



New Zealand Telecommunications Forum

Mobile Messaging Services Code

2021

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Notes:	This version updates references from the annulled Customer Complaints Code to the Customer Care Code

INTRODUCTORY STATEMENT

The *Mobile Messaging Services Code 2021* replaces the TCF *Mobile Messaging Services Codes* dated December 2014. The Mobile Messaging Services Code is a voluntary industry Code which sets out the rights and obligations of Content Providers, A2P SMS Partners and Telecommunication Service Providers for all mobile Messaging Services and Content in New Zealand.

The Code encourages the safe and responsible delivery of mobile Messaging Services that comply with legal and regulatory obligations in order to safeguard consumers. It further seeks to ensure that mobile Messaging Services operating in New Zealand provide a sustainable marketplace for all where customers are appropriately informed and protected.

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 Retail 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 Code also covers issues relating to commercial services, Internet Content; Illegal Content, unsolicited commercial communications, and Malicious Communications. The Code does not cover Peer-to-Peer Communications or broadcasting as defined under the Broadcasting Act.

2021 Revision

This version of the Code contains the following key revisions:

- A restructure of the Code's contents to remove duplication of elements common to Premium and Non-Premium Messaging Services.
- Emphasis of requirements and compliance with the Unsolicited Electronic Messages Act and Privacy Law Act.
- Minimum requirements for all Messaging services are set out in the main body of the Code with additional requirements for Premium and Subscription Services in Appendix 1.

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A. INTRODUCTION

1 Code Purpose

The purpose of this Code is to articulate best practice in and encourage the responsible delivery of Messaging Services that are compliant with legal and regulatory obligations and protect Customers.

2 Code Scope, Objectives, Exclusions and Conflicts

2.1 Scope

This Code specifies the minimum obligations on RSPs, A2P SMS Partners 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 Increase Customer confidence and encourage the responsible use of Messaging Services by providing guidelines for A2P SMS Partners, Content Providers and RSPs on the best practice management of mobile Messaging Services in New Zealand;
- 2.2.2 Ensure Customers are protected from illegal activity through providing guidelines for providers of Messaging Services to ensure compliance with their legal obligations and the obligations of this Code;
- 2.2.3 Prevent or reduce the incidence of spoof Messaging Services by providing guidelines that cover non-Commercial Messages (as defined in, but not covered by, the UEMA);
- 2.2.4 Promote the informed, fair and safe use of Messaging Services and set out the approach to monitoring compliance;
- 2.2.5 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 (Peer-to-Peer or Mobile-to-mobile messages).
- 2.3.2 This Code does not govern the processes used by RSPs or A2P SMS Partners to prevent scam Messages.

2.4 Dates, Times and Monetary Amounts

- 2.4.1 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.

2.5 Conflicts

- 2.5.1 In the event of a conflict between the provisions of this Code and a New Zealand statute or regulation, the provision of the statute or regulation will prevail.
- 2.5.2 In the event of a conflict between different provisions within this Code, the provision containing the higher standard or higher protection for consumers will prevail.

B. CODE DEFINITIONS

A2P SMS Partner	means a party providing A2P SMS services to a Content Provider and who is directly connected to a Mobile Network Operator.
Access Controls	means a technical measure imposed to control access to Restricted Content, for example PIN access to Restricted Content.
Advertising Standards Authority	means the Advertising Standards Authority Incorporated in New Zealand. For more information refer to www.asa.co.nz
Advice Services	means a Messaging Service which offers advice to Customers using Messages as a medium.
Age-Restricted Services	means a Messaging Service which is intended only for persons aged 18 or over.
Age Verification	means a process that is used to verify, as far as is reasonably possible, that a Customer is over the age of 18.
Broadcasting Act	means the Broadcasting Act 1989 as amended from time to time.
Business Hours	means 9.00am to 5.00pm on Working Days.
Chat Bots	means a computer service that generates responses to questions or comments from participants. These responses are sent without human operation interaction.
Code	means this Mobile Messaging Services Code.
Commercial Content	means Mobile Content that is provided to Customers via a RSP, whether free or premium, either directly by the RSP to its Customers, or that is provided to Customers by a third party that the RSP 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.
Complaint	A genuine dissatisfaction with a service, system, process or experience which is related to the purview of this Code and which is reported to an organisation or person.
Consent/ Consented	for the purposes of this Code, is to have the same meaning as 'consented to receiving' as that phrase is defined in subclauses (1)(a)(i) and (ii) only of clause 4 of UEMA. Refer to https://www.legislation.govt.nz/act/public/2007/0007/latest/DLM405141.html
Contact and Dating Services	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.
Content Provider	means a party who writes and directly controls the Message content (for clarity, this includes both premium e.g. the party who writes e.g. horoscopes and jokes, and in the case of bulk/transactional is e.g. the business sending e.g. appointment reminders.)
Customer	means the consumer with the contract with the RSP for the supply of a mobile service, or an end user authorised by the Customer to use the mobile service.
Delivery Failure	means when a Message has failed to deliver to the handset.

