

Telecommunications Carriers' Forum

Mobile Premium

Messaging Services Code

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1 Purpose

The Telecommunications Carriers' Forum ("TCF") has established a self-regulatory regime for the provision of Premium Messaging Services.

The Code sets out the rights and obligations of Content Providers, Content Service Providers and Telecommunications Service Providers and Carriers for all Premium Messaging Services which are accessed by a Customer in New Zealand or provided by a Content Service Provider which is operating in New Zealand.

'Responsible delivery' of Premium Messaging Services is not only a matter of compliance with legal and regulatory obligations, this Code has been produced which, when followed, will help ensure the safe and responsible delivery of Premium Messaging Services, informed and satisfied Customers, and a sustainable marketplace for all.

This Code is structured on an activities basis - for the activities which must be performed in relation to the Premium Messaging Services. Each activity sets out the requirements which apply to all Premium Messaging Services and contains subsections for Premium Messaging Services where there are Premium Messaging Service specific requirements.

2 Definitions & Interpretation

Advertising Standards Authority	Means the Advertising Standards Authority Incorporated of New Zealand. For more information refer to www.asa.co.nz .
Advice Services	Means a Premium Messaging Service which offers advice to Customers using Messages as a medium.
Age Restricted Services	Means a Premium Messaging Service which may include the provision of Restricted Content.
Business Hours	Means 9.00am to 5.00pm on Working Days.
Carrier	Means an entity that operates: <ul style="list-style-type: none">• a public switched telephone network (or a functionally equivalent system) that originates, transits or terminates calls; and/or• a public data network.
Chat Bots	Means computer-generated responses sent to chat participants. These responses are sent without human operation interaction.
Chat Service	Means a Premium Messaging Service which enables Customers to engage in live anonymous conversation by sending and receiving Messages to either another Customer or an employee of that Premium Messaging Service.

Code	Means this Mobile Premium Messaging Services Code.
Contact and Dating Services	Means a Premium Messaging Service which enables persons who were previously unacquainted with each other to make initial contact and arrange to meet in person or otherwise continue to have contact with one another outside the Premium Messaging Service if they wish to do so.
Content Provider	Means the party who has a contractual relationship with a Content Service Provider or Telecommunications Service Provider, in order to provide mobile content/Messages to the Customer.
Content Service Provider	Means any person that has a contractual relationship with a Telecommunications Service Provider in order to deliver Premium Messaging Services or content/Messages to the Customer.
Customer	Means a person who: <ul style="list-style-type: none"> a) elects to receive Premium Messaging Services from a Content Service Provider and/or Content Provider; b) has a bona fide billing relationship with a Telecommunications Service Provider; and c) is invoiced by that Telecommunications Service Provider for those Premium Messaging Services.
Delivery Failure Reason	Has the meaning defined in section 12.
Expenditure	Means the amount paid by the Customer to receive the Premium Messaging Service and excludes any amounts paid by the Customer for other products or services associated with the use of the Premium Messaging Service. For example the parking charge associated with a txt-to-park service is excluded.
IVR (or Interactive Voice Response)	Means a recorded message service which gives factual information about a particular Premium Messaging Service.
Message	Means an SMS, MMS and/or WAP.
MMS (or Multimedia Message Service)	Means a message which could be text, graphic, video or sound files sent to and/or from a mobile phone.
MO Mobile Originated Message	Means a Message sent from the Customer's mobile handset.

Month	Means a calendar month.
MT (Mobile Terminated) Message	Means a Message received by the Customer's mobile handset.
Non Subscription Service	Means a Premium Messaging Service other than a Subscription Service.
Non-Working Day	Means any day other than a Working Day.
Parties to this Code	Means a Carrier, Telecommunications Service Provider, Content Service Provider or Content Provider who has agreed to be bound by this Code.
Person	Means a legal person and includes a company and any other legal entity.
Premium Messaging Service	Means a Subscription or Non-Subscription Service provided via a mobile handset where the Customer is charged a rate above the basic Carriage Charge.
Restricted Content	Has the meaning set out in the TCF Mobile Content Code.
Shortcode	Means a number provisioned by Carriers to enable the charging of premium rates for Premium Messaging Services, and includes MSISDNs.
SMS (or Short Message Service)	Means a short text messages sent to and/or from a mobile phone.
Subscription Service	Means a Premium Messaging Service which offers multiple content, initiated by a sign-on process, including both recurring Premium Messaging Services billed at regular intervals and also Premium Messaging Services that are billed with content delivery.
TCF	Telecommunications Carriers' Forum Incorporated Society of New Zealand. For more information refer to www.tcf.org.nz .
TCF Mobile Content Code	Means the TCF New Zealand Code of Practice for Provision of content via Mobile Phones. For further information refer to the TCF website: www.tcf.org.nz .
Telecommunications	Means the Customer Complaints Code and Scheme Terms of

Dispute Resolution Scheme	Reference developed by the TCF. For further information refer to the TCF website: www.tcf.org.nz/tdrs .
Telecommunications Service	Means any good, service, equipment and/or facility that enables or facilitates telecommunication.
Telecommunications Service Provider	Means any person providing a Telecommunication Service to a Customer who has the billing relationship with that Customer to charge them for any chargeable activity relating to the provision of the Premium Messaging Service.
TollFree Number	Means a telephone number beginning with the digits 0800 or 0508 used for calls originating in New Zealand where the calls are free to the caller.
Video Service	Means a Premium Messaging Service that provides streaming video, audio and other multimedia content to mobile handsets.
Virtual Chat Services	Means a Chat Service which is not real time and enables two or more Customers to exchange Messages.
WAP (or Wireless Application Protocol)	Means a protocol that allows the sending of content and information to mobile handsets.
Week	Means Monday to Sunday (inclusive)
Working Day	Means a day on which registered banks are open for normal banking business, excluding Saturdays, Sundays and nationwide public holidays. Regional public holidays are considered to be Working Days.

In this Code all days and times refer to New Zealand dates and times. All monetary amounts referred to in this Code are in New Zealand Dollars (NZD), inclusive of GST.

3 Scope and Objectives

3.1 Objective

The object of this Code is to:

- a) Set out certain principles that providers of Premium Messaging Services should comply with for the best practice management of Premium Messaging Services. It will identify the rights and responsibilities of Content Providers, Content Service Providers, Telecommunications Service Customers and Carriers;
- b) Provide guidelines for providers of Premium Messaging Services to ensure compliance with their legal obligations and the obligations of this Code;
- c) Set out the approach to monitoring compliance;
- d) Achieve a balance between legitimate industry interests and viability, and Customer interests;
- e) Promote the informed fair and safe use of Premium Messaging Services and increase Customer confidence in and encourage the responsible use of Premium Messaging Services; and
- f) Acknowledge that providers of Premium Messaging Services and Customers alike have an on-going obligation to use reasonable efforts to attempt to minimise and discourage the inappropriate use of mobile technologies and promote prevention strategies.

3.2 Minimum Requirements

This Code specifies the minimum obligations on Carriers, Content Providers, Content Service Providers and Telecommunications Service Providers supplying Premium Messaging Services to the New Zealand marketplace, via SMS, MMS and WAP.

Parties who agree to be a Party to this Code will ensure that any contracts they enter into with other potential Parties to this Code (which relate to the subject matter of this Code) will be bound to the Code as if they were also a Party to this Code.

Content Service Providers are responsible for ensuring that the content and promotion of all of the Premium Messaging Services (whether produced by themselves, information providers, Content Providers or others) comply with all relevant provisions of this Code. While Content Service Providers may allocate their obligations under this Code to the relevant Content Provider, the Content Service Provider will remain responsible for fulfilling those obligations.

3.3 Compliance with the Law & other Codes

While compliance with this Code may assist you to comply with your legal and regulatory obligations, this Code does not constitute legal advice or a comprehensive outline of all legal issues relevant to the provision of Premium Messaging Services in

New Zealand.

In addition to compliance with this Code, industry participants are obliged to comply with all applicable laws, regulations and requirements of any government or statutory body, as well as with any other applicable industry standards or codes, whether voluntary or otherwise.

In particular, all parties to this Code must ensure they comply with Fair Trading Act 1987, Unsolicited Electronic Messages Act 2007, the Privacy Act 1993 and the Gambling Act 2003.

It is the responsibility of the parties to this Code to be fully conversant with the latest version of this Code, and to ensure that they are at all times in compliance.

