short Message(s) under this Agreement;
  - (viii) conduct a joint acceptance test with M800 in respect of the point of connection between M800's System and Customer's System;
  - (ix) handle all the Recipients' complaints and enquiries in relation to the Services and provide necessary information and support to M800 if the Recipients contact M800 directly in respect of the same;
  - (x) not to transmit any unsolicited Short Messages, International Toll Free Call(s), Contents or data to any Sub-Customer or any person wherever situate;
  - (xi) provide, if M800 requires, evidence that it has obtained the necessary licenses, permits, consents, authorisations and IP Rights, or complied with any analogous requirements in relation to the Customer's use of the Services;
  - (xii) subject to Clause 10, be responsible for all advertising and promotion of the Services during the term of this Agreement and is allowed to use the brand name(s) and/or logo(s) of M800 provided that prior written consent (which consent shall not be unreasonably withheld or delayed) of M800 has been obtained seven (7) days prior to the proposed use in respect of the setting, format, design, wordings and colors of M800's brand name(s) and/or logo(s). The cost of such advertising and promotion shall be solely borne by the Customers. M800 reserves the final discretion for approving and terminating the use of its logo(s) and/or brand name(s) by any Customers;
  - (xiii) purchase the requisite equipment for its Operations and bear all setup charges for technical connection purpose for the Services during the term of this Agreement; and
  - (xiv) be responsible to inform M800 the customer name(s) of Customer which shall use the Services upon M800's request by filling in a specified form namely Service Authorisation Request (SAR) as provided by M800, if required by M800
- (b) The Customer acknowledges and agrees that:
- (i) International Toll Free Call(s) shall only be successfully connected to the Recipient(s) by dialing or using the assigned ITFS number(s) in countries and/or geographical regions as specified by M800 from time to time. M800 reserves the rights to withdraw any ITFS number(s) assigned and re-assign a different ITFS number(s) and/or user name(s)/number(s) to the Customer from time to time;

- (ii) the Short Message(s) shall only be successfully sent to the Recipient (s) by using the assigned ITFS number(s) and/or the user name(s)/number(s) as assigned by M800 from time to time in countries and/or geographical regions that specified by M800 from time to time. M800 reserves the right to withdraw any assigned ITFS number(s) and/or the assigned user name(s)/number(s) from time to time and re-assign a different ITFS number(s) and/or user name(s)/number(s) to the Customer from time to time;
- (iii) it does not and will not have any legal claim to, or proprietary interest in, an ITFS number(s) and/or the assigned user name(s)/number(s). Customers shall not sell, license or otherwise transfer the ITFS number(s);
- (iv) the Customer is responsible for monitoring and controlling the use of the ITFS number(s) and shall be responsible for all charges incurred through the use of the ITFS number(s) with or without the authority, knowledge or consent of Customer;
- (v) only those International Toll Free Call(s) and/or Short Message(s) that are approved by M800 will be sent to the Recipient(s);
- (vi) the Customer shall ensure and do not use the assigned ITFS number(s) and/or the assigned user name(s)/number(s) immediately and M800 shall have the right to withdraw the assigned ITFS number(s) and/or the assigned user name(s)/number(s) from being used by any person immediately from the date of termination or suspension of the Service; and
- (vii) M800 reserves the right to re-assign a different ITFS number(s) and/or user name(s)/number(s) to the Customers after the resume of Service from suspension.

## 15.2 Equipment

- (a) If any equipment is to be provided by M800 to the Customer, all equipment shall remain M800's property at all times and the Customer will not acquire any rights or title in them.
- (b) The Customer shall not, nor permit any other person to alter, remove, add to, or otherwise interfere with the equipment or any identifying marks or numbers on the equipment.
- (c) The Customer shall:
  - (i) provide suitable accommodation, utility services and environmental conditions for the equipment;
  - (ii) use and operate all equipment in a proper manner;
  - (iii) keep any equipment in the Customer's premises safe, and shall be liable to M800 for any loss or damage to the equipment;
  - (iv) notify M800 as soon as reasonably practicable of any damage, fault, theft or loss of the equipment; and
  - (v) allow M800's employees, agents or sub-contractors to enter upon the Customer's premises for the purposes of inspecting, repairing, maintaining and/or removing the equipment and shall provide safe access to and safe working conditions at the Customer's premises.

- (d) In addition to the General Terms and Conditions herein, M800 may suspend or terminate this Agreement, in whole or in part, immediately upon written notice to the Customer if the Customer does not provide M800 with reasonable and safe access to the Customer's premises as allowed under this Agreement.
- (e) Upon termination of this Agreement, the Customer shall:
  - (i) immediately cease to use the equipment and the Services; and
  - (ii) permit or procure permission for M800 to remove any of M800's equipment from the Customer's premises and to terminate the Services at any reasonable time.

15.3 The Customer shall only send Short Message(s) to the Recipient in accordance with the following conditions:

- (a) via the assigned ITFS number(s) and/or the assigned user name(s)/number(s) to be provided by M800; If Customer sends unsolicited Short Message to any Sub-Customer or any Recipient, M800 shall have the rights to charge the Customer at the rate of USD1.50 per short message and reserve its right to suspend the Service immediately without any prior notice to the Customer;
- (b) in the event that M800 receives complaints or any other comment from the Recipients, M800's Contractors, Sub-Customers or any person regarding the receiving of the Short Message from the Customer or if M800 believes that the Content may breach any law or regulation, then:
  - (i) M800 may in its sole discretion do any or all of the following (and in any order):
    - (A) notify the Customer in writing of the complaint received;
    - (B) require the Customer to promptly respond to the complaint received;
    - (C) immediately block the Customer from sending any further Short Message to M800 without notice until the matter has been resolved;
    - (D) direct the Customer to cease sending Short Message to via M800 to any person; and
    - (E) charge the Customer for any damages or costs incurred and associated with handling the complaints or enquiries.
  - (ii) the Customer shall:
    - (A) investigate and satisfy itself that all Short Message(s) it transmits to any person wherever situate are not in breach of any law or regulation;
    - (B) respond to M800 within two (2) working days of receiving a notification from M800 sent in accordance with Clause 15.3(b)(ii)(A);
    - (C) comply with any direction issued by M800 pursuant to Clause 15.3(b)(i), including by ceasing the transmission of Short Message(s) which may be in breach of any law or regulation and notifying M800 as soon as the transmission has ceased; and
    - (D) fully indemnify and hold M800 harmless from and against any loss, liability, damage, expense or costs arising out of or in connection with any claims by the Sub-Customers the Recipients or any other person in respect of the receipt of the Short Message from the Customer.