Expenditure	means any charges on a Customer's mobile account (including pre-pay balance) related to a Messaging Service.
Frequency of Messages	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.
Illegal Content	includes content that is defined as "objectionable" by clause 3 of the Films, Videos, and Publications Classification Act 1993, content which is illegal by New Zealand criminal law, or content which is sent with an intent to defraud.
Internet Content	means the content on the internet over which the RSP may not have control because it is not provided to Customers by the RSP or by a third party which has a commercial arrangement with the RSP for the provision of Mobile Content Services
IVR (or Interactive Voice Response)	means a recorded voice message service which gives factual information about a particular Messaging Service.
Key Words	means a word pre-defined in a Message that either triggers an event in relation to a Messaging Service, or is used to confirm Customer intent to use a service.
Malicious Communications	means communications which would involve the misuse of a telephone device as specified under clause 112 of the Telecommunications Act 2001.
Marketing Database	a 'marketing database' refers to a database of Customer details maintained for the purpose of sending marketing or promotional Messages that relate to products or Messaging Services offered by the Content Provider.
Message	means an SMS, MMS and/or WAP.
Messaging Service	means a service for delivering Messages to and/or from Customers that has been implemented on the RSP network and includes both Premium and Non-Premium Messages.
MMS (or Multimedia Message Service)	means a standard way to send messages that includes multimedia content to and from a mobile phone.
MNO	Refer to 'Mobile Network Operator' below.
Mobile Network Operator (MNO)	means a party operating a mobile network in New Zealand.
Mobile Content Services	means commercial content services made available via mobile phones through an A2P SMS Partner and / or a Content Provider.
Mobile Virtual Network Operator (MVNO)	means a party offering a retail service using the network of an MNO.
MO Mobile Originated Message	means a Message sent from the Customer's mobile handset.
MSISDN	means the Mobile Station International ISDN Number of the Customer's mobile handset.
MT (Mobile Terminated) Message	means a Message received by the Customer's mobile handset.
MVNO	Refer to 'Mobile Virtual Network Operator' above.
Non-Commercial	Messages sent to a mobile number that are intended to be informative but not promotional and are a part of a service provided by the Content Provider,

	Service Provider, A2P SMS Partner or RSP.
Non-Premium	means any Messaging Service provided via a mobile handset where the Customer is either not charged for the Message or is charged at the relevant RSP's Standard Charge.
Non-Subscription Service	means a Messaging Service which is not a Subscription Service.
Non-Working Day	means any day other than a Working Day.
Party/Parties to this Code	means a Party who has agreed to be bound by this Code.
Peer-to-Peer Communications	means direct person-to-person communications and include person-to-person voice and video calls, text messages, photo and video messaging.
Person	means a legal person and includes a company and any other legal entity.
Premium	means any Message or Messaging Service that is chargeable to the Customer's mobile account above the Standard Charge.
Restricted Content	means material that are likely to be "restricted publications" under clause 23(2)(c) of the Films, Videos, and Publications Classification Act 1993. For examples of likely Restricted Content, refer Appendix 5.
Retail Service Provider (RSP)	means a party offering retail mobile services to consumers in New Zealand (this includes MNOs and MVNOs)
RSP	Refer to 'Retail Service Provider' above.
Scheme	means the Telecommunications Dispute Resolution Scheme service or any replacement scheme operated on behalf of the telecommunications industry.
Scheme Agent	means the independent body contracted by the TCF to provide the Telecommunications Dispute Resolution Scheme service
Scheme Member(s)	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
Short Code(s)	means a number provisioned by RSPs to enable the delivery of a Messaging Service(s) and includes MSISDNs.
SMS (or Short Message Service)	means a short text message sent to and/or from a mobile phone.
Standard Charge	Standard Charge means the amount charged by a RSP to deliver a SMS message before the application of any discounts, reductions or promotions.
Stimulation Messages	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.
Subscription Service	means a service in which the subscriber commits to receiving recurring Messages which ends only as a result of the subscription being terminated.
TCF	means New Zealand Telecommunications Forum Incorporated . For more information refer to www.tcf.org.nz .
Telecommunications Act	means the Telecommunications Act 2001 as amended from time to time.