4 Customer Authorisation

4.1 *Customer Consent required for all Premium Messaging Services*

All Premium Messaging Services must operate only on the basis of the Content Service Provider having received clear Customer consent from the Customer prior to the sending of any material to the Customer. For material of a nature that is charged to the Customer's mobile account, prior receipt of express consent is also required.

Clear Customer consent requires that the Customer has been clearly and reasonably informed in advance of the nature and content of the Premium Messaging Service they are now consenting to be provided with. In the case of express consent additionally being required, this requires that the consent must involve the requestor being authenticated as having a clear relationship with the end mobile device, via the use of an appropriate authentication mechanic such as:

- a) Opt-in Message being sent via MO Message;
- b) Opt-in mechanic being via IVR that automatically captures the Customer's handset (refer to section 4.2.1.1 for additional requirements regarding opt-in via IVR);
- c) Opt-in mechanic being via entry of a unique password/pin into a web/Wap page in which that password/pin has been supplied by MT Message sent to the requesting Customer's handset.

Messages must not be sent to Customers who have not requested them.

Customers may not be sent any Messages of a chargeable nature unless they have specifically consented to the receipt of such charged Messages, through clear and authenticated consent.

A Customer who has consented to the receipt of Messages relating to a specific Premium Messaging Service may not be sent Messages relating to another Premium Messaging Service without their prior consent.

Content Service Providers must retain records of all Customers' consent for their Premium Messaging Service for a minimum of 12 Months from the date the consent was granted. Where these actions were undertaken wholly or in part via mobile, the Content Service Provider must retain sufficient information for the Telecommunications Service Provider and the Content Service Provider to reconcile the transaction with its internal records if required.

4.1.1 **Premium Messaging fees & Charges**

Content Providers are required to inform a Customer about the premium rate fees for using the Premium Messaging Service. This information must be given:

- a) Before the Customer first uses the Premium Messaging Service; or
- b) At the time the Customer accesses the Premium Messaging Service but

- c) prior to any fees or charges being incurred by the Customer; and
- c) In a way that is clear, unambiguous and easily accessible by the Customer.

4.1.2 Data Charges

Customers must be made aware by Content Service Providers if the supply of the Premium Messaging Services may also incur additional data charges.

4.1.3 Withdrawal of Consent

Content Service Providers must implement appropriate, legally compliant procedures to enable the Customer to notify the Content Service Provider if they no longer wish to receive any type or category of messages. These procedures must be easy to use and must minimise any inconvenience or cost to the Customer.

Any Customer notification or request must be complied with ideally within 10 minutes of receipt, but in any event no later than 2 Working Days. With the exception of the confirmation of having unsubscribed message, no further Messages may be sent to a Customer who has notified the Message originator of their wish to opt out, unless the Customer requests or consents to the receipt of further Messages.

All Messages composed and/or conveyed by Content Service Providers must contain sufficient information to enable the Customer to identify the originator of the Message and to allow the Customer to contact the originator if they wish to opt out of further Messages. At a minimum this will include the Shortcode of the relevant Premium Messaging Service.

Refer to section 4.2.4 for Standardisation of 'STOP' command.

4.2 Subscription Services

In addition to the requirements set out in section 4.1 the following are the minimum requirements for the promotion and operation of Subscription Services.

4.2.1 Subscription Initiation and Cost of Initiation

All Subscription Services are required to include a mobile authentication element as part of the sign-up process, regardless of how or where the Subscription Service is operated and before any billable Messages are sent to the Customer. In each case, the cost to the Customer for any MO and/or MT Message related to initiating a Subscription Service must not exceed the basic Carriage Charge.

There are two ways a Customer can initiate a request to subscribe to a Subscription Service, either:

- a) Directly subscribing via Message sent from their mobile to the designated Shortcode; or
- b) Initiating the request for subscription through a non-mobile (or nonauthenticated-mobile) channel such as a web page, WAP session, or a voice circuit IVR.

4.2.1.1 Subscription Initiation via IVR

Where the mechanic is an IVR, the caller must take some positive action, such as dialing '0' to proceed with the call and accept the costs associated with the subscription. Positive action does not include the caller failing to terminate the call until after a given length of time. If the caller does not take the required action to proceed, the callers MSISDN should not be entered into the subscription service.

Inclusion of the caller's MSISDN into a marketing list must only be as a result of the caller taking some positive action such as dialing '0' to proceed.

4.2.1.2 Double Opt-in (Optional)

Content Service Providers may implement a double opt-in process:

The "welcome" Message equivalent to the following could be sent as:

- a) A standard, dedicated Message; and
- b) At no charge to the Customer.

The Message content equivalent to the following could:

- a) Commence with the phrase "[FreeMsg]";
- b) Include the name of the Subscription Service and optional description;
- c) Include Subscription Service cost and frequency;

- d) Include the phrase “To subscribe send YES to <Shortcode>”; and
- e) Include details of the helpline.

Example Subscription Service flow:

Customer views/hears advertisement and sends keyword by Message to Shortcode

Content Service Provider sends welcome Message

A suggested Message format is:

[FreeMsg] Welcome to [*name of service*]. To subscribe send YES to <shortcode> for [*product, i.e. ringtone, pics*] [*number of*] times a week for \$[*price*] each, Helpline 0800xxxxxx www.service.com.

If the Customer replies with ‘yes’ - they have actively opted into this Subscription Service and are deemed to have provided authenticated consent for their handset. The Subscription Service can commence with the issuing of the confirmation of subscription for the Customer’s reference. This MO Message must not exceed the basic Carriage Charge.

If the Customer does not reply the Content Service Provider may not send the Customer any other Messages until they actively opt-in to the Premium Messaging Service.

If the Customer replies with ‘No’ or ‘STOP’, the Content Service Provider must confirm by return Message and at no charge to the Customer that the Customer’s request to opt-out has been acted upon.

A suggested confirmation MT Message format where a Customer replies with ‘No’ is below:

[FreeMsg] You have replied ‘no’ to [shortcode]. You have not been subscribed to [service]. Helpline 0800xxxxxx www.service.com

4.2.1.3 Subscription Initiation via Non-mobile Channel

For clarity, this includes Subscription Services that Customers initiate the request for subscription via a non-mobile mechanic, such as a website or an IVR, or from a WAP site where the handset is not securely passed through to the Content Service Provider at the network level.

Where a Customer opts into a Subscription Service without initiating it from their mobile in a manner that provides automatic authentication through the passing of handset information, confirmation of intent must be obtained from the Customer by sending a *subscription confirmation request* as a standard MT Message to the mobile number nominated. This is essential to ensure the person requesting the Subscription Service is also the Customer.

The subscription confirmation request Message may either:

- a) Ask the Customer to confirm their wish to subscribe to the Subscription Service by sending an MO Message to the Shortcode; or
- b) Provide the Customer with a unique password/passkey, only available in the MT Message, for use to enter in a website or WAP site as validation.

The subscription confirmation request Message is required to be sent as:

- a) A standard, dedicated Message; and
- b) At no charge to the Customer.

The Message content must:

- a) Commence with the phrase “[FreeMsg]”;
- b) Include the name of the Subscription Service and optional description;
- c) Include Subscription Service cost and frequency;
- d) Include:
 - i) the phrase “To subscribe send YES to <Shortcode>”; OR
 - ii) provide details of the unique pin/password to be entered into a website / WAP site; and
- e) Include details of the helpline.

A suggested Message format for MO Message confirmation is below:

[Free Msg.] Welcome to [name of service]. To subscribe reply [keyword]. Cost [\$] per [billing frequency]. Helpline 0508xxxxxx.

A suggested Message format for Pin/Password confirmation is below:

[Free Msg.] Welcome to [name of service]. To subscribe enter password [password]. Cost [\$] per [billing frequency]. Helpline 0800xxxxxx.

4.2.2 Operation - Confirmation of Joining Subscription

Subscription Services must in all cases provide confirmation to the Customer that they have entered into a Subscription Service. This must be the first Message sent to the Customer before any premium rate Messages.

The confirmation of subscription is required to be sent as:

- a) A standard, dedicated Message; and
- b) At no charge to the end Customer.

The Message content must:

- a) Commence with the phrase “[FreeMsg]”;
- b) Confirm the Customer has entered a Subscription Service arrangement;
- c) Include the name of the Subscription Service and optional description;
- d) Include Subscription Service cost and frequency;
- e) Include details of the ‘STOP’ command; and
- f) Include details of the helpline.

