



New Zealand Telecommunications Forum

## Mobile Messaging Services Code 2014

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## INTRODUCTORY STATEMENT

The *Mobile Messaging Services Code 2014* replaces the endorsed *Mobile Messaging Services Code* dated December 2010 and the *Mobile Content Code* dated November 2008. The Mobile Messaging Services Code is a self-regulatory Code which sets out the rights and obligations of Content Providers, Aggregators and Telecommunication Service Providers for all Mobile Messaging Services and Content in New Zealand.

The Code encourages the responsible delivery of Messaging Services that are compliant with legal and regulatory obligations. It further seeks to ensure that the Messaging Services operating in New Zealand provide a sustainable market place for all, by ensuring safe and responsible delivery of Messaging Services where customers are informed and satisfied.

The Code also sets out industry agreed principles under which Mobile Content Services will be provided in order to ensure that they are provided in a socially responsible manner. It is intended that the Code will provide end users with confidence in the provision of content services by Telecommunications Service Providers. Parties will support the Code by providing Customers with information and education on the safe and appropriate use of Mobile Content Services.

The Mobile Content section also covers issues relating to commercial services, Internet Content; Illegal Content, unsolicited bulk communications, and Malicious Communications. The Code provides a basis for interested parties to take action against Illegal Content, unsolicited bulk communications and Malicious Communications. The Code does not cover Peer-to-Peer Communications or broadcasting as defined under the Broadcasting Act.

This Code is structured on a price activity basis. The Code has been broken down into Premium and Non-Premium Mobile Messaging Services, and Compliance. Each activity carries sub-sections to identify the specifics in relation to a particular activity.

### 2014 Revision

This version of the Code contains the following key revisions:

- A restructure of the Code's contents to separate the requirements for Premium and Non-Premium Messaging Services into their own distinct sections.
- The Mobile Content Code has been amalgamated into this Code.
- The Database Management Section has been updated to reflect current business practice.
- The Chat Services sections have been updated to better reflect current Messaging behaviour and business requirements.
- Amendments to the \$30 Notification clauses to allow greater flexibility for notification.
- Inclusion of 'Alerts' as a newly acknowledged Messaging Service category.
- Inclusion of the TCF Code Compliance Framework.

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## A. DEFINITIONS

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<b>Access Controls</b>	means a technical measure imposed to control access to Restricted Content, for example PIN access to Restricted Content.
<b>Advertising Standards Authority</b>	means the Advertising Standards Authority Incorporated in New Zealand. For more information refer to <a href="http://www.asa.co.nz">www.asa.co.nz</a> .
<b>Advice Services</b>	means a Messaging Service which offers advice to Customers using Messages as a medium.
<b>Age Restricted Services</b>	means a Messaging Service which is only for persons aged 18 or over.
<b>Age Verification</b>	means a process that is used to verify, as much as reasonably possible, that a Customer is over the age of 18.
<b>Aggregator</b>	means any Party that has a contractual relationship with a TSP and Content Provider in order to deliver Messaging Services or content/Messages to the Customer.
<b>Broadcasting Act</b>	means the Broadcasting Act 1989 as amended from time to time.
<b>Business Hours</b>	means 9.00am to 5.00pm on Working Days.
<b>Chat Bots</b>	means a computer service that; generates responses to chat participants. These responses are sent without human operation interaction.
<b>Code</b>	means this Mobile Messaging Services Code.
<b>Commercial Content</b>	means Mobile Content that is provided to Customers via a TSP, whether free or premium, either directly by the TSP to its Customers, or that is provided to Customers by a third party that the TSP has a commercial arrangement with for the provision of Mobile Content Services. Commercial Content includes, but is not limited to, video clips, games, screen savers, chat services, ring tones and other personalised audio content. Commercial Content does not include Internet Content, as described below, or Peer-to-Peer Communications.
<b>Consent/ Consented</b>	<p>for the purposes of this Code, means ‘consented to receiving’ and must be either ‘express consent’, or ‘consent that can be reasonably inferred’ as defined in the UEMA clause 4(1) (a) (i) and (ii). i.e.</p> <p>“(a) means—</p> <p>(i) express consent, whether given by the relevant electronic address holder or any other person who uses the relevant electronic address; or</p> <p>(ii) consent that can reasonably be inferred from—</p> <p>(A) the conduct and the business and other relationships of the persons concerned; and</p> <p>(B) any other circumstances specified in the regulations;”</p>

	A Customer MO request for information in response to any Advertising or Promotion is defined as Express Consent in this Code.
<b>Contact and Dating Services</b>	means a Messaging Service which enables persons 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 Messaging Service if they wish to do so.
<b>Content Provider</b>	means the party who has a contractual relationship with an Aggregator or TSP, in order to provide mobile content/Messages to the Customer.
<b>Customer</b>	means a person who:  elects to receive Messaging Services from an Aggregator and/or Content Provider; and  has a bona fide billing relationship with a TSP, for the provision of Messaging Services.
<b>Delivery Failure</b>	means when a Message has failed to deliver to the handset.
<b>Duty of Care</b>	Duty of care is defined as a requirement that a person act toward others and the public with watchfulness, attention, caution and prudence that a person in the circumstances would.
<b>Expenditure</b>	means any charges on a Customer's mobile account related to a Messaging Service.
<b>Frequency of Messages</b>	means how often Messages can be expected to be received by the Customer. The frequency can either be time or event based. Examples include: twice per week, monthly, whenever the train is delayed, when a Customer account goes below a certain dollar threshold (e.g. into a negative balance) etc.
<b>Further Recourse</b>	means any avenue beyond an Aggregator / Service Provider's internal complaints handling process for resolution of a complaint.
<b>Illegal Content</b>	includes content that is defined as "objectionable" by section 3 of the Films, Videos, and Publications Classification Act 1993; or as otherwise illegal by New Zealand criminal law.
<b>Internet Content</b>	means the content on the internet over which the TSP may not have control because it is not provided to Customers by the TSP or by a third party which has a commercial arrangement with the TSP for the provision of Mobile Content Services
<b>IVR (or Interactive Voice Response)</b>	means a recorded voice message service which gives factual information about a particular Messaging Service.
<b>Key Words</b>	means a word pre-defined in a Message that triggers an event in relation to a Messaging Service.
<b>Malicious Communications</b>	means communications which would involve the misuse of a telephone device as specified under section 112 of the Telecommunications Act 2001.
<b>Marketing Database</b>	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 Messaging Services offered by the Content Provider.
<b>Message</b>	means an SMS, MMS and/or WAP.
<b>Messaging Service</b>	means a service for delivering messages to and/or from Customers that has been implemented on the TSP network.
<b>MMS (or Multimedia Message Service)</b>	means a standard way to send messages that includes multimedia content to and from a mobile phone.
<b>Mobile Content Services</b>	means commercial content services made available via mobile phones through an Aggregator and / or a Content Provider.
<b>MO Mobile Originated Message</b>	means a Message sent from the Customer's mobile handset.
<b>MSISDN</b>	means the Mobile Station International ISDN Number of the Customer's mobile handset.
<b>MT (Mobile Terminated) Message</b>	means a Message received by the Customer's mobile handset.
<b>"Netsafe (The Internet Safety Group)"</b>	means the non-profit, independent organisation established in NZ to provide education about safe, secure and responsible use of information and communication technology.
<b>Non-Premium</b>	means any Mobile Messaging Service provided via a mobile handset where the Customer is either not charged for the Message or is charged the TSPs Standard Charge.
<b>Non Subscription Service</b>	means a Messaging Service other than a Subscription Service.
<b>Non-Working Day</b>	means any day other than a Working Day.
<b>Party/Parties to this Code</b>	means a Party who has agreed to be bound by this Code.
<b>Peer-to-Peer Communications</b>	means direct person to person communications and include person to person voice and video calls, text messages, photo and video messaging.
<b>Person</b>	means a legal person and includes a company and any other legal entity.
<b>Premium</b>	means any Message or Mobile Messaging Service that is chargeable to the Customer's mobile account above the Standard Charge
<b>Restricted Content</b>	See definition in Appendix 3.
<b>Scheme Agent</b>	means the independent body contracted by the TCF to provide the Telecommunications Dispute Resolution Scheme service
<b>Scheme Member(s)</b>	means a provider of Telecommunication Services to a customer, and who has the Billing Relationship with the customer for that Telecommunications Service and who has signed the Scheme Deed. Scheme Members may include TCF members and non-TCF members

<b>Short code(s)</b>	means a number provisioned by TSPs to enable the delivery of a Messaging Service(s) and includes MSISDNs.
<b>SMS (or Short Message Service)</b>	means a short text messages sent to and/or from a mobile phone.
<b>Standard Charge</b>	Standard Charge means the amount charged by a TSP to deliver a SMS message before the application of any discounts, reductions or promotions.
<b>Stimulation Messages</b>	means messages sent to a consumer with the purpose and intention of stimulating or inciting interest in a product, service or provider. These messages may or may not include a specific call to action.
<b>Subscription Service</b>	means a service in which the subscriber commits to receiving recurring Messages that requires no further or ongoing consent and which ends only as a result of the subscription being terminated.
<b>TCF</b>	means the Telecommunications Carriers' Forum Incorporated Society of New Zealand. For more information refer to <a href="http://www.tcf.org.nz">www.tcf.org.nz</a> .
<b>Telecommunications Act</b>	means the Telecommunications Act 2001 as amended from time to time.
<b>Telecommunications Dispute Resolution Scheme</b>	means the Customer Complaints Code and Scheme Terms of Reference developed by the TCF. For further information refer to the TCF website: <a href="http://www.tcf.org.nz/tdrs">www.tcf.org.nz/tdrs</a> .
<b>Telecommunications Service</b>	means any good, service, equipment and/or facility that enables or facilitates telecommunication.
<b>Telecommunications Service Provider (TSP)</b>	means any organisation providing a Telecommunication(s) 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 Messaging Service or Mobile Content.
<b>Toll Free Number</b>	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.
<b>TSP</b>	Refer to 'Telecommunications Service Provider' above.
<b>UEMA</b>	means the Unsolicited Electronic Messages Act 2007.
<b>Unrestricted Content</b>	means content that is not Illegal Content or Restricted Content.
<b>Video Service</b>	means a Messaging Service that provides streaming video, audio and other multimedia content to mobile handsets.
<b>Virtual Chat Services</b>	means a service, provided by a Content Provider which enables users to exchange separate messages, through text or a Mobile Messaging Service which may include, pictures, recorded voice, or recorded video between two or more users, or between a user and an operator.
<b>WAP (or Wireless Application Protocol)</b>	means a protocol that allows the sending of content and information to mobile handsets.
<b>Week</b>	means Monday to Sunday (inclusive)

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**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.

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## **B. INTRODUCTION**

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### **1. Purpose**

1.2 The purpose of this Code is to encourage the responsible delivery of Messaging Services that are compliant with legal and regulatory obligations. It further seeks to ensure that the Messaging Services operating in New Zealand provide a sustainable market place for all, by ensuring safe and responsible delivery of Messaging Services and Content where customers are informed and satisfied.

### **2. Scope and Objectives**

#### **2.1 Scope**

This Code specifies the minimum obligations on TSPs, Aggregators and Content Providers supplying Messaging Services and content to the New Zealand marketplace, via SMS, MMS and WAP.

#### **2.2 Objectives**

The objectives of this Code are to:

- 2.2.1 Provide guidelines for Aggregators, Content Providers and TSPs on the best practice management of Mobile Messaging Services in New Zealand;
- 2.2.2 Provide guidelines for providers of Messaging Services to ensure compliance with their legal obligations and the obligations of this Code;
- 2.2.3 Provide guidelines that cover non-Commercial Messages (as defined in, but not covered by, the UEMA);
- 2.2.4 Set out the approach to monitoring compliance;
- 2.2.5 Achieve a balance between legitimate industry interests and viability, and Customer interests;
- 2.2.6 Promote the informed, fair and safe use of Messaging Services, increase Customer confidence and encourage the responsible use of Messaging Services;
- 2.2.7 Acknowledge that providers of 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; and
- 2.2.8 Provide a mechanism for self-regulation of commercial content services provided via mobile phones achieved by following industry agreed principles.

#### **2.3 Scope exclusions**

- 2.3.1 This Code does not apply to the Transfer of Telecommunications Services from one cellular network to another cellular network.
- 2.3.2 This Code does not apply to texts included as part of 'text bundles' or 'bundled text' mobile packages.

