

Code for the Provision of Chargeable Mobile Content Services

1. Preamble

- 1.1 To address the public concern arising from the complaints regarding billing by some content service providers (CSPs) of chargeable mobile content services (MCS) delivered through short messaging services (SMS) / multimedia messaging services (MMS), this voluntary code (Code) sets out the guiding principles for compliance by CSPs and Mobile Network Operators (MNOs) / Mobile Virtual Network Operators (MVNOs) to ensure that appropriate and proportionate procedures and processes are put in place to protect consumers. The Code seeks to ensure that the consumers are better informed of the service charges and the genuine consent of the consumers is obtained before service activation.
- 1.2 Where the CSPs may make use of MNOs' or MVNOs' platforms to deliver MCS to the customers of MNOs or MVNOs ("Customers"), the CSPs may arrange with the MNOs or MVNOs for them to provide billing and payment collection services for the CSPs. The Customers who used the MCS are then billed by the relevant MNOs or MVNOs which in turn collect the payment from the Customers for using the MCS provided by the CSPs. In such cases, there exist two types of contracts, the first between the CSPs and the Customers for the use of the MCS and the second between the CSPs and the MNOs or MVNOs, as the case may be, which governs the delivery of as well as the billing and payment collection service for the MCS (delivery & collection service).
- 1.3 The contracts between MNOs and CSPs should include provisions which generally set out the obligations of the CSPs to inform Customers of relevant service charges and to obtain their proper consent to subscribe to the MCS. The MNOs shall ensure that the CSPs comply with this Code in providing the delivery & collection service to the CSPs. For those cases involving Customers of an

MVNO, and where the latter does not have a direct contractual relationship with the CSP, the MVNO shall make the necessary commercial arrangement with its hosting MNO so that the CSP complies with this Code in the MVNO's provision of the delivery & collection service to the CSP in association with the hosting MNO.

1.4 This Code relates to and complements the existing Industry Code of Practice on the Assignment of Access Codes for Value-Added SMS/MMS Services.

1.5 In this Code, the following definitions will apply:

- (a) Content Service Provider (CSP) means a person other than the MNO or MVNO or an affiliate of an MNO or MVNO that has a contractual relationship with an MNO or MVNO under which the latter agrees to (i) deliver the MCS originating from the CSP to the Customer; and (ii) directly bill and collect payment from the Customer on behalf of the CSP for using the MCS provided by the CSP.
- (b) Mobile Network Operator (MNO) is an operator (either holding a Unified Carrier Licence or a Mobile Carrier Licence) that is licensed to provide a public mobile radiocommunications service.
- (c) Mobile Virtual Network Operator (MVNO) is an operator (holding a Class 3 Service-Based Operator Licence) that is licensed to operate a mobile virtual network service.
- (d) Mobile virtual network service is a public mobile service making use of and by having access to, and interconnection with, the radiocommunications infrastructure of an MNO.
- (e) Mobile Content Service (MCS) means (i) the content service provided by a CSP and delivered via SMS/MMS through the network of an MNO or MVNO, to the access device of a Customer who subscribes to the public mobile radiocommunications service of that MNO or the mobile

virtual network service of that MVNO, as the case may be, and (ii) the content service provided by a CSP where a Customer's access device is connected to a CSP's audio recording system via the voice network of an MNO or MVNO to listen to pre-recorded audio messages, e.g. voice chat services.

(f) Public mobile radiocommunications service is a public telecommunications service using cellular radiocommunications technology operating at frequencies specified in the relevant licence to enable two-way communications between moving locations or between a moving location and a fixed location.

(g) Customer means the customer of an MNO or MVNO who has subscribed to either the post-paid or pre-paid public mobile radiocommunications service provided by the MNO or the mobile virtual network service provided by the MVNO, as the case may be.

1.6 For the purposes of this Code, the term "MNO" will include both the MNO and the MVNO unless otherwise specified.

1.7 This Code does not apply to the MCS where the MNO or an affiliate of the MNO is the CSP, or where the Customer subscribes to the MCS via the MNO's sales channels (e.g. portal, website, IVRS platform and other sales channels). For such MCS, the MNO will assume responsibility under its licence, and any dispute related to such services will be dealt with by the MNO concerned.

1.8 This Code does not apply to services where a Customer is solicited to confirm payment for charges that are not solely, directly and explicitly linked to an MCS covered under this Code. For the avoidance of doubt, services not solely, directly and explicitly linked to an MCS include, but are not limited to, SMS/MMS in relation to mobile payment services and internet based content services. For such services, the MNO will assume responsibility under its licence and will ensure that consumers of such services are fully and clearly informed of all information likely to influence

their decision to purchase the services, including the cost, before any payment is made. Any dispute related to such services will be dealt with by the MNO and the CSP concerned.