A suggested Message format for subscription confirmation is below:

[Free Msg] Thanks for subscribing to *[name of service and (description - optional)]*. Cost [cost of service in \$] per [product] [no. of pushes] per [billing frequency]. until you send STOP to *[originating service shortcode]*. Helpline 0800xxxxxx www.service.com

4.2.3 No Minimum Subscription Period

Customers must be free to leave a Subscription Service at any time.

Subscription Services which are billed when the content is delivered must not advertise a minimum subscription period.

If a Customer advises it wishes to ‘STOP’ a Subscription Service which is billed at regular intervals, the Content Service Provider is not required to refund the Customer for the balance of period remaining in that billing interval.

4.2.4 Standardisation of ‘STOP’ command

Content Service Providers must adopt standard procedures to enable Customers to:

- a) Unsubscribe from a Subscription Service; and
- b) Opt-out of marketing databases and the receipt of marketing / promotional material.

The following ‘STOP’ command and opt out procedures must be available to Customers using the Subscription Services.

Where a Customer unsubscribes from a Subscription Services or marketing material by telephone or some means other than their mobile phone, the Content Service Provider must comply with that request within 2 Working Days following receipt for requests to unsubscribe from that Subscription Service and within 5 Working Days of receipt for requests to unsubscribe from marketing material.

4.2.4.1 'STOP' Message to Terminate Subscription

A 'STOP' request sent to a Shortcode will terminate all Subscription Services from that Shortcode as follows:

If the Shortcode is used for only one Subscription Service, it is expected the Subscription Service will be terminated for that Customer within 10 minutes of the receipt of the 'STOP' command, and must be terminated within 2 Working Days of the Customer sending the command.

If the Shortcode has shared use for two or more Premium Messaging Services, then all Premium Messaging Services used by the Shortcode are to be terminated for that Customer within the timeframes specified above.

A 'STOP' request is deemed as any Message sent to the Shortcode that contains the word "STOP". The Content Service Provider can choose to recognise other words in addition to 'STOP' to indicate the Customer is opting out of the Premium Messaging Service.

Customers must not incur any charges beyond the basic Carriage Charge for unsubscribing using the 'STOP' command.

Content Service Providers are required to configure their charging structure in a way that the MO Message component forms a minor component of the total Premium Messaging Service charge.

If a Content Service Provider inadvertently charges a Customer after the 'STOP' Message has been received, the Content Service Provider must refund the Customer for all charges after the 'STOP' Message is received.

4.2.4.2 Advanced 'STOP' Commands

In the cases where a Content Service Provider is providing multiple Premium Messaging Services on a common Shortcode, support for advanced 'STOP' commands is allowed provided the following guidelines are met:

The 'STOP' command must be received in the format "STOP <Premium Messaging Service name>" or vice versa, and <Premium Messaging Service name> must be unambiguously matched to the Premium Messaging Service.

If the <Premium Messaging Service name> does not exist, then the 'STOP' command must be treated as a full 'STOP' command for all Premium Messaging Services on that Shortcode.

Example Scenario 1: Customer has subscribed to three Subscription Services "Games", "Tones" and "Wallpapers" that reside behind the one Shortcode. Customer sends a Message "STOP" to the Shortcode.

Action: The subscription to **all** Subscription Services **must** be cancelled.

Example Scenario 2: Customer has subscribed to three services "Games", "Tones" and "Wallpapers" that reside behind the one Shortcode. Customer sends a Message "STOP games" to the Shortcode.

Action: The subscription to the Games Service **must** be cancelled, and the

Tones and Wallpapers Subscription Services can continue.

Example Scenario 3: Customer has subscribed to three services “Games”, “Tones” and “Wallpapers” that reside behind the one Shortcode. Customer sends a Message “STOP ring” to the Shortcode.

Action: Customer has not been unsubscribed from “Ring” as it’s not a valid Service. This should be treated as a full ‘STOP’ command and the Customer removed from all Subscription Services - see above.

Example Scenario 4: Customer has subscribed to three services “Games”, “Tones” and “Wallpapers” that reside behind the one Shortcode. Customer sends a Message “STOP everything” to the Shortcode.

Action: The subscription to all Subscription Services must be cancelled.

4.2.4.3 Multiple Subscription Services on one Shortcode

Subject to section 4.2.4.2, if multiple Subscription Services do share a common Shortcode, any ‘STOP’ command sent to unsubscribe from a Subscription Service on that Shortcode must be treated to action a unsubscribe from all Subscription Services sharing that Shortcode.

4.2.5 Confirmation of Having Unsubscribed

A Message must be sent to the handset to confirm the termination of a Subscription Service. Request to unsubscribe submitted via Message, IVR, voice call, Web or email, must all result in a confirmation Message being sent to the Customer.

The confirmation is required to be sent as:

- a) A standard, dedicated Message; and
- b) At no charge to the Customer.

The Message content must:

- a) Commence with the phrase “[FreeMsg]”;
- b) Include the name of the Subscription Service/s that have been unsubscribed to;
- c) Not include any adult-related language or concepts;
- d) May include information about how to rejoin the Subscription Service; and
- e) Include details of the helpline.

Where the ‘STOP’ command is sent by a Customer subscribed to multiple Subscription Services on the one Shortcode, a separate unsubscribe confirmation must be sent for each Subscription Service being terminated to provide full clarity to the Customer.

Example: “Confirmation of Unsubscribing”:

[Free Msg] U r now unsubscribed from [Service Name]. To re-subscribe, SMS “Tones” to [Shortcode]. Cost = \$4.50 per month. Helpline 0508xxxxxx

4.2.6 Termination of Subscription Services

Customers may be charged a basic Carriage Charge for unsubscribing to a Subscription Service. The Content Service Provider must ensure the Customer can unsubscribe via the mobile handset and at least one of the following:

- a) Via a website; or
- b) By landline telephone,

where one of the methods must be the same as the Customer used for the initial subscription.

A Content Service Provider may continue to provide access to the Subscription Service for the remainder of the subscription period, provided the Customer is not charged an additional amount, other than basic Carriage Charges.

4.3 Chat Services

In addition to the requirements set out in section 4.1 the following are the minimum requirements for customer authorisation in relation to Chat Services:

- a) A confirmation / welcome Message for the chat room/Chat Service facilitation is required to be sent as the first Message;
- b) The confirmation / welcome for chat room/Chat Service facilitation Message is required to be sent as:
 - i) a standard, dedicated Message; and
 - ii) at no charge to the Customer;
- c) Warnings must be provided to new Customers concerning the dangers of disclosing personal details to the chat room, and advising against doing so;
- d) All chat rooms must be supplied with appropriate safety measures as required by this Code;
- e) The terms and conditions and posting rules of a Chat Service are to be assessed in light of the nature of the Chat Service, the safety measures placed on the Chat Service and the Content Service Provider's safety measures compliance plan;
- f) Invitations to join chat rooms must not be paid for by the receiver unless the invitation is extended to a Customer who has given express consent to pay for such invitations; and
- g) Participants in chat rooms must not be charged to receive chat room communications unless they have expressly consented to accept the charges.

The Message content must:

- a) Commence with the phrase “[FreeMsg]”;
- b) Include the name of the Chat Service and optional description;
- c) Include Chat Service cost and frequency; and
- d) Include details of the helpline.

Example: “Confirmation of chat room/Chat Service facilitation”

[Free Msg] Welcome to 'My Chat'. Cost = \$1.00 to send/receive per message.
Helpline 0800xxxxxx

4.3.1 Double Opt-in (Optional)

The two steps below describe optional double-opt in:

- a) If the Customer replies with “Yes”, a moderator receives the Customer's Message and begins a conversation; and
- b) If the Customer does not reply with “Yes”, or have replied with ‘STOP’, they have not opted-in and must not be sent any further Messages.

4.3.2 Opt-out

As soon as the Customer sends in ‘STOP’ all further conversation must be automatically stopped.

4.4 Virtual Chat Service

In addition to the requirements set out in section 4.1 this section sets out the minimum requirements for customer authorisation in relation to Virtual Chat Services.

Content Service Providers must take all reasonable steps to ensure that the participant in any Virtual Chat Service is an authorised user and that nobody under the age of 18 uses Virtual Chat Services.

The only exceptions to this rule are Age Restricted Content based Virtual Chat Services offered to the 16-17 age group, provided that the advertising of such services occurs in media where the target readership or audience is not below 16 years of age.

In the case of group text Virtual Chat Services, consumers must be informed of any conditions before they enter the Virtual Chat Service and, in particular, of the minimum number of Messages they will receive and the price per Message.

4.5 Age Restricted Service

In addition to the requirements set out in section 4.1 this section sets out the minimum requirements for customer authorisation in relation Age Restricted Services.