#### **2.4 Dates, Times and Monetary Amounts**

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.

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## C. PREMIUM MOBILE MESSAGING SERVICES

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### 3. Premium Mobile Messaging Service - Advertising and Promotion

#### 3.1 Premium Mobile Messaging Service General Requirements

Any party that advertises a Premium Mobile Messaging Service must comply with the following rules:

- 3.1.1 **Compliance:** All advertising and promotion for Messaging Services must comply with all New Zealand legislation, the Advertising Standards Authority Codes and industry guidelines.
- 3.1.2 **Appropriately target advertising:** All advertising should have regard to the type of advertising (including the medium or format being used) and its intended audience.
- 3.1.3 **TSP Reference:** Unless otherwise agreed, Messaging Services must not imply that such services are supplied or endorsed by the relevant TSP.
- 3.1.4 **Price, Terms & Conditions:** All information relating to price and material terms must be displayed clearly, accurately and within sufficient proximity to the product or Messaging Service being offered such that it is obvious that the information applies to that product or Messaging Service and reference to where the Terms and Conditions can be found, must be displayed.
- 3.1.5 **Name of Service:** All advertisements must include the name of the Service
- 3.1.6 **“Standard Charges”** Where the term standard charges apply; standard fees apply or similar is used, an explicit definition of what those standard charges are must be outlined to the customer in the Terms and Conditions.
- 3.1.7 **Use of the term ‘Free’:** Where any advertising refers to a Messaging Service being “free” or equivalent (which includes but is not limited to “no cost”, “no fee”, “no charge” or “\$0”), the Aggregator must ensure that the “free” Messaging Service is not subject to any charge, fee or cost.
- 3.1.8 **Advertising “free” services:** 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.
- 3.1.9 **Disclaimers:** Where a disclaimer is used in any advertising or promotion;
  - (a) The disclaimer must not:
    - (i) be inconsistent with anything contained in the principal message of the advertising; or
    - (ii) negate the principal message of the advertising; or
    - (iii) be introducing a new or additional offer;
  - (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 disclaimers presented as on-screen text must meet reasonable standards of legibility with regard to font size, style and colour, and duration of message. E.g. ‘Please ask the bill payer first.’, ‘See website for details’.

- 3.1.10 **Misleading advertising:** Advertisements for Messaging Services must not be confusing, misleading or deceptive in any way, or be likely to mislead or deceive, having regard to the intended audience.
- 3.1.11 **Up to date advertising:** Any advertisement for a Messaging Service must not contain material that is out of date, having regard to time sensitive information generally available, subsequently published, or released or made available.
- 3.1.12 **Limitations:**
- (a) All advertising containing an offer for a product or Messaging Service for a limited period or in a limited quantity must clearly state or communicate that limitation; and
  - (b) Where there are limitations, the advertisement should stipulate where information on further terms and conditions may be obtained. Those terms and conditions must include any handset incompatibility information (e.g. this service may not be supported on all mobile phones, this service only works with WAP compatible phones etc.)
- 3.1.13 **Savings Claims:** Where a savings claim is made in advertising, the advertising must specify the Messaging Service, rate or other matter on which the savings claim is based.
- 3.1.14 **Special Offers:** Where a 'special offer' is being advertised, sufficient details of the special offer must be included, including:
- (a) the principal elements of the special offer;
  - (b) the start date (if the special offer has not already started) and the end date of the special offer; and
  - (c) any conditions or limitations of the offer.
- 3.1.15 **Additional Charges:** If any additional charges will apply when using or accessing a Messaging Service, for instance data charges. E.g. 'Data charges may apply' this must be stated in the advertising and promotion.

### 3.2 Premium Subscription Services Requirements

The additional rules for advertising and promoting any Premium **Subscription Service** as follows:

- 3.2.1 **Key Elements:** All advertising or promotion of Subscription Services must include the following key elements:
- (a) Frequency of Messages, or event trigger, as applicable;
  - (b) Price point information or cost including any sign up cost;
  - (c) Mobile user should easily be able to identify what service they are interacting with; and
  - (d) Any additional charges that will apply when using or accessing the Messaging Service, for instance data charges.
- 3.2.2 **Reply Charges:** If a Customer incurs charges for replying to a marketing prompt or inducement Message sent as part of a Messaging Service, the Aggregator must identify those charges in the marketing, prompt or inducement Message.
- 3.2.3 **Advertising Minimum Subscription Period:** Subscription Services which are billed when the content is delivered must not advertise a minimum subscription period.

### 3.3 Television/Video Commercials and In-show Promotion

- 3.3.1 **Visual material:** For all Premium Messaging Services, Visual material must include the following information:
- (a) Short Code Number;
  - (b) Price Point information: These words must be prominent and visible to readers. For Standard Charge messages, the phrase 'text cost no more than the Standard Charge' should be used;

- (c) **Additional Charges:** Any additional charges that will apply when using or accessing the Messaging Service, for instance data charges. E.g. 'Data charges may apply'; and
  - (d) **Terms and conditions (if applicable):** Directions to where the full terms and conditions, contact details for customer support as specified in section E and any handset incompatibility information (if applicable) for the Messaging Service can be found. E.g. See website for details.
- 3.3.2 **Voiceover material:** For all Premium Services, Voiceover material must explicitly describe Price Point information.
- 3.3.3 **Visual Material:** For all Subscription Services visual material must clearly and legibly include:
- (a) Any sign-up cost;
  - (b) The noun '[join/subscription]' or the verb '[join/subscribe]'; and
  - (c) The Frequency of Messages, or event trigger, as applicable.
- 3.3.4 **Voiceover material:** For all Subscription Services Voiceover material must explicitly describe the Subscription Service as a 'subscription' or use the verb 'subscribe' to convey the activation method.
- 3.4 Radio**
- 3.4.1 **Voiceover material:** For all Premium Messaging Services, Voiceover material must include the following information:
- (a) Short Code Number
  - (b) Price Point information: These words must be clear and unambiguous to listeners.
  - (c) **Additional Charges:** Any additional charges that will apply when using or accessing the Messaging Service, for instance data charges. E.g. 'Data charges may apply'
  - (d) **Directions to where the full terms and conditions, contact details for customer support as specified in section E and any handset incompatibility information (if applicable) for the Messaging Service can be found. E.g. See website for details.**
- 3.4.2 **Voiceover material:** For all Subscription Services, Voiceover material must explicitly describe the Subscription Service as a 'subscription' or use the verb 'subscribe' to convey the activation method.
- 3.5 Print, WAP & Web-based Advertising**
- For Print, WAP & Web-Based Advertising the following material must be included:
- 3.5.1 **Price Point information:** These words must be prominent and visible to readers. For Standard Charge Messaging Services, the phrase 'text cost no more than the Standard Charge' should be used.
- 3.5.2 For print advertisements spanning more than one page the cost information must be on the first page.
- 3.5.3 For web-based advertising, the price point information should be at least 50% of the size of the Short code, static and visible without requiring the viewer to scroll down and see it (assuming a 1024x768 desktop). The price point and the frequency of messages must be displayed within 125 pixels of phone number and PIN entry fields. The font must be no smaller than 12 pixels. The contrast ratio between price and frequency information on the pages must be no less than 125 pixels.
- 3.5.4 **Contact Details for Customer Support:** As specified in section E of this Code. **Additional Charges:** Any additional charges that will apply when using or accessing the Messaging Service, for instance data charges. E.g. 'Data charges may apply'; and
- 3.5.5 **Terms and conditions (if applicable):** Directions to where the full terms and conditions, and any handset incompatibility information (if applicable) for the Messaging Service can be found. E.g.

See website for details, txt TERMS to Short Code XXXX.

- 3.5.6 For all Subscription Services, the following additional requirements apply:
- (a) Any sign-up cost, where applicable, must be displayed in a manner that is clear, legible and contrasts with the background
  - (b) The noun '[join/subscription]' or the verb '[join/subscribe]' must be used.

**Example:** 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]”.

## 4. Premium Mobile Messaging Service Specific Requirements – Advertising & Promotion

### 4.1 Virtual Chat Service

The additional requirements for the Advertising and Promotion of Virtual Chat Services are:

- 4.1.1 **Advertising:** Advertising for Virtual Chat Services should specify:
- (a) Limits to minimum user age, or Age Restricted if that applies, as specific in Section Mobile Content;
  - (b) If the services is intended as a dating service
  - (c) If the service uses operators to communicate with users. For Operator-Assisted chat, disclosure should be made in the advertising and terms and conditions, for example; “This Messaging Service employs operators who are paid to participate in chat.”
  - (d) Safety warnings as specified in Section Mobile Content
  - (e) specific warning of the risks of disclosing contact details
  - (f) Clear communication of the cost to send and receive messages
  - (g) Ensure that publicly-available elements of the Service do not contain contact details, addresses or any other means of direct contact

### 4.2 Age Restricted Services

The additional requirements for the Advertising and Promotion of Age Restricted Services are:

- 4.2.1 **Advertising:** Advertising for Age Restricted Services is permitted provided there is compliance with any regulations governing the media in which the advertising is conducted including the Films, Videos, and Publications Classification Act 1993, however, advertising for Age Restricted Services must not be targeted directly to children.
- 4.2.2 **Promotions:** 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 payer’s permission to use the Messaging Service;
  - (c) Be in context with the publication or other media in which they appear. The content of a 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 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 Messaging Service.



## 5. Marketing for Children – Advertising & Promotion

Persons under 14 years: In addition to section 3, all marketing to persons below the age of 14 must comply with the Advertising Standards Authority Code for Advertising to Children and the Children's Code for Advertising of Food.

## 6. Premium Mobile Messaging Services – Customer Consent, Authorisation & Initiation

This section outlines the general requirements for Customer Consent and Initiation that applies to all Premium Mobile Messaging Services. The Aggregator must take reasonable steps to ensure the following:

### 6.1 Customer Consent

- 6.1.1 No Messages or Messaging Service should be sent to Customers unless the Customer has Consented to receiving them prior (via Express Consent) in accordance with the interpretation of Consent as defined in the UEMA.
- 6.1.2 The Customer must be clearly and reasonably informed in advance of the nature and content of the Messaging Service they are consenting to be provided with.
- 6.1.3 A Customer who has Consented to the receipt of Messages relating to a specific Messaging Service may not be sent Messages relating to another Messaging Service without their prior Consent.

### 6.2 Express Consent

For all Premium Subscription Services, prior receipt of Express Consent is required.

### 6.3 Record of Consent

Aggregators must retain records of all Customers' Consent for their Messaging Service for a minimum of 2 (two) years or such other period as required by the UEMA from the date the Consent was granted. Where these actions were undertaken wholly or in part via mobile, the Aggregator must retain sufficient information for the TSP and the Aggregator to reconcile the transaction with its internal records if required.

## 7. Premium Subscription – Customer Authorisation, Consent & Initiation

The additional rules for customer authorisation, initiation and operation of Subscription Premium Messaging Services are set out below. The Aggregator must take reasonable steps to ensure the following:

- 7.1 **Express Consent:** For all Subscription Premium Messaging Services, prior receipt of express Consent is required.
- 7.2 **Initiation of Request:** There are two ways a Customer can initiate a request to subscribe to a Subscription Premium Messaging Service, either:
  - (a) Directly subscribing via Message sent from their mobile to the designated Short code; or
  - (b) Initiating the request for subscription through a non-mobile (or non-authenticated mobile) channel such as a web page, WAP session, printed form or a voice circuit IVR.
- 7.3 **Initiation Method and Cost of Initiation:** All Subscription Premium Messaging 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 Premium 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 Standard Charge.
- 7.4 **Authentication Mechanisms for express Consent:** Express Consent involves the requestor being authenticated as having a clear relationship with the end mobile device, via the use of an

appropriate authentication mechanism being an Opt-in Message being sent via MO Message.

## 7.5 Request Subscription Message

7.5.1 The Request Subscription Message is required to be sent as:

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

7.5.2 The Message must contain the following information in the order listed:

- (a) Commence with the phrase “[FreeMsg]”;
- (b) Include the name of the Subscription Service and optional description;
- (c) Include the Subscription Service cost and Frequency of Messages or event trigger
- (d) Include the phrase “To [join/subscribe] reply YES to <Short code>”; OR
- (e) Contact Details for Customer Support as specified in section E of this Code.