- 1.9 A CSP shall only provide MCS in compliance with this Code. For the avoidance of doubt, a CSP will be in breach of this Code if the CSP provides an MCS which has not been reviewed by the MNO providing the delivery & collection service to the CSP.
- 1.10 From time to time, the Communications Association of Hong Kong and the industry may, in consultation with other stakeholders including the Office of the Communications Authority, amend or update this Code in order to meet industry needs, changes in objectives or to reflect changes in the telecommunications market.

2. Advertisement and Promotion of Products/Services

- 2.1 Before entering into a contract with an MNO to obtain a delivery & collection service in respect of its MCS, a CSP shall ensure that it is capable of complying, has pledged to comply and is in compliance with the relevant requirements stipulated in this Code.
- 2.2 Upon entering into a contract with the MNO, the CSP shall conduct its business in compliance with this Code.
- 2.3 When advertising and promoting the MCS using printed media, the Internet, SMS or any other media format, the CSP shall provide clear, prominent and legible information using plain language about the purchase price of the content provided as part of the MCS and/or the price of the subscription-based service, indicating whether there is any sign-up cost and how the charge is calculated, including any mobile device originating charge, mobile device terminating charge or the charge per billing period. **For one time subscription services and all push-pull type MCS where multiple chargeable SMS and/or content may be pushed to a Customer's access device to solicit chargeable responses in return, the CSP shall provide clear, prominent and legible information on the price per charge, how the charge is**

calculated including any mobile device originating charge, mobile device terminating charge or the charge per billing period, and the maximum charge per billing period. For all one time subscription services, the subscription validity period and billing/cycle period must be clearly mentioned to ensure Customers' understanding. Any MCS marketing message sent via SMS to a Customer's access device shall be sent at no charge to the Customer. If the CSP will send any direct marketing messages to a Customer, the CSP must comply with the Personal Data (Privacy) Ordinance (Cap. 486) and Unsolicited Electronic Messages Ordinance (Cap. 593).

- 2.4 A detailed charging scheme shall be clearly indicated in a prominent position in any sales/marketing material in Chinese and English versions, including any printed media, publication on the website or other electronic media. For printed media, the font size of the charging information and any footnote shall not be less than 9. For information given online, clear information on the charging methods and fees should be given in the official website of the CSP. A CSP cannot impose charges on any services if the charging information **as described in paragraph 2.3 above** is not listed on the CSP's website. There should be sufficient contrast between the body text and the background upon which the words are printed or displayed.

3. Customer Authorisation/Consent

- 3.1 All purchases of MCS or subscriptions for MCS shall be opted in by the Customer. A CSP shall not automatically register a Customer onto a subscription based MCS upon purchase of a single MCS. When a Customer chooses to enter into a subscription for the MCS, the CSP shall in all cases provide prompt confirmation to the Customer of such subscription, bringing his/her attention to the fact that a subscription based service with the applicable charges has been selected. This confirmation must be the first message sent to the Customer before the commencement and activation of chargeable messages.

3.2 The CSP shall obtain the Customer's explicit consent to subscribe to the MCS. To obtain the Customer's explicit consent, once the Customer has completed the registration process or provided his/her mobile number or other personal data to the CSP for purchase of the MCS or to subscribe to the MCS, the CSP shall send the Customer a free SMS requesting him/her to confirm such purchase and/or subscription by replying to the CSP using a specified word, e.g. "YES", indicating whether he/she accepts or not. The CSP shall also obtain in the same message the Customer's explicit consent authorizing the MNO to act as a provider of billing and payment collection services for the MCS. The message shall also include (i) the name of the subscription service; (ii) subscription service charge and the price that will be charged for the content; **(iii) maximum charging incidences per billing period; (iv) the maximum charge per billing period;** (v) the expiry date of the subscription service; and (vi) the mechanism by which the Customer may use to cancel or terminate the service, with details of the CSP's customer hotline or helpline. This is essential in order to ensure the person requesting the purchase or subscription based service is also the registered Customer. An example of such SMS is given below:

"You apply for the Chargeable Content Service 'ABC' of 'XYZ Co.' Charges: **HK\$30/week, HK\$5/msg sent, HK\$6/msg received, max 50 msg sent/week + max 50 msg received/week = HK\$580/week.** Charges will be billed by [name of MNO] through this mobile phone account; service expiry date: 31/12/2010; Please send a message to 501111 with 'YES' to confirm; or a 'NO' to decline. To unsubscribe: send a 'UN' message to 501111. Customer Hotline: 23333333."