The application to 'opt in' may be in electronic or hard copy and must be accompanied by:

- a) The name of the Customer;
- b) The account number;
- c) Other information required by the Telecommunications Service Provider's processes to verify Customer identity;
- d) The identification used; and
- e) A declaration that the Customer is at least 18 years of age.

A Content Service Provider must not offer Age Restricted Services without ensuring the Telecommunications Service Provider has the controls in place referred to in section 10.3.

4.6 Video Services

Video Services must include:

- a) Notification of whether the Content Service Provider can see the Customer; and
- b) Notification if the Video Service is recorded and the purpose for which it is being recorded.

This information may be provided after the Customer has initiated the Video Service, but must be provided before the Video Service is engaged.

5 Customer Notifications

5.1 General Provisions

Content Service Providers must notify the Customer of the costs likely to be or already incurred at certain time-based or dollar thresholds which are detailed in this section.

All notifications must be sent as:

- a) A standard, dedicated Message; and
- b) At no additional charge to the Customer.

Details and suggested content for the notification Messages for the various Premium Messaging Services are outlined below.

5.2 \$30 Expenditure Notification and 30 Day Subscription Reminder

If a Customer using a given Premium Messaging Service reaches or exceeds a \$30 Expenditure increment for that Premium Messaging Service within a given Month, a \$30 Expenditure notification Message must be sent to the Customer immediately for each \$30 spent.

If a Customer using a given Subscription Service has not received a \$30 Expenditure notification Message for that Subscription Service during a given Month, then a 30-day Subscription reminder must be sent to the Customer at the end of that Month.

5.2.1 Notification Format - Non Subscription Service

The \$30 Expenditure notification Message for Non-Subscription Services must contain the following information:

- a) Commence with the phrase “[FreeMsg]”;
- b) Inform the Customer has passed \$30 spend;
- c) Include the name of the Non Subscription Service &/or Shortcode; and
- d) Include details of the helpline.

A suggested Message format is below:

[FreeMsg] Courtesy msg from [name of service]. U have spent >\$30 on [shortcode]. FYI only, no action required. Non-Subscription service. Helpline 0508xxxxxx

5.2.2 Notification Format - Subscription Service

The \$30 Expenditure notification Message must contain the following information:

- a) Commence with the phrase “[FreeMsg]”;
- b) Inform the Customer has reached or passed \$30 spend;
- c) State the Customer is “subscribed to” [name of the Subscription Service] &/or [Shortcode];
- d) Details of the ‘STOP’ command; and
- e) Details of the helpline.

A suggested Message format is:

[FreeMsg] U r subscribed to *[name of service]*. U have reached or passed \$30 spend on this service. To cancel SMS STOP to *[shortcode]*. Helpline 0508xxxxxx

The 30-day notification must contain the following information:

- a) Commence with the phrase “[Free Reminder]”;
- b) Name of the Subscription Service and optional description or Shortcode;
- c) Subscription Service cost and frequency;
- d) Details of the ‘STOP’ command; and
- e) Details of the helpline.

A suggested Message format is:

[FreeMsg] U r subscribed to *[name of service]*. Cost [in \$], per [billing frequency] until you SMS STOP to *[shortcode]*. Helpline 0508xxxxxx

5.3 Opt out of Expenditure Notification or Subscription Reminder

Subject to prior written permission from the relevant Telecommunications Service Provider, Content Service Providers may allow Customers to opt out of the \$30 Expenditure notification for specific Subscription Services. Similarly, with prior permission from the relevant Telecommunications Service Provider, Content Service Provider may allow certain Customers to opt out of the 30 day subscription reminder.

This facility is primarily intended for high value Subscription Services aimed at informed adult Customers, in which the frequency of Expenditure alerts would be especially annoying to the Customer or disruptive to the Premium Messaging Service.

5.4 Invalid Customer Request

If a Customer sends an indecipherable or invalid content request to a Premium Messaging Service, an error notification must be sent to the Customer. The notification Message must meet the following requirements:

The Message is required to be sent as:

- a) A standard, dedicated Message; and
- b) At no charge to the Customer.

The Message content must:

- a) Commence with the phrase “[FreeMsg]”;
- b) Include the name of the Premium Messaging Service that the Message relates to;
- c) Provide a informational message that you could not understand the Message and an example of the correct Message if appropriate; and
- d) Include details of the helpline.

A suggested Message format for error notification is:

[Free Msg] From [ServiceName] - We do not understand your message. Please check the instructions and txt your code again to [shortcode]. Helpline 0800xxxxxx.

6 Changes to Pricepoints or Propositions Offered on Shortcode(s)

6.1 TSP Notifications

When a Premium Messaging Service operating on a Shortcode is to be varied, which may include any or all of the following:

- a) Proposition offered on Shortcode;
- b) Pricepoints of Shortcode;
- c) Customer opt in/out procedures;
- d) Advertising mediums where there will be an impact to network through increased volumes;
- e) Customer service structures and contact details for the Content Provider;
- f) Change of content type or keywords;

the Content Service Provider must give the Telecommunications Service Provider at least 30 days written notice of the variation(s).

6.2 Proposition Cessation and Activation

When a service operating on a Shortcode is to be replaced with an alternative approved Premium Messaging Service to use the same Shortcode, there must be a delay of at least one Month between concluding the original Premium Messaging Service and launching the new Premium Messaging Service.

Where the new Premium Messaging Service is an Age Restricted Service and the Shortcode for that new Premium Messaging Service has not previously been used for an Age Restricted Service, the Shortcode must have been decommissioned at least three Months before the launch of the new Age Restricted Service.

6.3 Customer Notifications

When a Premium Messaging Service operating on a Shortcode is to be replaced:

- a) With an alternative Premium Messaging Service to use the same Shortcode at a difference pricepoint; or
- b) Should the Content Service Provider wish to increase the price points of an active Subscription Service,

the Customer must be notified at least one Month before the original Premium Messaging Service is decommissioned and launching the new Premium Messaging Service, so as to minimise unintended use of the new Premium Messaging Service. Where the new Premium Messaging Service is an Age Restricted Service and the Shortcode for that new Premium Messaging Service has not previously been used for an Age Restricted Service, the Shortcode must have been decommissioned at least

three Months before the launch of the new Age Restricted Service.

Furthermore, any previous or current Customers of the decommissioned Premium Messaging Service may not be automatically included as subscribers of the new Premium Messaging Service without their prior clear and authenticated consent for inclusion in the new Premium Messaging Service.

Example scenario 1: A company offering weather forecasts on Shortcode 1234, charging \$1.00 per Message, may decide to cease offering weather forecasts and alter the configuration to offer a Chat Service at \$1.00 per Message via the same Shortcode.

Action: The Content Service Provider is required to impose a delay between the end of the weather alert Premium Messaging Service and the launch of the Chat Service to ensure that Customers of the weather related Premium Messaging Service do not inadvertently access the Chat Service. The Content Service Provider should notify all existing active Customers of the weather forecast Premium Messaging Service of its cessation, and must not include any of these Customers in the new Chat Service unless they specifically opt-in to the Chat Service after being made aware of the full details of the new proposition.

Example scenario 2: A Content Service Provider offering weather forecasts on Shortcode 1234, charging \$1.00 per Message, may decide to continue but increase the pricing of the offering to \$2.00 per Message via the same Shortcode.

Action: The Content Service Provider should notify all existing active Customers of the weather forecast Premium Messaging Service of the price increase a Month prior to the price change being implemented, and must ask the Customer to opt-in and agree to subscribe to the new conditions. The Content Service Provider must not include any of the original Customers unless they specifically opt-in to the Premium Messaging Service after being made aware of the full details of the new proposition.

7 Advertising and Promotion of Premium Messaging Services

7.1 General requirements

Advertising and promotion for Premium Messaging Services marketed by Content Service Providers must comply with all New Zealand legislation, the Advertising Standards Authority Codes and industry guidelines. Parties to this Code are required to adhere to overall principles of the Code and include clear, prominent and legible information regarding price and other material terms. Advertising must not be designed to distract attention from such terms.

All advertising should have regard to the type of advertising (including the medium or format being used) and its intended audience.

If a Shortcode is not used as the primary means of advertising the Premium Messaging Service, the key word(s) used to advertise the Premium Messaging Service must meet the requirements of the Code as if the keyword(s) are the Shortcode.