7.5.3 The Message format to be used for MO Message confirmation is below:

[Free Msg.] [Name of service]. To [join/subscribe] reply [keyword]. Cost [\$] per [frequency or event]. Helpline 0508/0800xxxxxx.

7.5.4 **Confirmation of Subscription Message:** Premium Subscription Services must in all cases provide confirmation to the Customer that they have entered into a Subscription Service.

- (a) This must be the first Message sent to the Customer before any Premium Messages.
- (b) The confirmation of subscription is required to be sent as:
  - (i) A standard, dedicated Message; and
  - (ii) At no charge to the end Customer.

7.5.5 The Message content must contain the following information in the order listed:

- (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
- (e) Include details on the Frequency of Messages or Event;
- (f) Include details of the ‘STOP’ command; and
- (g) Contact details for Customer Support as specified in section E of this Code.

A suggested Message format for subscription confirmation is below:

[Free Msg] Thanks for subscribing to *[name of service & (description - optional)]*. Cost [cost of service in \$] per [product] [no. of pushes] per [frequency or event] until you send STOP to *[originating service Short code]*. Helpline ph xxxxxx www.service.com

## 7.6 Premium Subscription – Termination of Services

This section outlines the requirements for the termination of Premium Subscription Services.

- 7.6.1 **Procedures:** Aggregators must ensure that appropriate, legally compliant procedures are in place to enable the Customer to notify the Aggregator 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.
- 7.6.2 **Message Originator:** All Messages composed and/or conveyed by Aggregators 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.
- 7.6.3 **Remaining Subscription Period:** An Aggregator 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 the Standard Charge.
- 7.6.4 **Opt-Out Channel:** The Aggregator must ensure the Customer can unsubscribe via the mobile handset and at least one of the advertised customer support channels as specified in Section E

## 7.7 Opt-out via non-Mobile Channel

- 7.7.1 **Response Timeframe:** Where a Customer unsubscribes from a Subscription Service or marketing material by telephone or some means other than their mobile phone, the Aggregator must comply with that request within two Working Days following receipt for requests to unsubscribe from that Subscription Service.
- 7.7.2 **Unsubscribe Confirmation:** Customers who unsubscribe from a Messaging Service via a non-Mobile Channel (e.g. IVR, voice call, email, web) must always be notified that they have been unsubscribed from the Messaging Service.
- 7.7.3 **Refunds:** If a billed message is sent after an unsubscribe request is received the Aggregator must facilitate a refund to the Customer for all charges incurred after the request is received.
- 7.7.4 **Unsubscribed Confirmation Message:** A Message must be sent to the handset to confirm the termination of a Subscription Service. The confirmation is required to be sent as:
  - (a) A standard, dedicated Message; and
  - (b) At no charge to the Customer unless the Messaging Service terms and conditions clearly state that there would be a charge of no more than the Standard Charge to opt-out.
- 7.7.5 The Message content must contain the following information, and no other content is allowed to precede this:
  - (a) Name of the Subscription Service/s that have been unsubscribed from;
  - (b) May include information about how to rejoin the Subscription Service; and
  - (c) Include Contact Details as per section E.
- 7.7.6 The Message must not include any adult-related language or concepts.
- 7.7.7 **Multiple Subscription Services on one Short code:** Subject to clause 7.7, if multiple Subscription Services do share a common Short code, any 'STOP' command sent to unsubscribe from a Subscription Service on that Short code must be treated to action an unsubscribe from all Subscription Services sharing that Short code provided that the Aggregator or Content Provider is unable to differentiate which service is being unsubscribed from.
- 7.7.8 **Single Subscription Service across Multiple Short codes:** Subject to clause 7.7, if a single Subscription Service shares multiple Short codes, any 'STOP' command sent to unsubscribe from that Subscription Service on either of the Short codes must be treated to action an unsubscribe from all Subscription Services sharing those Short codes provided that the Aggregator or Content Provider is unable to differentiate which service is being unsubscribed from.
- 7.7.9 **Advanced 'STOP' Commands for multiple Messaging Services:** In the cases where an

Aggregator is providing multiple Messaging Services on a common Short code, support for advanced 'STOP' commands is allowed provided the following guidelines are met:

- 7.7.10 The 'STOP' command must be received in the format "STOP < Messaging Service name>" or vice versa, and <Messaging Service name> must be unambiguously matched to the Messaging Service.
- 7.7.11 If the < Messaging Service name> is unrecognisable, then the 'STOP' command must be treated as a full 'STOP' command for all Messaging Services on that Short code.

## **7.8 Opt-out via Mobile Channel**

- 7.8.1 **Response Timeframe:** Any Customer notification or request to unsubscribe received via mobile channel must be complied with within 10 minutes of receipt. With the exception of the Unsubscribed Confirmation Message detailed in 7.8 below, 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.
- 7.8.2 **'STOP' Operations:** A 'STOP' request sent to a Short code will terminate all Subscription Services from that Short code as follows:
- 7.8.3 **'STOP' and other Key Words:** A 'STOP' request is deemed as any Message sent to the Short code that contains the word "STOP" in any form of case sensitivity (e.g. uppercase, lowercase etc). The Aggregator can choose to recognise other Key Words in addition to 'STOP' to indicate the Customer is opting out of the Messaging Service, such as "QUIT".
- 7.8.4 **Charges:** The Customer must not incur any charge for unsubscribing using the 'STOP' command unless the Messaging Service terms and conditions clearly state that there would be a charge of no more than the Standard Charge to opt-out.
- 7.8.5 **Refunds:** If a billed message is sent after the 'STOP' Message has been received, the Aggregator must facilitate a refund to the Customer for all charges after the 'STOP' Message is received.
- 7.8.6 **Unsubscribed Confirmation Message:** A Message must be sent to the handset to confirm the termination of a Subscription Service. The confirmation is required to be sent as:
  - (a) A standard, dedicated Message; and
  - (b) At no charge to the Customer unless the Messaging Service terms and conditions clearly state that there would be a charge of no more than the Standard Charge to opt-out.
- 7.8.7 The Message content must contain the following information, and no other content is allowed to precede this:
  - (a) Name of the Subscription Service/s that have been unsubscribed from;
  - (b) May include information about how to rejoin the Subscription Service; and
  - (c) Include Contact Details as per section E.
- 7.8.8 The Message must not include any adult-related language or concepts.
- 7.8.9 **Multiple Subscription Services on one Short code:** Subject to clause 7.8, if multiple Subscription Services do share a common Short code, any 'STOP' command sent to unsubscribe from a Subscription Service on that Short code must be treated to action an unsubscribe from all Subscription Services sharing that Short code provided that the Aggregator or Content Provider is unable to differentiate which service is being unsubscribed from.
- 7.8.10 **Single Subscription Service across Multiple Short codes:** Subject to clause 7.8, if a single Subscription Service shares multiple Short codes, any 'STOP' command sent to unsubscribe from that Subscription Service on either of the Short codes must be treated to action an unsubscribe from all Subscription Services sharing those Short codes provided that the Aggregator or Content Provider is unable to differentiate which service is being unsubscribed from.
- 7.8.11 **Advanced 'STOP' Commands for multiple Messaging Services:** In the cases where an

Aggregator is providing multiple Messaging Services on a common Short code, support for advanced 'STOP' commands is allowed provided the following guidelines are met:

- 7.8.12 The 'STOP' command must be received in the format "STOP < Messaging Service name>" or vice versa, and <Messaging Service name> must be unambiguously matched to the Messaging Service.
- 7.8.13 If the < Messaging Service name> is unrecognisable, then the 'STOP' command must be treated as a full 'STOP' command for all Messaging Services on that Short code.

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

**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 Short code. Customer sends a Message "STOP games" to the Short code.

**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 Short code. Customer sends a Message "STOP ring" to the Short code.

**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.

## 8. Premium Mobile Messaging Service Specific Requirements – Customer Authorisation, Initiation & Termination

This section outlines the additional requirements for the customer authorisation, initiation and termination of specific services. The Aggregator must take reasonable steps to ensure the following:

### 8.1 Virtual Chat Services

- 8.1.1 The additional rules for customer authorisation, initiation and termination of Chat Services are as follows:
- 8.1.2 **Welcome Messages:** A confirmation / welcome Message for the Virtual Chat Service facilitation is required to be sent as the first Message. This confirmation /message is required to be sent as:
  - (a) a standard, dedicated Message; and
  - (b) at no charge to the Customer;Example: "FreeMsg: Confirmation of Virtual Chat Service facilitation"
- 8.1.3 Include the following information in the following order
  - (a) Commence with the phrase "[FreeMsg]";
  - (b) Include the name of the Chat Service and optional description;
  - (c) Include Chat Service cost and Frequency of Messages; and
  - (d) Contact details for Customer Support as specified in section E of this Code.
- 8.1.4 Include the following additional messages:
  - (a) Warnings: Warnings must be provided to new Customers concerning the dangers of disclosing personal details in The Virtual Chat Service, and advising against doing so
  - (b) Warnings must be given to new Customers about the potential dangers of age restricted

services..

## 8.2 Invitation Charges

- 8.2.1 Invitations to join Virtual Chat Services 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
- 8.2.2 Participants in Virtual Chat Services must not be charged to receive messages unless they have provided express Consent to accept the charges.

[Free Msg] Welcome to 'My Chat'. Cost = \$1.00 to send/receive per message.  
Helpline 0800/0508xxxxxx

## 8.3 Double Opt-in

- 8.3.1 For services which use operators to communicate with the users a double opt-in process is required as described below:
  - (a) If the Customer replies with "Yes", an operator 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.

## 8.4 Customer Opt-out

- 8.4.1 For MO Premium Virtual Chat Services it must be clear in the Messaging Service terms and conditions, that to STOP the service the Customer should stop sending MO messages to the Chat Service so it will no longer be charged.
- 8.4.2 If the service is MT charged Premium Virtual Chat Services then the STOP command prevents any further messages to be sent by the Content Provider.

## 8.5 Age Restricted Service

The additional rules for customer authorisation, initiation and termination of Age Restricted Services are as follows:

- 8.5.1 Offering Age Restricted Services: An Aggregator must not offer Age Restricted Services without ensuring the controls are in place as referred to in Section 12.4.
- 8.5.2 **Customer Opt-in:** 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 TSP's processes to verify Customer identity;
  - (d) The identification used; and
  - (e) A declaration that the Customer is at least 18 years of age.

## 8.6 Video Services

The additional rules for customer authorisation, initiation and termination of Video Services are as follows:

- 8.6.1 **Notifications:** Video Services must include the following information. This information may be provided after the Customer has initiated the Video Service, but must be provided before the Video Service is engaged:
- 8.6.2 Notification of whether the Aggregator can see the Customer; and
- 8.6.3 Notification if the Video Service is recorded, and the purpose for which it is being recorded.

## 9. Premium - Service Operation; Providing Information to Customers

The rules for the operation of all Premium Messaging services are outlined below. The Aggregator must take reasonable steps to ensure the following:

- 9.1 **Messages to Customers:** Every Message sent to a Customer must include the Service Name (description of service) where it is not implicit.
- 9.2 **Messaging Fees & Charges (including Data Charges):** Aggregators, on behalf of Content Providers, will take all reasonable steps to inform a Customer about any fees or charges, including any Data charges that may apply, for using the Messaging Service. This information must be given:
  - (a) Before the Customer first uses the Messaging Service; or
  - (b) At the time the Customer accesses the Messaging Service but 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.
- 9.3 Refer to Section 3 Advertising and Promotion for requirements on how the charging information must be provided to the Customer.
- 9.4 **\$30 Expenditure Notifications:** If a Customer using a Premium Messaging Service (excluding Standard Charge) reaches or exceeds a \$30 Expenditure increment for that Messaging Service within a given calendar month, a \$30 Expenditure notification Message must be sent to the Customer immediately for each \$30 spent.
- 9.5 **\$30 Expenditure Notification Format – Non Subscription Service:** Where the \$30 Expenditure notification does apply, the \$30 Expenditure notification Message for Non-Subscription Services must contain the following information in the order listed below:
  - (a) Commence with the phrase “[FreeMsg]”;
  - (b) Inform the Customer has passed \$30 spend, where reference to \$30 must use the format \$30;
  - (c) Include the name of the Non Subscription Service &/or Short code; and
  - (d) Contact details for Customer Support as specified in section E of this Code..