3.3 If the Customer replies by entering the specified word, e.g. "YES", he/she has actively opted into this subscribed MCS, and the subscription of the MCS may then commence with the issuing of the confirmation of subscription for the Customer's reference.

3.4 If the Customer does not reply, the CSP may not send the Customer any other messages (so far as the current transaction is concerned) until he/she actively opts in to the MCS. The CSP may send offers to the Customer (subject to the Customer's prior

consent and compliance in accordance with the Personal Data (Privacy) Ordinance (Cap. 486) and Unsolicited Electronic Messages Ordinance (Cap. 593)) but cannot treat the Customer in such a way as if a contract has been entered into. If the Customer replies with 'NO', the CSP shall confirm by return message at no charge to the Customer to the effect that the Customer's instruction NOT to subscribe to the MCS has been acted upon.

- 3.5 If the Customer does reply to the message but does not enter the specified word, e.g. "YES", the CSP shall not treat such a reply as confirmation or consent given by the Customer for subscription. The CSP may send another (but only one) SMS at no charge to this Customer to follow up the previous one to solicit his/her purchase and/or subscription decision.
- 3.6 An MCS of **charity nature** may be exempted from compliance with the requirements stipulated in paragraphs 3.2 to 3.5 above. A CSP wishing to obtain approval for such exemption on an MCS shall submit to the MNO a certified true copy of the Memorandum and Articles of Association or equivalent documents of the organization concerned and documentary proof of its status as a charitable institution that is exempt from tax under section 88 of the Inland Revenue Ordinance (Cap. 112).
- 3.7 The CSP shall at all times comply with the Personal Data (Privacy) Ordinance (Cap. 486) in the collection, use, transfer, retention and processing of any personal data of a Customer or potential Customer. In particular, the CSP should not incorporate any marketing or promotional information in any SMS sent to a Customer in relation to his/her opting in or opting out of the purchase of or subscription to the MCS, unless the prior express consent of the Customer has been obtained, in accordance with the requirements of the Personal Data (Privacy) Ordinance (Cap. 486), and such consent has not been withdrawn.

4. Un-subscription/Termination of Service

- 4.1 The CSP shall provide information in a clear manner to Customers

at no charge about how to unsubscribe and de-register from the subscription of the MCS, prior to the provision of the subscription based service or in the contract between the CSP and Customer. The CSP shall also make such information readily available to the Customers on an on-going basis by various means, including on the CSP's official website, and via telephone or SMS if so requested by the Customer. Such information must also be provided to the MNOs. The mechanism for unsubscribing and de-registering should be transparent and easy for the Customer to use. For example, an automated SMS-based mechanism to unsubscribe shall be available for Customers of an automated SMS-based content service; or a web-based unsubscribing mechanism shall be made available such that Customers can unsubscribe in the same simple manner used by them to subscribe to the same service.

- 4.2 In respect of MCS where the charge is based on a per message rate, the CSP shall make it clear to the Customers that they may unsubscribe or terminate the MCS at any time, via the mechanism as detailed in paragraph 4.1 above. Upon receiving an unsubscribe or termination request from a Customer, the CSP shall promptly send an SMS to the Customer's access device to confirm termination of the subscription service and advise the MNO immediately. Upon notification from the CSP, the MNO shall stop billing the Customer for the relevant MCS promptly.
- 4.3 For all other MCS where the service is provided at a fixed fee for a specified fixed period (such as a flat-rate monthly package), the unsubscription or termination should become effective on the date when the current billing cycle ends or when the relevant fixed term expires, as agreed in the contract between the CSP and Customer, whichever is the earlier. Upon receipt of an unsubscribe or termination request from a Customer, the CSP shall promptly send an SMS to the Customer's access device to confirm termination of the subscription service and advise the MNO immediately. Upon notification by the CSP, the MNO shall only bill the Customer for the relevant MCS for the remainder of the current billing cycle or the remainder of the fixed term as agreed in the relevant contract between the CSP and Customer, whichever ends earlier.

- 4.4 In respect of a termination or unsubscribe request issued by the Customer directly to the MNO for the MCS where the charge is based on a per message rate, the MNO shall promptly provide the Customer with information on how to contact the relevant CSP and shall (but not as the agent of the Customer) pass the record of the Customer's request as soon as practicable to the relevant CSP who will follow the procedures as detailed in the penultimate sentence of paragraph 4.2 above. The MNO may stop billing the Customer for the relevant MCS immediately. In respect of a similar request for MCS where the service is provided at a fixed fee for a specified fixed period (such as a flat-rate monthly package), the MNO shall promptly provide the Customer with information on how to contact the relevant CSP and shall (but not as the agent of the Customer) pass the record of the Customer's request as soon as practicable to the relevant CSP who will follow the procedures as detailed in the penultimate sentence of paragraph 4.3 above. The MNO may only charge the Customer for the relevant MCS for the remainder of the current billing cycle or the remainder of the fixed term as agreed in accordance with the relevant contract between the CSP and Customer, whichever ends earlier.
- 4.5 In respect of all MCS, the unsubscribe mechanism shall be transparent and easily accessible. The subscription confirmation messages and unsubscribe requests of Customers relating to a MCS shall be duly recorded by the CSP, and the record should be kept for at least 12 months.
- 4.6 The CSP shall not charge the Customer for sending any unsubscribe or termination request.