7.1.1 Requirements for All Premium Messaging Services

Advertising must comply with the following principles:

- a) The key elements of the offer must be included in the text and any voice overs in a manner which the average consumer can reasonably be expected to comprehend having regard to the media used;
- b) Pricing information - including cost and frequency of messages - must be made available to Customers without requiring them to initiate the Premium Messaging Service;
- c) Advertising must refer explicitly to any standard charges that will apply when using or accessing the Premium Messaging Service. For instance: '\$3.00 plus standard Message rates' or 'Data charges apply'; and
- d) Unless otherwise agreed, Premium Messaging Services must not imply that such services are supplied or endorsed by the relevant Telecommunications Service Provider.

All information relating to price and material terms must be;

- a) Similar in size to that of any Shortcode advertised and of sufficient size to be read by the audience given the nature of the promotional media; and
- b) Displayed clearly, accurately and within sufficient proximity to the product or Premium Messaging Service being offered such that it is obvious that the information applies to that product or Premium Messaging Service;

Where a disclaimer is used in any advertising;

- a) The disclaimer must not be inconsistent with anything contained in the principal message of the advertising and must not negate the principal

- message of the advertising;
- b) Having regard to the type of advertising (including the medium or format being used) and its intended audience, the disclaimer must be clearly indicated or stated and must be readily available;
 - c) The disclaimer must:
 - i) be placed next to the offer; or
 - ii) be linked to the offer by an asterisked footnote or other symbol; or
 - iii) for television or radio advertising, form part of the advertisement visually or orally;
 - d) All advertising containing an offer for a product or Premium Messaging Service for a limited period or in a limited quantity must clearly state or communicate that limitation;
 - e) All advertising offering a product or Premium Messaging Service which is available only to a limited class of Customers must clearly state or communicate the eligibility requirement or restriction. Where there are limitations on handset compatibility the advertisement should stipulate where information on further terms and conditions maybe obtained. Those terms and conditions must then detail handset compatibility information;
 - f) Where a 'special offer' is being advertised, sufficient details of the special offer must be included, including:
 - i) the principal elements of the special offer;
 - ii) the start date (if the special offer has not already started) and the end date of the special offer; and
 - iii) any conditions or limitations of the offer.
 - g) Where a savings claim is made in advertising, the advertising must specify the Premium Messaging Service, rate or other matter on which the savings claim is based;
 - h) Where any advertising uses the term "free" or equivalent (which includes but is not limited to "no cost", "no fee", "no charge" or "\$0"), the Content Service Provider must ensure that:
 - i) the "free" product or Premium Messaging Service is not subject to any charge, fee or cost (if Carriage Charges apply, this must be stated);
 - ii) the advertising material clearly identifies those elements of the offer that are "free";
 - iii) any other conditions that qualify the offer are clearly stated, including any other product or Premium Messaging Service which must be purchased with the "free" product or Premium Messaging Service;
 - iv) the prices of products or Premium Messaging Services accompanying the offer are not inflated to cover some or all of the cost of the "free" offers; and
 - i) Advertising which offers or promotes credits, free services or products, or other benefits must clearly state or communicate any conditions, including time limits, caps or fair use policies, upon a Customer's ability to use the credits, free services or products, or other benefits;
 - j) Having regard to the intended audience of the advertising, all advertising must not generally be confusing, misleading or deceptive in any way; and
 - k) An advertisement for a Premium Messaging Service shall not contain material that is out of date, having regard to time sensitive information generally available, subsequently published, or released or made

available.

7.1.2 Chat Service- Operator Assisted

These requirements are in addition to the general guidelines in section 7.1 and 7.1.1.

Advertising for operator assisted Chat Services should not imply:

- a) Age Restricted Content;
- b) Dating Service; or
- c) Simply peer-to-peer Chat Service.

For Operator-Assisted chat, disclosure should be made in the advertising and terms and conditions, for example;

“This Premium Messaging Service employs operators who are paid to participate in chat.”

7.1.3 Age Restricted Services

These requirements are in addition to the general guidelines in section 7.1 and 7.1.1.

Advertising for Restricted Services (as defined in the TCF Mobile Content Code) is permitted provided there is compliance with any regulations governing the media in which the advertising is conducted, however, advertising for Age Restricted Services must not be targeted directly to children.

Promotions for Age Restricted Services must:

- a) Be directed at adult audiences and not be directed at persons under the age of 18;
- b) State that the user must be over 18 years of age and that they must either be the bill payer or have the bill payers permission to use the Premium Messaging Service;
- c) Be in context with the publication or other media in which they appear. The content of a Premium Messaging Service should not be contrary to the reasonable expectations of those responding to the promotion; and
- d) Must provide a Message at the beginning of the Premium Messaging Service stating that:
 - i) the user must be over the age of 18 years old; and
 - ii) the user should be either the bill-payer or have the bill-payer’s permission to use the Premium Messaging Service.

7.2 *Television/Video Commercial*

These requirements are in addition to those set out in section 7.1.

Visual material must include:

- a) Price per Message information;
- b) Details of the helpline;
- c) Content Service Provider or Content Provider website URL; and

- d) Handset compatibility information (or where to find information about handset compatibility).

These words must be prominent and highly visible to readers.

All information relating to price must:

- a) Be at least 50% of the font size of the Shortcode;
- b) Display simultaneously and for the same duration; and
- c) Display for a period of at least 10 seconds so as it can be assimilated by the average person. If the Shortcode is displayed for longer than ten seconds, the price information must be displayed for the same length of time that the Shortcode appears.

Terms and conditions must be clearly legible and easily comprehensible and held on screen long enough for all text to be read by the average viewer. A minimum of 0.2 seconds per word or 2 seconds minimum duration if less than 5 words, is recommended.

Voiceover material must explicitly describe:

- a) Price per Message information.

For Subscription Services, the following additional requirements apply:

Visual material must also include:

- a) The noun 'subscription' or the verb 'subscribe'. These words must be prominent and highly visible to readers;
- b) Frequency of subscription for the Subscription Services must be clearly visible at the same time. e.g. 3 msg per Week; and
- c) Details of the 'STOP' command.

Voiceover material must explicitly describe:

- a) The Subscription Service as a 'subscription' or use the verb 'subscribe' to convey the activation method.

7.3 Radio Advertising

These requirements are in addition to those set out in section 7.1.

Voiceover material must explicitly describe:

- a) Price per Message information, and
- b) Any initial or additional charges (if applicable) (e.g. membership, joining fee, data charges).

For Subscription Services, the following additional requirements apply:

Voiceover material must explicitly describe:

- a) The Subscription Service as a 'subscription' or use the verb 'subscribe' to

- b) convey the activation method; and
- b) Details of a website location where the full terms and conditions of the relevant Subscription Service are displayed.

7.4 Print, WAP & Web-based Advertising

These requirements are in addition to those set out in section 7.1.

- a) A minimum of 6 point print size must be used;
- b) If the size of Shortcode is between 24 point and 48 point size, the cost information must be a minimum of 25 % of the size of the Shortcode;
- c) If the print size of the Shortcode is over 48 point print size, the cost information must be a minimum of 12 point; and
- d) For print advertisements spanning more than one page the cost information must be on the first page.

For Web-based advertising the cost information must be:

- a) At least 50% of the size of the Shortcode;
- b) Static and visible without requiring the viewer to scroll down and see it (assuming an 1,024x700 desktop); and
- c) For Subscription Services, the text referred to in (a) to (c) below must appear on the same page, and not below the fold, as the main Shortcode and advertised in the same font with background being no smaller than either 50% of that used for the advertised Shortcode or 10 point size, whichever is the greater.

For Subscription Services, the following additional requirements apply:

- a) Use of the noun 'subscription' or the verb 'subscribe';
- b) Frequency of subscription for the Subscription Services must be clearly visible at the same time. e.g. 3 msg per Week; and
- c) Details of the 'STOP' command.

Below is an example, of WAP advertising or browsing (unprompted subscriber navigation to a site):

“Join/Subscribe to [Subscription Service name optional] for cost [\$] per [billing frequency]”.

7.5 Use of Marketing Database

A 'marketing database' refers to a database of Customer details maintained for the purpose of sending marketing or promotional Messages that relate to products or Premium Messaging Services offered by the Content Service Provider.

Any Message content must:

- a) Commence with the phrase “[FreeMsg]”; and

- b) Not use any implied personal message or any other message which creates a false imperative to reply by premium rate Message.

Examples of implied personal messages may include: 'I fancy you', 'I miss you', 'I'm lonely do you want to chat?', 'Where are you?' or 'Urgent, please call';

- c) Not include any adult related language or concepts;
- d) Relate only to Premium Messaging Services provided by the Content Service Provider that are of the same nature as the previous Premium Messaging Service utilised by the Customer; and
- e) Include details of the 'STOP' command to stop any further marketing messages.