A suggested Message format is :

[FreeMsg] Courtesy msg frm [name of service]. U hve spent >\$30 on [Short code]. FYI only, no action required. Non-Subscription service. Helpline 0508/0800xxxxxx

### 9.6 \$30 Expenditure Notification Exemption for Non-Subscription Services

- 9.6.1 Subject to prior written permission from the relevant TSP, Aggregators may apply for an exemption for the \$30 Expenditure notification for specific Premium Messaging Services by including the cost of the messaging in the reply messages instead.
- 9.6.2 This facility is primarily intended for high volume interactive media Messaging Services where the messaging charge is clearly communicated..

### 9.7 Stimulation Messages

- 9.7.1 When a customer has interacted with a Premium Non Subscription or On Demand Service, it would be considered as a One off transaction. Where a customer enters into a one off transaction, at no stage can a provider infer any consent to receive further communications from the provider of that service. At no point in time outside of that one off transaction should those customers be sent any stimulation message.

- 9.7.2 When a customer has opted out of a Premium Subscription service, any consent to receive further communications from that service provider will be deemed to have been revoked. From this time those customers should not be sent any stimulation message.
- 9.7.3 Any stimulation messages sent in breach of this clause will be considered spam.

## 10. Premium – Service Operation, Message Delivery Failures

This section outlines the rules around the failure of a Premium Messaging Service.

- 10.1 **Time Sensitive Content:** Content of a time sensitive nature, such as weather or traffic alerts, that have not been successfully delivered within a time-frame 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 Premium Message. If the delivery delay was due to operational issues of the Aggregator, TSP or Content Provider, the Aggregator or Content Provider may wish as a measure of good faith to the Customer, send the content to the Customer at no charge.
- 10.2 **Content paid for in advance:** 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 Provider should attempt to resend the content at no cost to the Customer.
- 10.3 **Premium MT Messages:** For Premium MT Messages that have attempted, but failed to be delivered to the Customer, then a further attempt to deliver the Message may be allowed once within 3 days of the failed attempt, or on the next scheduled message event, which ever comes first. If the second attempt to deliver the Premium MT Message fails to deliver, no further attempts should be made to deliver the Messages. The Customer should be opted out of the service, and normal opt-out procedures should be followed.

## 11. Premium Subscription – Service Operation

The rules for the operation of Premium Messaging Subscription-based services are as follows:

- 11.1 **Messages to Customers:** Every Message that forms part of a Subscription Service sent to a Customer must include the following key elements:
- (a) Service Name (description of service) where it is not implicit;
  - (b) Details of the 'STOP' command; and
  - (c) Contact details for Customer Support as specified in section E of this Code.
- 11.2 **'STOP' and Opt-Out Procedures:** The 'STOP' command and opt out procedures detailed in section 7 must be available to Customers using any Subscription Service.
- 11.3 **No Minimum Subscription Period:** Customers must be free to leave a Subscription Service at any time.
- 11.4 **Billing:** If a Customer advises it wishes to 'STOP' a Subscription Service which is billed at regular intervals, the Aggregator is not required to refund the Customer for the balance of period remaining in that billing interval.
- 11.5 **\$30 Expenditure Notification Format – Subscription Service:** Where the \$30 expenditure notification applies, the \$30 Expenditure notification Message must contain the following information in the order listed below:
- (a) Commence with the phrase "[FreeMsg]";
  - (b) Inform the Customer has reached or passed \$30 spend, where reference to \$30 must use the format \$30;
  - (c) State the Customer is "subscribed to" [name of the Subscription Service] &/or [Short code];
  - (d) Details of the 'STOP' command; and



- (e) Contact details for Customer Support as specified in section E of this Code.

[FreeMsg] Courtesy msg frm [name of service]. U hve spent >\$30 on [Short code]. FYI only, no action required. Non-Subscription service. Helpline 0508/0800xxxxxx

11.6 A suggested Message format is:

11.6.1. **30 Day Subscription Service Reminder:** The 30-day notification is required for all Premium Subscription-based Messaging Services, excluding Standard Charge. The subscription service reminder must contain the following information in this order:

- (a) Commence with the phrase “[Free Reminder]”;
- (b) Name of the Subscription Service and optional description or Short code;
- (c) Subscription Service cost;
- (d) Frequency of Messages;
- (e) Details of the ‘STOP’ command; and
- (f) Contact details for Customer Support as specified in section E of this Code.

## 12. Premium Service Specific Requirements – Service Operation

This section outlines the operational requirements for specific Premium Services.

### 12.1 Virtual Chat Services

The additional rules for the service operation of Virtual Chat Services are as follows:

12.1.1 **Messages:** Messages sent by Operators, in a Virtual Chat Service will only be sent to Customers on the basis of:

- (a) 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) Operator messages must always be sent in reply to Messages sent by a Customer. Operators must not initiate new communication with users to stimulate message activity.

12.1.2 **Billing Rates:** Virtual Chat Services facilitating communication must comply with the following stipulations:

- (a) Administrative Messages associated with opting into the Messaging Service should not incur rates more than the Standard Charge;
- (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.

### 12.2 Contact and Dating Services

The additional rules for the service operation of Contact and Dating Services are as follows.

12.2.1 Aggregators who operate Messaging Services 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 Messaging Services;
- (b) Ensure that publicly-available elements of the 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 Messaging Service.

### **12.3 User Safety and Risk assessment for Virtual Chat services**

Additional requirements for the operation of Virtual Chat, Age Restricted, Contact and Dating Services are outlined below.

- 12.3.1 Safety: All Virtual Chat Services must comply with appropriate safety measures as required by this Code.
- 12.3.2 Risk Assessment: Aggregators:
  - (a) Must take appropriate steps to ensure safety of users;
  - (b) Must have supplied on demand, or at regular intervals from the Content Provider a random sample of Messaging Service usage to ensure compliance; and
  - (c) Must undertake an assessment of a Virtual Chat Service against the measures outlined in this code before launching the Messaging Service; and
- 12.3.3 Prior to implementation Aggregators must require a risk assessment and user safety plan from the Content Provider, to mitigate any highlighted risks and specifically to minimize the risk of inappropriate and dangerous acts occurring with children under the age of 16. These measures include:
  - (a) Mechanisms to limit access from users under 16
  - (b) Age Verification systems if required for Age Restricted Services
  - (c) Mechanisms for users to block unwanted contact and content;
  - (d) Measures to manage the safety of users in respect to contact by other users and content posted in the service
  - (e) Measures to allow users to report on inappropriate content or communication.

### **12.4 Virtual Chat Services – Content Related Requirements**

- 12.4.1 Content Providers of Virtual Chat services must take all reasonable steps to prevent access by users under 16 years of age. Advertising for the service should not be placed in media, where the target audience is below 16 years of age.
- 12.4.2 If the content of a chat service is intended to contain communications or content of a sexual, or adult nature, users under the age of 18 must be prohibited from the service, by way of an Age Verification system.
- 12.4.3 It must be made clear to users, in both advertising and in operation, if the Virtual Chat Service makes use of operators to engage in communication with users.
- 12.4.4 Content Providers are obliged to ensure that proactive steps are taken to ensure the safety of users within a Virtual Chat Service. Proactive steps must include the ability for users to block contact, content and communication from other users and to report content and users to service monitors.
- 12.4.5 Virtual Chat services should employ user safety provisions to the extent that inappropriate behaviour, or content, results in appropriate user safety steps, such as warning and banning of users.
- 12.4.6 Virtual Chat Services must employ mechanisms that ensure that users under the age limit for the particular service are detected and removed.

12.4.7 User behaviour in Virtual Chat service, which may be illegal under New Zealand criminal law, such as grooming people under 16 for sex (refer section 131B of the Crimes Act 1961), will be reported to the Police.

**12.5 Operator assisted Virtual Chat Services operate in the following way:**

12.5.1 Customer responds to an advert for a Virtual Chat Service and sends a Message to the advertised Short code;

12.5.2 An operator employed by the Content Provider running the Virtual Chat Service receives the Message on his/ her computer;

12.5.3 The operator replies to the Customer and a conversation then ensues;

12.5.4 Under this service model (operator 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

12.5.5 Chat Bots may only be used for systems administration, information, help and service operation messages. Chat Bots must not be used to impersonate operators or chat users.

**12.6 Age Restricted Services**

The additional rules for the service operation of **Age Restricted Services** are as follows.

12.6.1 Aggregators and/or Content Providers must not enable delivery of an Age Restricted Service unless it receives an explicit request for access from the Customer and confirmation that Customer is aged at least 18 years of age or older. For the purposes of this section, an Aggregator and/or Content 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.

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

The additional rules for the service operation of **Betting Tipster Services** are as follows:

12.6.3 Aggregators must ensure that 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.

12.6.4 Aggregators must make clear that opinions on particular selections given in Messaging Services or promotional material are opinions and not statements of fact.

**12.7 Advice Services**

The additional rules for the service operation of Advice Services are as follows:

12.7.1 Advice Services must:

- (a) Be conveyed in a responsible manner;
- (b) Indicate clearly in the promotional material or at the beginning of the 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 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.

## **12.8 WAP Messaging Services**

The additional rules for the service operation of WAP Services are as follows:

- 12.8.1 WAP Messages may be used for both marketing messages and content delivery.
- 12.8.2 WAP Messages must identify the following prior to the WAP link, so that when the WAP Message is viewed by the Customer in their Messaging Service 'in box' the Customer can identify where the Message has come from:
  - (a) The Short code used by the Messaging Service; and
  - (b) Contact details for Customer Support as specified in section E of this Code.
- 12.8.3 WAP Messages used for marketing messages must include details of the 'STOP' command.
- 12.8.4 Aggregators must ensure that:
  - (a) Any WAP marketing message sent to a Customer's mobile phone by WAP Push Message is recorded in a call log in clear text format;
  - (b) The call log described in clause 15 enables the reader of the log to easily read the content of each recorded WAP Push Message; and make records from that call log available to the relevant TSP on request.
  - (c) Any website linked to such a WAP Push Message includes a link enabling the Customer to opt-out of marketing.

## **13. Premium; Invalid Customer Requests**

The following requirements for the management of Invalid Customer Requests apply to Premium Messaging Services:

- 13.1 **Invalid Customer Response:** If a Customer sends an indecipherable or invalid content request to a Messaging Service, an error response must be sent to the Customer. The Message is required to be sent at no charge to the Customer.

The Message content must contain at least the following:

- (a) Include the name of the Messaging Service that the Message relates to; and
- (b) Advise that you could not understand the Message and provide an example of the correct Message if appropriate.

## **14. Premium; Changes to Price points or Propositions Offered on Short codes(s)**

- 14.1 The following requirements for changes to price points or propositions offered on Short codes apply to Premium Messaging Services.

### **14.2 TSP Notifications**

- 14.2.1 When a Messaging Service operating on a Short code is to be varied, which may include any or all of the following:

- (a) Messaging Service offered on Short code;
- (b) Price points of Short code;
- (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.

- 14.2.2 The Aggregator must give the TSP written notice of the variation(s) in advance in accordance

with each individual TSP's requirements.

### **14.3 Messaging Service Cessation and Activation**

- 14.3.1 When a Messaging Service operating on a Short code is to be replaced with an alternative or different one, approved Messaging Service using the same Short code, the TSP has the discretion to decide on the delay time (if any) between concluding the original Messaging Service and launching the new Messaging Service.

### **14.4 Customer Notifications**

- 14.4.1 **Active Subscription Service Price Point Change:** Should the Content Provider, via the Aggregator wish to increase the price point of an active Subscription Service, the Aggregator must notify the Customer at least one (1) calendar month before the price point change takes effect.

### **14.5 Change of Messaging Service**

- 14.5.1 **Charities:** When a Charity Messaging service operating on a Short code is to be replaced with another Charity or another alternative different, approved Messaging Service using the same Short code, there must be a stand down period of at least 30 days between concluding the original Messaging Service and launching the new Messaging Service.
- 14.5.2 **Age Restricted Service:** Where a new Messaging Service is an Age Restricted Service and the Short code for that new Messaging Service has not previously been used for an Age Restricted Service, the Short code must have been decommissioned for at least three (3) calendar months before the launch of the new Age Restricted Service.
- 14.5.3 **Customers of decommissioned Messaging Service:** Furthermore, any previous or current Customers of the decommissioned Messaging Service may not be automatically included as subscribers of the new Messaging Service without their prior Consent.

## **15. Premium; Database Management**

The following requirements for database management apply to Premium Messaging Services.