5. Monitoring of Accumulated Charges and Other Issues

- 5.1 The CSP should monitor the usage by the Customers of its MCS. The CSP and the MNO, pursuant to their contract, shall in accordance with their usual customer alert policy regarding usage upsurge, monitor from time to time the charges that a Customer has accumulated, and shall alert the Customer as soon as practicable if the accumulated amount has reached the threshold of the Customer

based on his/her usage profile.

- 5.2 For any renewal of the MCS subscription of a Customer, the MNO and CSP should follow all the principles listed in this Code.

6. Contract between the MNO and CSP

- 6.1 An MNO shall only connect the MCS of a CSP to its network platform, after the MNO has in accordance with its necessary procedure confirmed that such CSP and the MCS provided by the CSP are in compliance with this Code,. Before entering into a contract with a CSP to provide a delivery & collection service, an MNO should (i) assess and confirm that the CSP is capable of complying, has pledged to comply, and is in compliance with all the relevant requirements stipulated in this Code; and (ii) check that the CSP's MCS is fully compliant with this Code. Where the CSP intends to provide a new MCS or materially change an existing MCS, it shall notify the MNO and provide details of the MCS to the MNO for the latter to check the compliance of the MCS with this Code, failing which the MNO is entitled to suspend at any time the delivery of the new or amended MCS of the CSP from its network platform until the compliance by the CSP and the concerned MCS with the Code.
- 6.2 The terms of the contract between the MNO and CSP governing the delivery & collection service shall require the CSP to strictly comply with this Code (as amended from time to time).

7. Compliance Checking, Complaint Investigation and Disconnection of CSP from MNO Platform

- 7.1 The MNO shall devise:
 - (a) a set of procedures/criteria which the MNO will use to assess and confirm an applicant CSP's capability of and securing its pledge to comply with this Code, and to check that the MCS provided by the CSP is compliant with this Code;

- (b) a set of procedures to conduct checks on CSP's compliance or otherwise with this Code (as set out in paragraphs 7.2 and 7.3 below); and
 - (c) a set of procedures in handling complaints against CSP's for non-compliance with this Code.
- 7.2 The MNO shall check compliance with this Code by CSPs on a regular and random basis.
- 7.3 Whether through its own random monitoring or through the handling of any complaint received by the MNO, if a CSP's failure to comply with any requirement under this Code is substantiated after following due process, the MNO may issue a warning to the CSP. If the CSP has not rectified the non-compliance to the MNO's satisfaction within the time period reasonably specified by the MNO, the MNO may consider temporarily disconnecting the relevant MCS of the CSP from its network platform. In case of severe non-compliance affecting a large number of Customers, and causing or may reasonably cause a major concern to the Hong Kong public, the MNO shall disconnect the relevant MCS of the CSP from its network immediately. The MNO may consider publishing information on its website about the disconnection of the relevant MCS. In the case of temporary disconnection of an MCS from the MNO's network platform, the relevant MCS can only be resumed after the MNO has confirmed that the CSP has rectified the non-compliance.
- 7.4 The MNO shall keep a record of all warnings issued to each CSP. If within a period of 2 months, a CSP receives a total of 3 warnings under paragraph 7.3 above from the MNO, notwithstanding that the CSP has fully rectified the non-compliance pursuant to the first 2 warnings that the CSP has received, the MNO may disconnect all the MCS of the CSP from its network platform. The MNO may consider publishing information on its website about the disconnection of all MCS of the CSP from its network.

8. Verification of Billing Information

- 8.1 To assist and facilitate the Customer and the CSP in resolving any billing dispute, the MNO shall, subject to compliance with the Personal Data (Privacy) Ordinance (Cap. 486), help verify the Customer's billing information of the subscribed MCS, the billing records and call logs.

9. Non Interruption of Telecommunications Services

- 9.1 Any MCS related billing dispute between a Customer and a CSP shall not affect the availability of the rest of the telecommunications services subscribed by the Customer with the MNO.

Communications Association of Hong Kong

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