7.6 Marketing to Children

In addition to sections 7.1 to 7.5, all marketing to children under 15 years of age must comply with the Advertising Standards Authority Code for Advertising to Children and the following additional requirements:

- a) Marketing must be solely on an 'opt in' basis, and must include a free and easily accessible method for opting out;
- b) A parental guidance Premium Messaging Service must send a warning advising consumer under 15 years of age not to use that Premium Messaging Service without the permission of the account holder. This warning must be included when:
 - i) a subscription confirmation Message is sent prior to the commencement of a Subscription Service; and
 - ii) a subscription reminder Message is sent at NZD \$30 increments on a Subscription Service;
- c) Any prizes or benefits offered to children opting into a campaign must be consistent with their age. e.g. a car as a prize for a 14-year-old would not be considered consistent;
- d) Personal information collected from children must not be disclosed to any third party without explicit consent of the child's parent or guardian regarding both the party and the purpose; and
- e) All marketing must be presented and conducted in a responsible manner, and should take into consideration child-specific factors including safety and the ability to pay.

8 Customer Service

This section sets out the obligations in relation to complaints handling and helpdesk facilities.

There should be a commitment to efficient and fair resolution of complaints by people in the relevant organisation at all levels, including that parties Chief Executive Officer(s) or ruling body and this should be demonstrated by an organisational culture which acknowledges the right of Customers to complain and which regards complaints as an opportunity to improve its Premium Messaging Services.

Parties to this Code who are entitled to be members of the Telecommunications Disputes Resolution Scheme are encouraged to do so. Where any Party to this Code is a member of that Scheme, the provisions of the TCF Customer Complaints Code will take precedence over the provisions in this Code in relation to Customer Complaints.

8.1 Complaints Handling Principles

A complaint must be:

- a) About a specific event or events;
- b) A grievance that isn't resolved when it is raised or which the Customer has otherwise requested be recorded;
- c) Valid if it is made within 12 months of the Customer's initial contact with the parties to this Code in relation to the activity being complained about.

A complaint must not be frivolous, vexatious or trivial or relate to:

- a) Equipment and/or applications the Customer owns which the party the Customer is complaining to does not support;
- b) The charges the Content Provider choose to set;
- c) Matters for which the Customer who is complaining does not have sufficient interest in except to the extent that it relates to section 7 of the Code; and
- d) Matters which the party to this Code is prevented by law from resolving.

The parties to this Code should adhere to the following principles:

- a) Complaint handling processes should recognise the need for fairness, both to the Customer and the organisation (or individual) about whom the complaint is made;
- b) Where possible, parties to this Code should seek to have complaints about the Premium Messaging Services they provide resolved when they are raised;
- c) Parties to the Code should provide adequate resources for complaint handling with sufficient delegated levels of authority;
- d) The complaint handling processes should have the capacity to determine and implement remedies to achieve resolution; and
- e) Customers who lodge complaints should be treated with courtesy.

8.2 Complaints Handling Process

Customers should refer complaints to the party who provides them with the Premium Messaging Service which is the subject matter of the complaint.

When a Customer complaint is first made about a Premium Messaging Service in relation to:

- a) Billing or network failure, the complaint must be directed to the Telecommunications Service Provider;
- b) Message content, the complaint must be directed to the helpline number associated with that Premium Messaging Service; and
- c) Advertising, the complaint must be directed to the Advertising Standards Authority.

Content Service Providers and Content Providers wishing to lodge a complaint about another parties advertising of a Premium Messaging Service must lodge that complaint with the Advertising Standards Authority in the first instance.

8.3 Visibility and Accessibility

The complaint handling process of the Party to the Code which that Party requires the Customer to follow must be documented and made available to the Customer upon request in hard copy, or other format as agreed with the Customer.

Parties to the Code must provide information on how, when and where Customers can make a complaint. This information must be in simple and plain English. All reasonable endeavours must be used to ensure that the complaint handling process is accessible to all Customers and enables appropriate services to meet the needs of Customers with impairments and from non-English speaking backgrounds.

Complaint handling processes must include an internal escalation process.

Complaint handling policies must:

- a) be made available to Customers and staff;
- b) include information to Customers about their right to complain;
- c) provide sufficient information so that Customers can readily identify the area(s) which handles Customer complaints;
- d) be free; and
- e) be flexible, for example, offer more than one channel through which the Customer may lodge a complaint.

8.4 Responsiveness

Where a Customer lodges a complaint with a Party to this Code, that party must:

- a) In accordance with section 8.2, refer the complaint to the appropriate party;
- b) On receipt of complaint by the Party to this Code responsible for resolving it, acknowledge receipt of written complaints as soon as practicable but in any event within 5 Working Days of receipt of the complaint. They can elect to do this either verbally or in writing, unless one or the other method is specified by the Customer. A complaint made verbally to a party to this Code will be

- deemed to have been acknowledged at the time it is taken;
- c) Advise Customers when they make a complaint, or make every reasonable effort to do so within 10 Working Days of receipt, of the estimated level of complexity of the investigation and a timeframe for the possible agreement of the complaint. If the advised timeframe is to be exceeded, the party to this Code must advise the Customer of the revised timeframe before or at the time the timeframe expires. Subject to 8.4 (d), the timeframe for providing the final response in relation to a complaint must be not more than 20 Working Days from the date of receipt by the relevant party of the complaint;
 - d) In certain cases it will not be possible for a complaint to be handled within the 20 Working Day timeframe referred to in clause 8.4 (c) due to the complexity or particular circumstances of the complaint. The Party dealing with the Customer in relation to the complaint must provide regular updates to the Customer in these circumstances and the Customer must be kept informed as to the progress of their complaint and likely timeframe for finalisation;
 - e) Must provide Customers with sufficient information to ensure they can effectively inquire on the progress of the complaint. Customers must be advised if this information changes;
 - f) Have appropriate methods and/or mechanisms in place in order to take action and undertakings made to Customers in the resolution of complaints;
 - g) Advise Customers of the outcome of the investigation of their complaint. This must be in a written format, if requested by the Customer; and
 - h) Exercise caution not to dismiss complaints as frivolous or vexatious without due consideration and, where appropriate, escalation. Where the Party to this Code dealing with the complaint deems the complaint to be frivolous or vexatious, that Party must:
 - i) inform the Customer of the reasons for the decision not to investigate on the grounds of jurisdiction; and
 - ii) where requested by the Customer inform the Customer of the availability of external options for the Customers Complaint to be handled.

8.5 Helpdesk

The helpdesk must offer a good Customer experience and the helpline number must always be clearly shown on any advertising. The helpline number must be free to call from both a New Zealand landline or cell phone.

The preference is for a live agent helpdesk to be available during the hours of 9am to 5pm on Working Days and 9am to 5pm Non-Working Days. An Interactive Voice Response (IVR) helpdesk may be used outside of these hours.

As a minimum the helpdesk should be a 24/7 IVR service.

An example of an acceptable IVR service for a Content Provider is as follows:

Welcome to (CONTENT PROVIDER'S NAME), this is a 24 hour automated service. Please listen to the instructions:"

Press 1 to 'STOP' a Subscription Service - Please leave your name, mobile number, Shortcode and if you have been in a subscription database, you will receive a confirmation that you have been unsubscribed from the Subscription Service within 2 Working Days.

Press 2 to re-request the information/content again

Press 3 to leave a message - Please leave your name, mobile number and the details of your issue and an operator will call you back within 2 Working Days.

Press 4 to speak to an operator (if after hours pass to number 3)

8.6 Recording Customer Complaints

The processes of the Parties to this Code must provide for appropriate and systematic record keeping of complaints. The nature of any complaint and, if applicable, any undertakings made by the Party to this Code to the Customer must be recorded and retained for a minimum period of one year following the resolution of a complaint.

Complaints need to be appropriately analysed to identify recurring and systemic problems and trends in order to address and eliminate the underlying causes of complaints and improve the quality of Customer service.

Parties to this Code must keep information they deem necessary to show their compliance with this Code.

8.7 Complaints Related to Advertising

As set out in section 8.2, all complaints related to advertising must be referred to the Advertising Standards Authority in the first instance.

Telecommunications Service Providers will provide the Advertising Standards Authority with the name and contacts details for any Content Service Provider or Content Provider for a Premium Messaging Service whenever requested by the Advertising Standards Authority and will notify the party concerned whenever such information is provided.