- 15.1 Aggregators must regularly communicate to all their Content Providers that they 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.
- 15.2 Reasonable processes must be implemented to ensure that Customers who obtain a new mobile number from a TSP do not receive content or Messaging Services subscribed to by the previous user of that number. To facilitate this, Aggregators must require the Content Provider to deactivate all Customers who meet either of the following criteria:
- (a) For Premium Subscription Services, excluding Standard Charge: Customers who have had an inactive relationship with them for thirty (30) days. An inactive relationship is classified as one in which the Content Provider has not successfully sent or received a Message to or from the Customer.
  - (b) Where there is a Permanent Message Delivery Failure.
- 15.3 Content Providers must remove or unsubscribe dormant or quarantined handset numbers from their databases.
- 15.4 Furthermore a MT Message delivery attempt to any number that directly results in a Delivery Receipt showing permanent failure, as defined by the TSP, may be used by the Aggregator as a trigger to advise the Content Provider to remove that handset number from the Subscription Service and marketing databases, as the Customer may no longer be available to be serviced.

- 15.5 Aggregators must ensure a log is maintained of each Messaging Service for audit purposes of the following information:
- (a) Mobile number of the incoming Message;
  - (b) Short code of the outgoing Message;
  - (c) Message content; and
  - (d) Date and time stamp.
- 15.6 Logs must be retained for a minimum of two (2) years from the date the Customers Messaging Service ended.

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## D. NON-PREMIUM MOBILE MESSAGING SERVICES

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### 16. Non-Premium Mobile Messaging Services – Advertising & Promotion

#### 16.1 Non-Premium General Requirements

The rules for the advertising and promotion of all Non-Premium Mobile Messaging Services are:

- 16.1.1 **Compliance:** All advertising and promotion for Messaging Services must comply with all New Zealand legislation, the Advertising Standards Authority Codes and industry guidelines.
- 16.1.2 **Appropriately target advertising:** All advertising should have regard to the type of advertising (including the medium or format being used) and its intended audience.
- 16.1.3 **TSP Reference:** Unless otherwise agreed, Messaging Services must not imply that such services are supplied or endorsed by the relevant TSP.
- 16.1.4 **Price, Terms & Conditions:** All information relating to price and material terms must be displayed clearly, accurately and within sufficient proximity to the product or Messaging Service being offered such that it is obvious that the information applies to that product or Messaging Service and reference to where the Terms and Conditions can be found, must be displayed.
- 16.1.5 **“Standard Charges”:** Where the term standard charges apply; standard fees apply or similar is used, an explicit definition of what those standard charges are must be outlined to the customer in the Terms and Conditions.
- 16.1.6 **Name of Service:** All advertisements must include the name of the Service
- 16.1.7 **Use of the term ‘Free’:** Where any advertising refers to a Messaging Service being “free” or equivalent (which includes but is not limited to “no cost”, “no fee”, “no charge” or “\$0”), the Aggregator must ensure that the “free” Messaging Service is not subject to any charge, fee or cost.
- 16.1.8 **Advertising “free” services:** 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.
- 16.1.9 **Disclaimers:** Where a disclaimer is used in any advertising or promotion;
  - (a) The disclaimer must not:
    - (i) be inconsistent with anything contained in the principal message of the advertising; or
    - (ii) negate the principal message of the advertising; or
    - (iii) be introducing a new or additional offer;
    - (iv) 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;
  - (b) 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.
  - (c) All disclaimers presented as on-screen text must meet reasonable standards of legibility

with regard to font size, style and colour, and duration of message. E.g. 'Please ask the bill payer first.', 'See website for details'.

16.1.10 **Misleading advertising:** Advertisements for Messaging Services must not be confusing, misleading or deceptive in any way, or be likely to mislead or deceive, having regard to the intended audience.

16.1.11 **Up to date advertising:** Any advertisement for a Messaging Service must not contain material that is out of date, having regard to time sensitive information generally available, subsequently published, or released or made available.

## 16.2 Limitations

16.2.1. All advertising containing an offer for a product or Messaging Service for a limited period or in a limited quantity must clearly state or communicate that limitation; and

16.2.2. Where there are limitations, the advertisement should stipulate where information on further terms and conditions may be obtained. Those terms and conditions must include any handset incompatibility information (e.g. this service may not be supported on all mobile phones, this service only works with WAP compatible phones etc.)

16.2.3. **Savings Claims:** Where a savings claim is made in advertising, the advertising must specify the Messaging Service, rate or other matter on which the savings claim is based;

16.2.4. **Special Offers:** Where a 'special offer' is being advertised, sufficient details of the special offer must be included, including:

- (a) the principal elements of the special offer;
- (b) the start date (if the special offer has not already started) and the end date of the special offer; and
- (c) any conditions or limitations of the offer.

16.2.5. **Additional charges:** If any additional charges will apply when using or accessing a Messaging Service, for instance data charge E.g. 'Data charges may apply' this must be stated in the advertising and promotion.

## 16.3 Non-Premium Subscription Services Requirements

The additional rules for advertising and promoting any **Non-Premium Subscription Service** as follows:

16.3.1 **Key Elements:** All advertising or promotion of Subscription Services must include the following key elements:

- (a) Frequency of Messages or event trigger, as applicable; and
- (b) Any additional charges that will apply when using or accessing the Messaging Service, for instance data charges.

16.3.2 **Reply Charges:** If a Customer would incur charges for replying to a marketing, prompt or inducement Message sent as part of a Messaging Service, the Aggregator must identify those charges in the **marketing**, prompt or inducement Message.

16.3.3 **Terms and Conditions:** A subscription service must include Terms and Conditions and be accessible during the promotional period by any member of the public without the need for human interjection. The location of these should be included on all promotional material where a service has a **subscription** element. The following information must be included;

- (a) The name of the promoter and their contact details
- (b) Dates of the promotion
- (c) Any client facing Short codes used as part of the service
- (d) The frequency of the messages
- (e) The cost of receiving or sending a txt message



- (f) How a user may opt out (during the promotional period and outside the promotional period).
- 16.3.4 **Advertising Minimum Subscription Period:** Subscription Services which are billed when the content is delivered must not advertise a minimum subscription period.
- 16.4 Television/Video Commercials and In-show Promotion**
- 16.4.1 **Visual Material:** For all Subscription Services visual material must clearly and legibly include:
- (a) Any sign-up cost;
  - (b) The noun ‘subscription’ or the verb ‘subscribe’; and
  - (c) The Frequency of Messages or event trigger as applicable.
- 16.4.2 **Voiceover material:** For all Subscription Services Voiceover material must explicitly describe the Subscription Service as a ‘subscription’ or use the verb ‘subscribe’ to convey the activation method.
- 16.5 Radio**
- 16.5.1 **Voiceover material:** For all Subscription Services, Voiceover material must explicitly describe the Subscription Service as a ‘subscription’ or use the verb ‘subscribe’ to convey the activation method.
- 16.6 Print, WAP & Web-based Advertising**
- 16.6.1 For all Subscription Services, the following additional requirements apply:
- (a) Any sign-up cost, where applicable, must be displayed in a manner that is clear, legible and contrasts with the background
  - (b) The noun ‘subscription’ or the verb ‘subscribe’ must be used.
- Example:** 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]”.

## 17. Non-Premium Service Specific Requirements – Advertising & Promotion

The additional requirements for advertising and promotion of Non-Premium specific services are:

### 17.1 Age Restricted Services

- 17.1.1 **Advertising:** Advertising for Age Restricted Services is permitted provided there is compliance with any regulations governing the media in which the advertising is conducted including the Films, Videos, and Publications Classification Act 1993, however, advertising for Age Restricted Services must not be targeted directly to children.
- 17.1.2 **Promotions:** 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 payer’s permission to use the Messaging Service;
  - (c) Be in context with the publication or other media in which they appear. The content of a 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 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 Messaging Service.

## **17.2 Marketing for Children**

- 17.2.1 Persons under 14 years: In addition to section 25.1, all marketing to persons below the age of 14 must comply with the Advertising Standards Authority Code for Advertising to Children and the Children's Code for Advertising of Food.

## **18. Non-Premium – Customer Consent, Authorisation & Initiation**

This section outlines the general requirements for Customer Consent and Initiation that applies to Non-Premium Messaging Services.

### **18.1 Customer Consent**

- 18.1.1 No Messages or Messaging Service should be sent to Customers unless the Customer has Consented to receiving them prior (either via Express or Inferred Consent) in accordance with the interpretation of Consent as defined in the UEMA.
- 18.1.2 The Customer must be clearly and reasonably informed in advance of the nature and content of the Messaging Service they are consenting to be provided with.
- 18.1.3 A Customer who has consented to the receipt of Messages relating to a specific Messaging Service may not be sent Messages relating to another Messaging Service without their prior Consent.

### **18.2 Types of Consent**

- 18.2.1 Non-Premium Subscription Service - Minimum Inferred Consent is required however Express Consent may be required depending on the specific type of Messaging Service
- 18.2.2 Non-Premium Non-Subscription Service - Inferred consent is required.
- 18.2.3 **Record of Consent:** Aggregators must retain records of all Customers' Consent for their Messaging Service for a minimum of 2 (two) years or such other period as required by the UEMA from the date the Consent was granted. Where these actions were undertaken wholly or in part via mobile, the Aggregator must retain sufficient information for the TSP and the Aggregator to reconcile the transaction with its internal records if required.

### **18.3 Age Restricted Service**

The additional rules for customer authorisation, initiation and termination of Non-Premium Age Restricted Services are as follows:

- 18.3.1 Customer **Opt-in:** 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 TSP's processes to verify Customer identity;
  - (d) The identification used; and
  - (e) A declaration that the Customer is at least 18 years of age.
- 18.3.2 **Offering Age Restricted Services:** An Aggregator or Content Provider must not offer Age Restricted Services without ensuring the controls are in place as referred to in section 23.

## **19. Non-Premium – Service Operation, Message Delivery Failures**

This section outlines the rules around the failure of a Messaging Service.

- 19.1 **Time Sensitive Content:** Content of a time sensitive nature, such as weather or traffic alerts, that have not been successfully delivered within a time-frame generally assumed reasonable for that specific content, and for which the Customer will be charged for receiving the content, should not be re-sent to the Customer.. If the delivery delay was due to operational issues of

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

## 20. Non-Premium Subscription Services – Customer Authorisation, Consent & Initiation

The additional rules for customer authorisation, consent and initiation of all Non-Premium Subscription-based Messaging Services are as follows:

- 20.1 **Inferred Consent:** Where inferred Consent has been provided the Aggregator may choose to send a Confirmation of Subscription Message (based on the type and frequency of the Messaging Service). The information that the Confirmation of Subscription Message must contain is detailed below.
- 20.2 **Express Consent:** Where express Consent has been provided, a Confirmation of Subscription Message must be sent.
- 20.3 Confirmation of Subscription Message:
  - (a) The confirmation of subscription message must be sent as:
  - (b) A standard, dedicated Message; and
  - (c) At no charge above the Standard Charge to the end Customer.
- 20.4 The Message content must contain the following information in the order listed:
  - (a) Confirm the Customer has entered a Subscription Service arrangement;
  - (b) Include the name of the Subscription Service and optional description; and
  - (c) Include details of the 'STOP' command.

## 21. Non-Premium Subscription – Termination of Services

This section outlines the requirements for the termination of Non-Premium Subscription Services.

- 21.1 **Procedures:** Aggregators must ensure that appropriate, legally compliant procedures are in place to enable the Customer to notify the Aggregator 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.
- 21.2 **Message Originator:** All Messages composed and/or conveyed by Aggregators 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. Refer to clause 22 for more details on what information the Aggregator must include in the Message, depending on the type of Messaging Service.
- 21.3 **Opt-out Channel:** The Aggregator must ensure the Customer can unsubscribe via the mobile handset and at least one of the advertised customer support channels as specified in Section E (Customer Support).
- 21.4 **Opt-out via non-Mobile Channel**
  - 21.4.1 **Response Timeframe:** Where a Customer unsubscribes from a Subscription Service or marketing material by telephone or some means other than their mobile phone, the Aggregator must comply with that request within two Working Days following receipt for requests to unsubscribe from that Subscription Service.
  - 21.4.2 **Unsubscribe Confirmation:** Customers who unsubscribe from a Messaging Service via a non-Mobile Channel (e.g. IVR, voice call, email, web) must always be notified that they have been unsubscribed from the Messaging Service.
  - 21.4.3 **Refunds:** If a billed message is sent after an unsubscribe request is received the Aggregator must facilitate a refund to the Customer for all charges incurred after the request is received
  - 21.4.4 **Unsubscribed Confirmation Message:** A Message must be sent to the handset to confirm the

termination of a Subscription Service. The confirmation is required to be sent as:

- (a) A standard, dedicated Message; and
- (b) At no charge to the Customer unless the Messaging Service terms and conditions clearly state that there would be a charge of no more than the Standard Charge to opt-out.