8.8 Escalated Complaints

Where a complaint has been referred to the Party identified in section 8.2 as the party responsible for resolving the complaint, and the party lodging the complaint is not satisfied with the outcome proposed by the party they have been referred to, they may refer their complaint to the Telecommunications Service Provider who will undertake to resolve the complaint in accordance with section 8.8 and otherwise in a manner it considers appropriate, based on available information and with reference to any relevant independent third party.

8.8.1 Telecommunications Service Provider Customer Complaints Handling

Upon receipt of an escalated Customer complaint, the Telecommunications Service Provider must email the following information to the relevant Content Service Provider's Customer care:

- a) The Shortcode;
- b) The date the Customer made contact with the Telecommunications Service Provider helpdesk in relation to the escalated complaint;
- c) The Customer's mobile number; and
- d) A brief description of the Customer's issue/complaint.

Telecommunications Service Providers must retain all records relating to an escalated complaint for a minimum of two years.

8.8.2 Escalated Customer Complaints to Content Service Provider

The Content Service Provider must:

- a) Propose a resolution to the Customer about escalated Customer complaints within 2 Working Days of the email from the relevant Telecommunications Service Provider;
- b) Upon proposing a resolution of an escalated Customer complaint, reply to the email from the relevant Telecommunications Service Provider's Customer care to demonstrate how they have endeavoured to resolve the issue. The email must contain the following information:
 - i) the Shortcode;
 - ii) the date the Telecommunications Service Provider made contact with the Content Provider helpdesk;
 - iii) the Customer's mobile number;
 - iv) a brief description of the Customer's issue/complaint;
 - v) a description of any resolution reached with the Customer; and
 - vi) the date the resolution was reached with the Customer.
- c) Retain all records relating to a complaint for a minimum of two years.

8.8.3 Customer Complaints unresolved by Content Service Provider

Where a Customer complaint escalated by a Customer to a Telecommunications Service Provider is still not resolved by the Content Service Provider to the Customer's satisfaction, the Telecommunications Service Provider will work with the Customer to see if they can reach a satisfactory outcome. If the Customer remains unsatisfied with the outcome proposed by any of the Parties to this code, the Party to the Code who has been primarily dealing with the Customer in relation to the relevant complaint will advise the Customer of their avenues of further recourse.

8.8.4 Escalated Content Service Provider Complaints

If a Content Service Provider has lodged a complaint with the Advertising Standards Authority and the Content Service Provider is not satisfied with outcome of that complaint having pursued all avenues available to them via the Advertising Standards Authority and they want to pursue it with the Telecommunications Service Provider, the Content Service Provider must provide the following information to the Telecommunications Service Provider:

- a) Content Service Provider's:
 - i) company name and address;
 - ii) complainant name (first and last); and
 - iii) contact details (email and phone);
- b) Name of the Premium Messaging Service the complaint relates to (if known);
- c) A brief description of the issue/complaint including a reference to the section(s) of the Code the Content Service Provider considers the Premium Messaging Service is breaching;
- d) Supporting evidence to include:
 - i) Message content and flows;
 - ii) specific Shortcode(s) the Premium Messaging Service relates to;
 - iii) time of the event;
 - iv) date (dd/mm/yy);
 - v) the mobile number used; and
 - vi) any other applicable information, e.g. if Message unsolicited.

The Telecommunications Service Provider will review the:

- a) Decision made by the Advertising Standards Authority and/or the Advertising Standards Complaints Board;
- b) Section 7 of this Code; and
- c) The information provided in accordance with section 8.8.4 (a) to (d) above;
- d) Section 13 of this Code;

and determine what action should be taken in accordance with section 13 of this Code (if any).

9 Content Standards

The provision of content by Premium Messaging Services must at all times comply with the TCF Mobile Content Code.

10 Additional Service Specific Requirements

This section sets out all the other additional requirements for specific Premium Messaging Services.

10.1 Risk Assessment and Human Resource Requirements

Section 10.1 relates to Chat Services, Age Restricted Services and Contact and Dating Services.

10.1.1 Risk Assessment

Content Service Providers:

- a) Must adopt a duty of care towards all Customers and is concerned with the delivery of quality, satisfactory services;
- b) Must regularly take a random sample of Premium Messaging Service usage to ensure compliance; and
- c) Must undertake an assessment of a Chat Service against the measures outlined below before launching the Premium Messaging Service;
- d) Should implement measures to mitigate any highlighted risks and specifically to minimize the risk of inappropriate and dangerous situations occurring with children under the age of 15.

These measures include:

- i) blocking unwanted contact;
- ii) electronic filtering;
- iii) human moderation;
- iv) human monitoring; and
- v) recruitment of staff.

For further information on these measures refer to sections 10.1.2 to 10.1.5 (inclusive).

10.1.2 Blocking Unwanted Contact

All moderators must have the ability to block Customers that are using inappropriate language, being offensive in any way, or where requested by the Customer. The Customer is informed that they have been blocked and are not able to interact with the Service any further.

10.1.3 Electronic Filtering

Content Service Providers must have an electronic filtering process whereby various contents are omitted from Premium Messaging Service Messages, improving the experience for both moderators and Customers.

10.1.4 Human Monitoring and Moderation

All chat rooms must be moderated in such a way as to minimise opportunities to circulate content or to facilitate activities that are illegal, that incite violence or crime, that are potentially offensive to reasonable participants, or that breach any industry code of practice.

Content Service Providers must have quality assurance procedures in place to ensure that monitors respond appropriately to each message, in a timeframe that enables intervention where necessary.

Human Moderators:

- a) Must be appropriately screened and trained; and
- b) Read all Messages posted to the Chat Service shortly after being posted.

If a Customer is not behaving appropriately, the moderators have the ability to send warnings that serve as an educational tool and have the effect of alerting Customers to the potential dangers associated with Chat Services and include good chatting practices. Customers can also be permanently barred from participating in Chat Services.

10.1.5 Recruitment of Staff

In respect of employees and contractors Content Providers of Chat Services are required to:

- a) Perform a police check; and
- b) Contact previous employers for personal references.

10.2 Chat Service

10.2.1 Operation

Moderator based Chat Services operate in the following way:

- a) Customer responds to an advert for a Chat Service and sends a Message to the advertised Shortcode;
- b) A moderator employed by the Content Service Provider running the Chat Service receives the Message on his/ her computer;
- c) The moderator replies to the Customer and a conversation then ensues;
- d) Under this service model (moderator-based chat) there is absolutely no way that a Customer can connect and talk with another Customer. All Messages sent into the Mobile Chat system are directed to a moderator; and
- e) Chat Bots should not be used in chat (other than for the standard

welcome Message and Expenditure notifications). This does not apply to registration or administrative, or match interactions.

10.2.2 Premium Chat Messages

- a) Will only be sent to Customers on the basis of a maximum of three MT Messages per one MO Message from the Customer;
- b) If more than one MT Message per one MO Message, the number of MT Messages must be clearly advertised e.g Max 3 replies; and
- c) Must always be sent in reply to Messages sent by a Customer.

10.2.3 Billing Premium Rates

Operator Chat Services facilitating communication must comply with the following stipulations:

- a) Administrative Messages associated with opting into the Premium Messaging Service should not incur premium rates;
- b) Invitations to change Chat Operators must not be MT Message charged (paid for by the receiver), unless the invitation is extended to a Customer who has given express consent to pay for such invitations; and
- c) Customers chatting with one Operator must not be MT Message charged to receive communications from another Chat Service unless they have expressly consented to accept the charges.

10.3 Age Restricted Services

A Telecommunications Service Provider must not enable delivery of an Age Restricted Service unless it receives an explicit request for access from the Customer and that Customer is aged at least 18 years of age or older. For the purposes of this section, a Telecommunications Service Provider must verify the age of the Customer obtaining evidence of some other form of identification by which the age of the Customer can reasonably be determined to be 18 years of age or older. Examples of identification that would satisfy this requirement include a valid drivers licence, proof of - age card, passport or birth certificate in the name of the Customer.

Content Service Providers must ensure that promotions for Age Restricted Services, and the Premium Messaging Services themselves, are compatible with access control and rating arrangements available for and appropriate to the medium through which they are accessible.

10.4 Contact and Dating Services

Content Service Providers who operate Premium Messaging Services which enable contact details to be exchanged, either in the course of exchanging Messages in Virtual Chat Services or otherwise, must:

- a) Warn users of the risks involved when contact details are given out and give clear advice on sensible precautions to take when meeting people through such Premium Messaging Services;
- b) Ensure that publicly-available elements of the Premium Messaging Service do not contain contact details, addresses or any other means of direct contact; and

- c) Make clear in the promotional material any restrictions on the location, sex and age range of users and of advertisers to the Premium Messaging Service.