## **21.5 Opt-out via Mobile Channel**

21.5.1 **Response Timeframe:** Any Customer notification or request to unsubscribe received via mobile channel must be complied with within 10 minutes of receipt. With the exception of the Unsubscribed Confirmation Message detailed in clause 21.5, below, 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.

21.5.2 **'STOP' Operations:** A 'STOP' request sent to a Short code will terminate all Subscription Services from that Short code as follows:

21.5.3 **'STOP' and other Key Words:** A 'STOP' request is deemed as any Message sent to the Short code that contains the word "STOP" in any form of case sensitivity (e.g. uppercase, lowercase etc). The Aggregator can choose to recognise other Key Words in addition to 'STOP' to indicate the Customer is opting out of the Messaging Service, such as "QUIT".

21.5.4 **Charges:** The Customer must not incur any charge for unsubscribing using the 'STOP' command unless the Messaging Service terms and conditions clearly state that there would be a charge of no more than the Standard Charge to opt-out.

21.5.5 **Refunds:** If a billed message is sent after the 'STOP' Message has been received, the Aggregator must facilitate a refund to the Customer for all charges after the 'STOP' Message is received.

21.5.6 **Unsubscribed Confirmation Message:** A Message must be sent to the handset to confirm the termination of a Subscription Service. The confirmation is required to be sent as:

- (a) A standard, dedicated Message; and
- (b) At no charge to the Customer unless the Messaging Service terms and conditions clearly state that there would be a charge of no more than the Standard Charge to opt-out.

21.5.7 The Message content must contain the following information, and no other content is allowed to precede this:

- (a) Name of the Subscription Service/s that have been unsubscribed from;
- (b) May include information about how to rejoin the Subscription Service; and
- (c) Include Contact Details as per section E.

21.5.8 The Message must not include any adult-related language or concepts.

21.5.9 **Multiple Subscription Services on one Short code:** Subject to section 21 if multiple Subscription Services do share a common Short code, any 'STOP' command sent to unsubscribe from a Subscription Service on that Short code must be treated to action a unsubscribe from all Subscription Services sharing that Short code provided that the aggregator or content provider is unable to differentiate which service is being unsubscribed from.

21.5.10 **Single Subscription Service across Multiple Short codes:** Subject to section 21 if a single Subscription Service shares multiple Short codes, any 'STOP' command sent to unsubscribe from that Subscription Service on either of the Short codes must be treated to action a unsubscribe from all Subscription Services sharing those Short codes provided that the aggregator or content provider is unable to differentiate which service is being unsubscribed from.

21.5.11 **Advanced 'STOP' Commands for multiple Messaging Services:** In the cases where an Aggregator is providing multiple Messaging Services on a common Short code, support for advanced 'STOP' commands is allowed provided the following guidelines are met:

- (a) The 'STOP' command must be received in the format "STOP < Messaging Service name>"

or vice versa, and <Messaging Service name> must be unambiguously matched to the Messaging Service.

- (b) If the < Messaging Service name> is unrecognisable, then the 'STOP' command must be treated as a full 'STOP' command for all Messaging Services on that Short code.

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

**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 Short code. Customer sends a Message "STOP games" to the Short code.

**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 Short code. Customer sends a Message "STOP ring" to the Short code.

**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.

## 22. Non-Premium Subscription – Service Operation

The rules for the operation of Non-Premium Subscription-based Messaging services are as follows:

- 22.1 **Messages to Customers:** Every Message that forms part of a Subscription Service sent to a Customer must include the following key elements:
- (a) Service Name (description of service) where it is not implicit;
  - (b) Details of the 'STOP' command; and
  - (c) Contact details for Customer Support as specified in section E (Customer Support) of this Code.
- 22.2 **'STOP' and Opt-Out Procedures:** The 'STOP' command and opt out procedures detailed in section 22.1 must be available to Customers using any Subscription Service.
- 22.3 **No Minimum Subscription Period:** Customers must be free to leave a Non-Premium Subscription Service at any time.
- 22.4 **Virtual Chat Services**

The additional rules for the service operation of Virtual Chat Services, contact and dating services are as follows:

### 22.5 User Safety and Risk assessment for Virtual Chat services

#### 22.5.1 Risk Assessment: Aggregators:

- (a) Must take appropriate steps to ensure safety of users;
- (b) Must have supplied on demand, or at regular intervals from the Content Provider a random sample of Messaging Service usage to ensure compliance; and
- (c) Must undertake an assessment of a Virtual Chat Service against the measures outlined in this code before launching the Messaging Service; and

22.5.2 Prior to implementation must require a risk assessment and user safety plan from the Content Provider, to mitigate any highlighted risks and specifically to minimize the risk of inappropriate and dangerous occurring with children under the age of 16. The plan must be prepared to show compliance with Section Mobile Content. These measures include:

- (a) Mechanisms to limit access from users under 16
- (b) Age Verification systems if required for Age Restricted Services
- (c) Mechanisms for users to block unwanted contact and content;
- (d) Measures to manage the safety of users in respect to contact by other users and content posted in the service
- (e) Measures to allow users to report on inappropriate content or communication.

**22.6 Virtual Chat Services – Content Related Requirements**

- 22.6.1 Content Providers of Virtual Chat services must take all reasonable steps to prevent access by users under 16 years of age. Advertising for the service should not be placed in media, where the target audience is below 16 years of age.
- 22.6.2 If the content of a chat service is intended to contain communications or content of a sexual, or adult nature, users under the age of 18 must be prohibited from the service, by way of an Age Verification system.
- 22.6.3 It must be made clear to users, in both advertising and in operation, if the Virtual Chat Service makes use of operators to engage in communication with users.
- 22.6.4 Content Providers are obliged to ensure that proactive steps are taken to ensure the safety of users within a Virtual Chat Service. Proactive steps must include the ability for users to block contact, content and communication from other users and to report content and users to service monitors.
- 22.6.5 Virtual Chat services should employ user safety provisions to the extent that inappropriate behaviour, or content, results in appropriate user safety steps, such as warning and banning of users.
- 22.6.6 Virtual Chat Services must employ mechanisms that ensure that users under the age limit for the particular service are detected and removed.
- 22.6.7 User behaviour in Virtual Chat service, which may be illegal under New Zealand criminal law, such as grooming people under 16 for sex (refer section 131B of the Crimes Act 1961), will be reported to the Police.

**22.7 Operator assisted Virtual Chat Services operate in the following way:**

- 22.7.1 Customer responds to an advert for a Virtual Chat Service and sends a Message to the advertised Short code;
- 22.7.2 An operator employed by the Content Provider running the Virtual Chat Service receives the Message on his/ her computer;
- 22.7.3 The operator replies to the Customer and a conversation then ensues;
- 22.7.4 Under this service model (operator 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
- 22.7.5 Chat Bots may only be used for systems administration, information, help and service operation messages. Chat Bots must not be used to impersonate operators or chat users.

**22.8 WAP Messaging Services**

The additional rules for the service operation of WAP Services are as follows:

- 22.8.1 WAP Messages may be used for both marketing messages and content delivery.
- 22.8.2 WAP Messages must identify the following prior to the WAP link, so that when the WAP Message is viewed by the Customer in their Messaging Service ‘in box’ the Customer can identify where the Message has come from:
  - (a) The Short code used by the Messaging Service; and

- (b) Contact details for Customer Support as specified in section E of this Code.
- (c) WAP Messages used for marketing messages must include details of the 'STOP' command.
- (d) Aggregators must ensure that:
  - (i) Any WAP marketing message sent to a Customer's mobile phone by WAP Push Message is recorded in a call log in clear text format;
  - (ii) The call log described in clause 27 enables the reader of the log to easily read the content of each recorded WAP Push Message; and make records from that call log available to the relevant TSP on request.

Any website linked to such a WAP Push Message includes a link enabling the Customer to opt-out of marketing.

## 23. Non-Premium Service Specific Requirements – Service Operation

The rules for the operation of Non-Premium Messaging specific services are as follows:

### 23.1 Age Restricted Services

The additional rules for the service operation of Age Restricted Services are as follows:

- 23.1.1 Aggregators and/or Content Providers 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, an Aggregator and/or Content 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 driver's licence, proof of -age card, passport or birth certificate in the name of the Customer.
- 23.1.2 Aggregators and/or Content Providers must ensure that promotions for Age Restricted Services, and the Messaging Services themselves, are compatible with access control and rating arrangements available for and appropriate to the medium through which they are accessible.

## 24. Invalid Customer Requests

The following requirements for the management of Invalid Customer Requests apply to all Messaging Services:

- 24.1.1 Invalid Customer Response: If a Customer sends an indecipherable or invalid content request to a Messaging Service, an error response must be sent to the Customer. The response Message must be sent:
  - (a) at no charge to the Customer.
  - (b) The Message content must contain one or more of the following:
    - (c) Include the name of the Messaging Service that the Message relates to;
    - (d) Advise that you could not understand the Message and provide an example of the correct Message if appropriate; and
    - (e) Terms and Conditions.
- 24.1.2 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 [Short code]. [Terms and Conditions]

## 25. Changes to Price points or Propositions Offered on Short codes(s)

The following requirements for changes to price points or propositions offered on Short codes apply to all Messaging Services.

### 25.1 TSP Notifications

- 25.1.1 When a Messaging Service operating on a Short code is to be varied, which may include any or all of the following:
- (a) Messaging Service offered on Short code;
  - (b) Non-premium price points of Short code;
  - (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) the Aggregator must give the TSP written notice of the variation(s) in advance in accordance with each individual TSP's requirements.

### 25.2 Messaging Service Cessation and Activation

- 25.2.1 When a Messaging Service operating on a Short code is to be replaced with an alternative or different one, approved Messaging Service using the same Short code, the TSP has the discretion to decide on the delay time (if any) between concluding the original Messaging Service and launching the new Messaging Service.
- 25.2.2 Age Restricted Service: Where the new Messaging Service is an Age Restricted Service and the Short code for that new Messaging Service has not previously been used for an Age Restricted Service, the Short code must have been decommissioned at least three (3) calendar months before the launch of the new Age Restricted Service.

### 25.3 Customer Notifications

- 25.3.1 **Active Subscription Service Price Point Change:** Should the Aggregator wish to increase the price point of an active Subscription Service, the Customer must be notified at least one (1) calendar month before the price point change taking effect.
- 25.3.2 **Customers of decommissioned Messaging Service:** Furthermore, any previous or current Customers of the decommissioned Messaging Service may not be automatically included as subscribers of the new Messaging Service without their prior, authenticated Consent for inclusion in the new Messaging Service.

## 26. Database Management

The following requirements for database management apply to Messaging Services.

- 26.1 Aggregators must regularly communicate to all their Content Providers that they 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.
- 26.2 Reasonable processes must be implemented to ensure that Customers who obtain a new mobile number from a TSP do not receive content or Messaging Services subscribed to by the previous user of that number. To facilitate this, Aggregators must require the Content Provider to deactivate all Customers who meet either of the following criteria:
- (a) For Premium Subscription Services, excluding Standard Charge: Customers who have had an inactive relationship with them for thirty (30) days. An inactive relationship is classified as one in which the Content Provider has not successfully sent or received a Message to or from the Customer.



- (b) Where there is a Permanent Message Delivery Failure.
- 26.3 Content Providers must remove or unsubscribe dormant or quarantined handset numbers from their databases.
- 26.4 Furthermore a MT Message delivery attempt to any number that directly results in a Delivery Receipt showing permanent failure, as defined by the TSP, may be used by the Aggregator as a trigger to advise the Content Provider to remove that handset number from the Subscription Service and marketing databases, as the Customer may no longer be available to be serviced.
- 26.5 Aggregators must ensure a log is maintained, for a minimum of two years, of each Messaging Service for audit purposes of the following information:
- (a) Mobile number of the incoming Message;
  - (b) Short code of the outgoing Message;
  - (c) Message content; and
  - (d) Date and time stamp.
- 26.6 Aggregators will ensure that Logs must be retained for a minimum of two (2) years after the date the Customers Messaging Service has ended.

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## E. CUSTOMER SERVICE & COMPLAINTS

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### 27. Mobile Messaging Customer Service and Complaints

This section outlines the requirements for Customer Support and the complaints handling process for **Messaging Services**.

### 28. Customer Support

Aggregators are required to provide Helpdesk support for Customers as outlined below.

- 28.1 **Non-Premium Messaging Services:** For all Non-Premium Messaging services at least one of the following must be provided; either a free phone number or local calling number that charges not more than the local calling rates. In addition, a website URL or email address may be provided to enable the Customer to get helpdesk support.
- 28.2 **Premium Messaging Services:** For all Premium Messaging Services a number that is free to call from both a New Zealand landline or cell phone must be provided.
- 28.3 The preference is for a live helpdesk agent to be available during the hours of 9am to 5pm on Working Days. An Interactive Voice Response (IVR) helpdesk may be used outside of these hours.
- 28.4 As a minimum the helpdesk should be a 24/7 IVR service. An example of an acceptable IVR service for a Content Provider for a Subscription Service is as follows:
- 28.5 Welcome to (CONTENT PROVIDER'S NAME), this is a 24 hour automated service. Please listen to the instructions:"
- 28.6 Press 1 to 'STOP' a Subscription Service – Please leave your name, mobile number, Short code 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.
- 28.7 Press 2 to re-request the information/content again
- 28.8 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.
- 28.9 Press 4 to speak to an operator (if after hours pass to number 3)

### 29. Principles - Customer Complaints Handling

- 29.1 There should be a commitment to efficient and fair resolution of complaints by people in the relevant organisation at all levels, including that party's 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 Messaging Services.
- 29.2 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.
- 29.3 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 twelve (12) months of the Customer's initial contact with the parties to this Code in relation to the activity being complained about.

- 29.4 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 Advertising & Promotion of the Code; and
  - (d) Matters which the party to this Code is prevented by law from resolving.
- 29.5 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 Messaging Services they provide resolved when they are raised or promptly thereafter;
  - (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.

## **30. Process – Customer Complaints Handling**

### **30.1 General Requirements**

- 30.1.1 Customers should refer complaints to the party who provides them with the Messaging Service which is the subject matter of the complaint.
- 30.1.2 When a Customer complaint is first made about a Messaging Service in relation to:
- (a) Billing queries, the complaint must be directed to the Aggregators/ Content providers
  - (b) Network failure, the complaint must be directed to the TSP;
  - (c) Message content, the complaint must be directed to the helpline number associated with that Messaging Service;
  - (d) Advertising, the complaint should be directed to the Content Provider in the first instance and if required thereafter to the Advertising Standards Authority; and
  - (e) Unsolicited Messages, the complaint should be directed to the UEMA and Department of Internal Affairs.

### **30.2 Visibility and Accessibility**

- 30.2.1 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.
- 30.2.2 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.
- 30.2.3 Complaint handling processes must include an internal escalation process.
- 30.2.4 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.

### **30.3 Process and Timeframes**

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

- (a) In accordance with clause 30.1, 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 five (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 ten (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 clause 30.3, the timeframe for providing the final response in relation to a complaint must be not more than twenty (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 twenty (20) Working Day timeframe referred to in clause 30.3 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.

### **30.4 Recording Customer Complaints**

- 30.4.1 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.
- 30.4.2 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.
- 30.4.3 Parties to this Code must keep information they deem necessary to show their compliance with this Code.

## **31. Complaints Related to Advertising**

- 31.1 As set out in clause 30.1 all complaints related to advertising must be referred to the Content Provider in the first instance and then to the Advertising Standards Authority.
- 31.2 TSPs will provide the Advertising Standards Authority with the name and contacts details for any Aggregator or Content Provider for a Messaging Service whenever requested by the Advertising Standards Authority and will notify the party concerned whenever such information is provided.

## **32. Escalated Complaints**

- 32.1 Where a complaint has been referred to the Party identified in section 30 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 TSP who will undertake to resolve the complaint in accordance with clause 32.2 and otherwise in a manner it considers appropriate, based on available information and with reference to any relevant independent third party.

### **32.2 TSP Customer Complaints Handling**

- 32.2.1 Upon receipt of an escalated Customer complaint, the TSP must email the following information to the relevant Aggregator's Customer care:
  - (a) The Short code;
  - (b) The date the Customer made contact with the TSP helpdesk in relation to the escalated complaint;
  - (c) The Customer's mobile number; and
  - (d) A brief description of the Customer's issue/complaint.
- 32.2.2 TSPs must retain all records relating to an escalated complaint for a minimum of two (2) years.

### **32.3 Escalated Customer Complaints to Aggregator**

- 32.3.1 The Aggregator must:
  - (a) Propose a resolution to the Customer about escalated Customer complaints within two (2) Working Days of the email from the relevant TSP;
  - (b) Upon proposing a resolution of an escalated Customer complaint, reply to the email from the relevant TSP's Customer care to demonstrate how they have endeavoured to resolve the issue. The email must contain the following information:
    - (i) the Short code;
    - (ii) the date the TSP 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.

**32.4 Customer Complaints unresolved by Aggregator**

- 32.4.1 Where a Customer complaint escalated by a Customer to a TSP is still not resolved by the Aggregator to the Customer's satisfaction, the TSP 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.

### **33. Customer Complaints Code**

- 33.1 The Customer Complaints Code is a TCF Mandatory Code meaning all TCF members must become a signatory. If a TSP has not met their obligations under the Customer Complaints Code then their actions can be addressed through the independently managed TDRS Scheme.
- 33.2 Customers and Telecommunications Service Providers must follow the processes set out in the Customer Complaints Code for resolution of a customer complaint before a customer can take a complaint to the Scheme Agent if their Telecommunications Service Provider has joined the Telecommunications Dispute Resolution Scheme (TDRS).
- 33.3 If a Telecommunications Service Provider is not bound by the Customer Complaints Code and a Customer of that Telecommunications Service Provider lodges a complaint, the complaint will be dealt using the Telecommunications Service Provider's own internal Customer complaints process. If this Customer is not satisfied with the outcome from their Telecommunications Service Provider's internal complaints handling process, the Customer may choose to pursue Further Recourse avenues other than the TDRS (including other legal avenues)..

### **34. Other Avenues for Complaint**

The Customer can also seek advice from the following organisations:

The Advertising Standards Authority; [www.asa.co.nz](http://www.asa.co.nz)

The Department of Internal Affairs; [www.dia.govt.nz](http://www.dia.govt.nz)

The Commerce Commission; [www.comcom.govt.nz](http://www.comcom.govt.nz)

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## **F. CODE COMPLIANCE AND ADMINISTRATION**

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### **35. Code Compliance**

#### **35.1 Compliance with the Law & other Codes**

- 35.1.1 Compliance with this Code provides a framework for all Parties to act in accordance with New Zealand legal and regulatory obligations. Industry participants including Parties to this Code have an obligation to comply with all applicable laws, regulations and requirements of any government or statutory body, as well as other applicable industry standards or Codes.
- 35.1.2 In particular, all parties to this Code must ensure they comply with Fair Trading Act 1986, Unsolicited Electronic Messages Act 2007, the Privacy Act 1993, the Gambling Act 2003 (including the Sales Promotion Scheme) and for Age Restricted Services the Films, Videos, and Publications Classification Act 1993.
- 35.1.3 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 compliant at all times.

#### **35.2 Compliance with Code**

- 35.2.1 The TCF Code Compliance Framework (CCF) applies to the ongoing monitoring and compliance management of this Code. By becoming a Party to this Code, Parties agree to comply with and are bound by the terms of the CCF in relation to the performance of their obligations under this Code. Additional defined terms in this part refer to CCF Defined Terms.
- 35.2.2 For the avoidance of doubt, in situations where Parties to this Code have a dispute relating to interpretations of this Code, the TCF will act as the arbitrator on these items through the CCF. Disputes of this nature can be emailed to [compliance@tcf.org.nz](mailto:compliance@tcf.org.nz) for review.
- 35.2.3 For the purposes of the self-certification requirements of the CCF, a signatory to this Code is required to certify they comply with the obligation set out in Appendix 2.

#### **35.3 General Compliance Responsibilities**

- 35.3.1 A Person who agrees 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.
- 35.3.2 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 Messaging Services.
- 35.3.3 It is recognised that a Person may be any combination of a Content Provider, Aggregator and TSP. It is up to that Person to ensure they comply with all the provisions of the Code relevant to them.
- 35.3.4 Aggregators are responsible for ensuring that the content of all of the Messaging Services (whether produced by themselves, information providers, Content Providers or others) comply with all relevant provisions of this Code. While Aggregators may allocate their obligations under this Code to the relevant Content Provider, the Aggregator will remain responsible for fulfilling those obligations.
- 35.3.5 For the purposes of this Code, the Aggregator has been named as the Party undertaking the majority of provisions in this Code, although it is recognised that this work may be undertaken by either the Aggregator or passed to the Content Provider to complete whilst still complying with clause 37 above.

#### **35.4 Additional CCF Requirement**

- 35.4.1 Notwithstanding any standard requirements of the CCF:
- (a) In the event of any Notice of Potential breach submitted by a TSP about an Aggregator, the Compliance Officer will provide the Aggregator with a Compliance



Issue Notice providing the Aggregator no more than ten (10) Working Days to fix the issue.

- (b) In the event of any Notice of Potential Breach submitted by an Aggregator about a Content Provider, the Compliance Officer will provide the Content Provider with a Compliance Issue Notice providing the Content Provider 5 (five) Working Days to fix the issue
  - (i) the complainant may immediately suspend the non-compliant Messaging Service on written notice to the party in breach, regardless of the status of the Compliance Issue Notice;
  - (ii) the complainant may, at its discretion, terminate the offending Messaging Service if the party in breach fails to comply with the requirements of the Compliance Issue Notice within the applicable timeframe.

35.4.2 In extreme cases, such as the promotion of banned content or where there is sufficient evidence for the complainant to believe the Messaging Service breaches any New Zealand law, the complainant may terminate the offending Messaging Service(s) immediately on notice to the party in breach, regardless of the status of any Compliance Issue Notice.

35.4.3 Before making any complaint to the Compliance Officer the complainant must have readily available all documentary and other evidence necessary to substantiate any factual claims made.

35.4.4 For the avoidance of doubt, the provisions of the CCF do not prevent any party from taking any actions it deems necessary, arising from any contract.

### **35.5 Dispute Resolution**

35.5.1 Any dispute in relation to any decisions made by a Party to this Code under Section 36 will be resolved in accordance with the procedures outlined in the contract between that Party and other party(s) involved in the dispute.

### **35.6 Mobile Content Information and Advice**

35.6.1 In order to comply with this Code, Telecommunications Service Providers will:

- (a) Provide information to Customers on the nature, content and services of messaging services approved;
- (b) Provide information on this Code on their website;
- (c) Provide Customers with a way of communicating any concerns, including the ability to notify any inappropriate content or behaviour to Telecommunications Service Providers; and

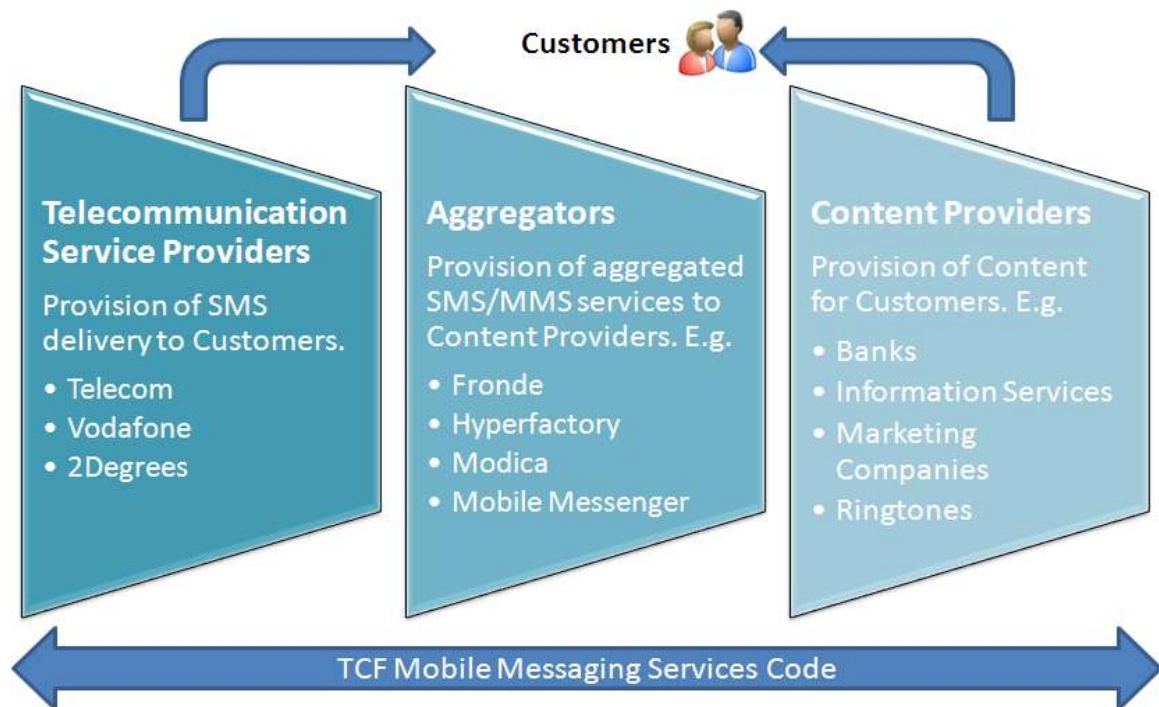
## **36. Administration of the Code**

36.1 As new 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.

36.2 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](http://www.tcf.org.nz/contact).