10.5 Advice Services

Advice Services must:

- a) Be conveyed in a responsible manner;
- b) Indicate clearly in the promotional material or at the beginning of the Premium Messaging Service, the identity, current status and any relevant professional qualifications and experience of the person(s) or organisation supplying the information or advice. If the advice is given by a person with no relevant qualifications, the Premium Messaging Service must explain the source of the information; and
- c) Be prefaced with a statement that the Customer should not act upon advice which needs individual interpretation without first consulting a suitably qualified practitioner.

10.6 Betting Tipster Services

Content Service Providers must ensure that Premium Messaging Services and promotional material relating to betting tipster services do not:

- a) Make claims about future selections being certain winners or about the certainty of profits; and
- b) Quote odds for future selections unless the availability of these odds can be substantiated.

Content Service Providers must make clear that opinions on particular selections given in Premium Messaging Services or promotional material are opinions and not statements of fact.

11 Other Requirements

11.1 WAP Messages

WAP Messages may be used for both marketing messages and content delivery. WAP Messages must identify, prior to the WAP link either:

- a) The Shortcode used by the Premium Messaging Service; or
- b) The helpline number,

so that when the WAP Message is viewed by the Customer in their Premium Messaging Service 'in box' the Customer can identify where the Message has come from.

WAP Messages used for marketing messages must include details of the 'STOP' command.

11.2 Database Management

Content Service Providers are responsible for ensuring the accuracy and relevance of any databases used to hold Customer contact data, including the management and

purging of expired data.

Content Service Providers must ensure a log is maintained of each Premium Messaging Service for audit purposes of the following information:

- a) Mobile number of the incoming Message;
- b) Shortcode of the outgoing Message;
- c) Message content; and
- d) Date and time stamp.

This log must be retained for a minimum of 12 Months from the date the Customers Premium Messaging Service ended.

Reasonable processes must be implemented to ensure that Customers who obtain a new mobile number from a Telecommunications Service Provider do not receive content or Premium Messaging Services subscribed to by the previous user of this number.

To facilitate this Content Service Providers must deactivate all Customers whom have had an inactive relationship with them for 6 Months, from all Content Service Providers marketing databases. Subject to section 4.2.4, an inactive relationship is classified as one in which the Content Service Provider has not successfully sent or received a Message to or from the Customer.

Where a Telecommunications Service Provider provides lists of dormant or quarantined handset numbers, Content Service Providers must purge their databases of these Customers within 5 Working Days of the relevant Telecommunications Service Provider issuing the list.

Furthermore a MT Message delivery attempt to any handset that directly results in a Delivery Receipt showing permanent failure must be used by the Content Service Provider as a trigger to remove that handset number from the Subscription Service and marketing databases, as the Customer is clearly no longer available to be serviced.

12 Failed MT Messages and Timeliness of Content Delivery

Where MT Messages fail to deliver to the handset at the scheduled time whether due to Customer unavailability (including out of credit) or due to operational delays of the Content Service Provider and/or the Carrier, there are restrictions on which cases the content can be attempted to be resent. Factors that influence this include whether:

- a) The content is of a time sensitive nature;
- b) The content has been already paid for separately in advance; and
- c) The reason for delivery failure returned by Carrier (“**Delivery Failure Reason**”).

Content of a time sensitive nature, such as weather or traffic alerts, that have not been successfully delivered within a timeframe generally assumed reasonable for that specific content, and for which the Customer will be charged for receiving the content, should not be resent to the Customer as a chargeable Message. If the delivery delay was due to operational issues of the Content Service Provider, the

Content Service Provider may wish as a measure of good faith to the Customer, send the content to the Customer at no charge.

Where the Customer has already paid for the content in advance (i.e. a flat Monthly charge paid in advance) and there is no event based charge for the content to be sent, the Content Service Provider should attempt to resend the content at no cost to the Customer.

For Messages that have attempted, but failed to be delivered to the Customer, and with a Delivery Failure Reason returned that is potentially of an interim nature, then further attempts to deliver the Message may be allowed as follows:

- a) One attempt each day for the period of seven days from the receipt of the initial Delivery Failure Reason; then
- b) Two attempts in any seven day period for the period of eight to thirty days from the receipt of the initial Delivery Failure Reason.

However, where the Delivery Failure Reason indicates the Message delivery has failed due to a lack of credit there can be a maximum of two further attempts within seven days of receipt of the initial Delivery Failure Reason.

Where the Delivery Failure Reason returned is a permanent failure, the Message must be abandoned and no further retries are permitted. In such instances, details of the Customer must also be purged from relevant databases to ensure that the Customer is no longer considered a subscriber to that particular Subscription Service.

13 Compliance

This Code will take effect 3 months from the date the Code is endorsed by the TCF.

Consideration is being given to the appointment of an independent party to oversee and enforce compliance with this Code. Until such time as this Code is updated to reflect any such a regime, the compliance regime set out in section 13 below shall apply.

13.1 Responsibilities

The obligations under this Code must be carried out promptly and effectively, with all reasonable steps taken to ensure the informed and safe use of the Premium Messaging Services.

It is recognised that a Person may be any combination of a Content Provider, Content Service Provider, Telecommunication Service Provider and Carrier. It is up to that Person to ensure they comply with all the provisions of the Code relevant to them.

Parties to this Code agree that in any contract they enter into with Content Service Provider and/or Content Providers (as applicable) for the provision of Premium Messaging Services, they will ensure that the Content Service Provider or Content Provider (as applicable) is required to comply with the provisions in this Code.

While parties to this Code may allocate their obligations under this Code to the other Persons, those parties remain primarily responsible for fulfilling those obligations.

13.2 Non Compliance by Content Service Providers

In the event of any non-compliance by the Content Service Provider the Telecommunication Service Provider may take the following actions:

- a) Provide the Content Service Provider with a written non-compliance warning notification. This form will provide details of the non-compliance incident along with the required actions, to correct the problem. The Content Service Provider shall have 10 Working Days to fix the issue;
- b) Immediately suspend the non-compliant Premium Messaging Service on written notice to the Content Service Provider;
- c) At its discretion, terminate the offending Premium Messaging Service if the Content Service Provider fails to comply with the requirements in section 13.2(a); and
- d) In extreme cases, such as the promotion of banned content or where there is sufficient evidence for the Telecommunication Service Provider to believe the Premium Messaging Service breaches any New Zealand law, terminate the offending Premium Messaging Service(s) immediately on notice to the Content Service Provider.

Before issuing any of the notices referred to in this subsection, the Telecommunication Service Provider must have readily available all documentary and other evidence necessary to substantiate any factual claims made.

13.3 Non Compliance by Content Providers

In the event of any non-compliance by the Content Provider (whether in relation to direct obligations they have under this Code or as a result of obligations the Content Service Provider has under this Code which they require the have advised the Content Provider in writing that they are also required to undertake, the Content Service Provider may take the following actions:

- a) Provide the Content Provider with a written non-compliance warning notification. This form will provide details of the non-compliance incident along with the required actions, to correct the problem. The Content Provider shall have 10 Working Days to fix the issue;
- b) Immediately suspend the non-compliant Premium Messaging Service on written notice to the Content Provider;
- c) At its discretion, terminate the offending Premium Messaging Service if the Content Provider fails to comply with the requirements in section 13.3 (a); and
- d) In extreme cases, such as the promotion of banned content or where there is sufficient evidence for the Content Service Provider to believe the Premium Messaging Service breaches any New Zealand law, terminate the offending Premium Messaging Service(s) immediately on notice to the Content Provider.

Before issuing any of the notices referred to in this subsection, the Content Service Provider must have readily available all documentary and other evidence necessary to substantiate any factual claims made.

13.4 Dispute Resolution

Any dispute in relation to any decisions made by a Party to this Code under 13.2 and 13.3 will be resolved in accordance with the procedures outlined in the contract between that Party and other party(s) involved in the dispute.

14 Code Administration

As new Premium Messaging Services are being introduced to the market on a regular basis, this Code will be reviewed at least annually, from the anniversary date the Code is endorsed by the TCF.

This Code will be amended in accordance with the TCF's Operating Procedures Manual. If you wish to propose changes to this Code, please contact the TCF on www.tcf.org.nz/contact.

Any enquiries or advice in relation to this Code should be made to www.tcf.org.nz/contact.