36.3 Any enquiries or advice in relation to this Code should be made to [www.tcf.org.nz/contact](http://www.tcf.org.nz/contact).

## APPENDIX 1: NZ MOBILE MESSAGING SUPPLY CHAIN DIAGRAM



### Notes:

TSPs can also be Content Providers e.g. Vlive! and Y!X TWorld.

Aggregators can also be Content Providers.

Content Providers can also provide Content Provider aggregator services e.g. MediaWorks, Saatchi & Saatchi.

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## **APPENDIX 2: CODE COMPLIANCE FRAMEWORK SELF CERTIFICATION REQUIREMENTS**

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As part of the self-certification requirements of the CCF and this Code, TCF parties must certify that they comply with:

- (a) Clause 3 regarding general advertising and promotion;
- (b) Clause 6 regarding Customer Consent and Initiation;
- (c) Clause 7.6 regarding Termination of Services; and
- (d) Clause 11 regarding Subscription based Messaging services.

Parties must keep information they deem necessary to show their compliance with this Code, should it be required.

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## APPENDIX 3: DEFINITION OF RESTRICTED CONTENT

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This definition is intended to cover types of material that are likely to be “restricted publications” under section 23(2)(c) of the Films, Videos, and Publications Classification Act 1993 (“the Act”). Telecommunications Service Providers will need to exercise discretion when applying this Code’s definition of Restricted Content since some types of content, (including but not limited to those involving sex, violence or sexual violence), could be “objectionable”, as defined in section 3 of the Act.

A Telecommunications Service Provider rating of content as Restricted Content would not preclude it being classified as objectionable by the Office of Film and Literature Classification (“Office”) and could not be relied on as a defence to charges involving objectionable material. This definition is not intended to be a complete list of restricted content or supplement, or in any way be a substitute for, the authority of the Office or current laws or statutory definitions.

### 37. Restricted Content

37.1 Types of Restricted Content include:

- 37.1.1. **Language:** Frequent use of highly offensive language or explicit sexual references.
- 37.1.2. **Nudity:** Nudity depicting male or female genitals or female nipples, whether or not such genitals or nipples are real.
- 37.1.3. **Sex:** Actual or realistic depictions of sex activity, for example:
  - (a) Real or simulated sexual intercourse.
  - (b) Depiction of sexual activity involving devices such as sex toys.
  - (c) Sexual activity with visible pubic areas.

Note, however, that material which genuinely seeks to inform and educate such as in matters of sexuality, safe sex and health and where explicit images are the minimum necessary to illustrate and educate in a responsible manner may be permissible.

- (d) **Violence:** Violence which dwells on the infliction of pain or on injuries; depictions of sexual violence.
- 37.2 In respect of mobile games in particular:
- 37.2.1. Violence towards realistic depictions of humans or realistic depictions of animals such as scenes of dismemberment, torture, sadism and other types of excessive violence.
  - 37.2.2. Graphic, detailed and sustained violence towards realistic depictions of humans or realistic depictions of animals or violence towards vulnerable or defenceless humans or animals.
  - 37.2.3. **Drug use:** Depictions of illegal drug taking or solvent abuse or instructive details on illegal drug taking or manufacture of drugs or solvent abuse.
  - 37.2.4. **Horror:** Depictions of sustained or detailed inflictions of pain or injury including anything which involves sadism, cruelty or induces a high level of fear or anxiety.
  - 37.2.5. **Cruelty:** Depictions of mental or physical cruelty.
    - (a) Imitable techniques:
    - (b) Dangerous combat techniques such as ear-claps, head-butts and blows to the neck.
    - (c) Instructive details on obtaining or manufacturing weapons, such as knives, firearms or bombs.
    - (d) Instructive details of techniques for use in the commission of a criminal offence.
  - 37.2.6. **Depictions of suicide:** Instructive details of harmful body modification techniques (such as tattooing, body piercing, branding, scarification, cosmetic surgery).

- 37.2.7. Depictions of dangerous, imitable stunts likely to result in a real risk of serious harm. For the avoidance of doubt this does not include sporting activities for example, snowboarding, skateboarding.

## APPENDIX 4: QUICK REFERENCE GUIDES

These guidelines should be treated as indicative only. You should read the Code in its entirety to understand the principles, requirements and obligations for advertising or running a Mobile Messaging Service in New Zealand in accordance with the Code.

### 38. Sections and Clauses - Quick Reference Guide

This provides an overview of which Code clauses apply to the main types of Mobile Messaging Services (Subscription based, Non-Subscription based, Premium and Non-Premium).

Section & Clauses	Subscription		Non-Subscription	
	Premium	Non-Premium	Premium	Non-Premium
Introductory and Revision Statement	✓	✓	✓	✓
A Defined Terms	✓	✓	✓	✓
B Introduction	✓	✓	✓	✓
2 Scope	✓	✓	✓	✓
C Premium Messaging Services – Advertising & Promotion	✓	-	✓	-
4 Service Specific Requirements – Advertising & Promotion	✓		✓	
6 Premium - Customer Consent, Authorisation & Initiation	✓	✓	✓	✓
7 Premium Subscription - Customer Consent & Initiation (and Termination)	✓	-	-	-
8 Premium Service Specific Requirements – Customer Authorisation, Initiation & Termination	✓	✓		
9 Premium Service Operation - Providing Information to Customers	✓	-	✓	-
10 Premium Service Operation – Message Delivery Failures	✓	-	✓	-
11 Premium Subscription – Service Operation	✓	-	-	-
12 Premium Service Specific Requirements – Service Operation	✓	-	✓	-
13 Invalid Customer Requests	✓		✓	
14 Changes to Price points or Propositions Offered on Short codes(s)	✓		✓	
15 Database Management	✓		✓	
D Non- Premium Messaging Services – Advertising &		✓		✓

Section & Clauses	Subscription		Non-Subscription	
	Premium	Non-Premium	Premium	Non-Premium
Promotion				
16 Non-Premium Messaging Services – Advertising & Promotion	-	✓	-	✓
17 Non Premium Service Specific – Advertising & Promotion	-	✓	-	-
18 Non-Premium Customer Authorisation, Initiation and Termination	-	✓	-	✓
19 Non-Premium Service Operation, Message Delivery Failures	-	✓	-	✓
20 Non-Premium Subscription Services – Customer Consent and Initiation	-	✓	-	-
21 Non-Premium Subscription Services – Termination of Services	-	✓	-	-
22 Non-Premium Subscription Service Operation	-	✓	-	-
23 Non-Premium Service Specific Requirements – Service Operation	-	✓	-	✓
24 Invalid Customer Requests		✓		✓
25 Changes to Price points or Propositions Offered on Short codes(s)	-	✓	-	✓
26 Database Management	-	✓	-	✓
E Customer Service & Complaints	✓	✓	✓	✓
F Code Compliance and Administration	✓	✓	✓	✓

## 39. Key Elements for Advertising, Promotion and Messages – Quick Reference Guide

This provides an overview of the key elements that must be included when advertising or promoting a Mobile Messaging Service and the key elements that should be included in Mobile Messages sent to Customers.

Key:

✓ = is applicable

- Not applicable

+ = may be applicable

Section	Subscription		Non-Subscription	
	Premium (exc Std Charge)	Non-Premium	Premium (exc Std Charge)	Non-Premium
Express Consent	✓	-	✓	-
Inferred Consent	-	✓	-	✓
<b>ADVERTISING &amp; PROMOTION</b>				
Short code Number/Name of Service	✓	✓	✓	✓
Price point information	✓	✓	✓	✓
Frequency of Messages (or event trigger)	✓	✓	✓	-
The noun 'subscription' or the verb 'subscribe'	✓	✓	-	-
Any initial sign up cost	✓	✓	-	-
Free phone help desk number	✓	-	+	-
Either a local calling number that charges not more than the local calling rates, a website URL or email address.	-	✓	-	✓
Additional Charges	✓	✓	✓	✓
Terms & Conditions (if applicable)	✓	✓	✓	✓
Opt out Cost	✓	✓	-	-
<b>MOBILE MESSAGES INFORMATION TO CUSTOMERS – SUMMARY OF KEY ELEMENTS</b>				
Request Subscription Message	✓	✓+	-	-
Commence with the phrase 'FreeMsg'	✓	-	✓	-
Service name (description of service)	✓	-	-	-
Subscription service cost	✓	-	-	-
Frequency of messages (or event)	✓	-	-	-



Section	Subscription		Non-Subscription	
	Premium (exc Std Charge)	Non-Premium	Premium (exc Std Charge)	Non-Premium
How to subscribe	✓	-	-	-
Free phone help desk number	✓	-	-	-
Either a local calling number that charges not more than the local calling rates, a website URL or email address.	-	-	-	-
<b>Confirmation of Subscription Message:</b>	✓	+✓	-	-
Commence with the phrase 'FreeMsg'	✓	✓	✓	-
Confirmation that customer has entered subscription service arrangement	✓	✓	-	-
Service name (description of service)	✓	✓	-	-
Subscription service cost	✓	-	-	-
Frequency of messages or event	✓	-	-	-
Details of the STOP command	✓	✓	-	-
Free phone help desk number	✓	-	-	-
Either a local calling number that charges not more than the local calling rates, a website URL or email address.	-	-	-	-
<b>Service Operation – Messages to Customers</b>	✓	✓	✓	-
Service name (description of service)	✓	✓	-	-
Service name (description of service) where it is not implicit	✓	✓	✓	-
Any fees or charges that apply including Data charges, if this info was not provided before the Customer first used the messaging service.	✓	✓	✓	-
Details of the STOP command	✓	✓	-	-
Free phone help desk number	✓	-	-	-
Either a local calling number that charges not more than the local calling rates, a website URL or email address.	✓	✓	✓	✓
<b>\$30 Expenditure Notifications</b>	✓	-	✓	-
Commence with the phrase 'FreeMsg'	✓	-	✓	-
\$30 spend details	✓	-	✓	-

Section	Subscription		Non-Subscription	
	Premium (exc Std Charge)	Non-Premium	Premium (exc Std Charge)	Non-Premium
Service name and/or Short code	✓	-	✓	-
Details of the STOP command	✓	-	-	-
Free phone help desk number	✓	-	✓	-
\$30 Expenditure Notification Exemption Non-Subscription Service	-	-	✓	✓
<b>30 Day Subscription Reminder</b>	✓	-	-	-
Commence with the phrase 'FreeMsg'	✓	-	-	-
Service name and/or Short code	✓	-	-	-
Subscription Service cost	✓	-	-	-
Frequency of Messages	✓	-	-	-
Details of the STOP command	✓	-	-	-
Free phone help desk number	✓	-	-	-
Option for customer to Opt out of \$30 Expenditure notifications	-✓	-	-	-
<b>Unsubscribed Confirmation Message (where opt-out received via mobile channel)</b>	✓	✓	-	-
Name of Subscription service	✓	✓	-	-
How to re-join the Service	✓	✓	-	-
Free phone help desk number	✓	-	-	-
Either a local calling number that charges not more than the local calling rates, a website URL or email address.	-	✓	-	-