Telecommunications Dispute Resolution Scheme	means the free, independent service to help consumers resolve complaints with their telecommunications provider.
Telecommunications Service	means any good, service, equipment and/or facility that enables or facilitates telecommunication.
Toll Free Number	means a telephone number beginning with the digits 0800 or 0508 used for calls originating in New Zealand where the calls are free to the caller.
UEMA	means the Unsolicited Electronic Messages Act 2007 including all amendments to that Act or any replacement or supplementary legislation.
Unrestricted Content	means content that is not Illegal Content or Restricted Content.
Video Service	means a Messaging Service that provides streaming video, audio and other multimedia content to mobile handsets.
Virtual Chat Services	means a service, provided by a Content Provider which enables users to exchange separate messages, through text or a Messaging Service which may include pictures, recorded voice, or recorded video between two or more users, or between a user and an operator.
WAP (or Wireless Application Protocol)	means a protocol that allows the sending of content and information to mobile handsets.
Week	means Monday to Sunday (inclusive).
Working Day	means a day on which registered banks are open for normal banking business, excluding Saturdays, Sundays and nationwide public holidays. Regional public holidays are considered to be Working Days.

C. REQUIREMENTS FOR ALL MESSAGING SERVICES

3 Compliance with laws and Code Information for Customers

3.1. Compliance

A Party that advertises, operates or sells a Messaging Service must:

- 3.1.1 Comply with Fair Trading Act 1986, Unsolicited Electronic Messages Act 2007, Privacy Act 2020, Gambling Act 2003 (including the Sales Promotion Scheme) and for Age Restricted Services the Films, Videos, and Publications Classification Act 1993 including any amendments, re-enactments or consolidations of those statutes.
- 3.1.2 Comply with all other applicable New Zealand laws, regulations and requirements of the New Zealand Government or statutory body, as well as other applicable industry standards or Codes.
- 3.1.3 Be fully conversant with the latest version of this Code, and ensure they are compliant at all times.
- 3.1.4 Ensure that Messaging Services:
 - a. Are not used for and do not enable or encourage any illegal activity;
 - b. Do not contain “objectionable content” as defined in the Films, Videos, and Publications Classification Act 1993;
 - c. Are consistent with any relevant guidance issued by the Department of Internal Affairs or other Government department in relation to Messaging Services.
- 3.1.5 Take reasonable steps to prevent Messaging Services from being used for scam or other illegal purposes.

3.2 Precedence of Legislation

- 3.2.1 In the event of a conflict between the provisions of this Code and the provisions of any New Zealand legislation, the provisions of the legislation shall take precedence.

3.3 Information for Customers About Messaging Services

- 3.3.1 RSPs and A2P SMS Partners 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 Retail Service Providers.

4 Advertising & Promotion

4.1 General advertising and promotion requirements

- 4.1.1 All advertising should have regard to and be appropriate for the type of advertising (including the medium or format being used) and its intended audience.
- 4.1.2 Advertising which offers or promotes credits, free services or products, or other benefits must clearly communicate any conditions, including time limits, caps or fair use policies, about a Customer’s ability to use the credits, free services or products, or other benefits.
- 4.1.3 Advertisements for Messaging Services must not:
 - a. be confusing, misleading or deceptive in any way, or be likely to mislead or deceive, having regard to the intended audience or
 - b. contain material that is out of date, having regard to time sensitive information generally available, subsequently published, or released or

made available.

- 4.1.4 Unless otherwise agreed, Messaging Services must not imply that such services are supplied or endorsed by the relevant RSP.
- 4.1.5 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.
- 4.1.6 All advertisements must include the name of the Service.
- 4.1.7 All advertising containing an offer for a product or Messaging Service for a limited period or in a limited quantity must:
 - a. clearly state or communicate that limitation; and
 - b. 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.)
- 4.1.8 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.
- 4.1.9 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.
- 4.1.10 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 A2P SMS Partner must ensure that the "free" Messaging Service is not subject to any charge, fee or cost.
- 4.1.11 If any additional charges will apply when using or accessing a Messaging Service, for instance data charges, this must be stated in the advertising and promotion e.g., "*Data charges may apply*".
- 4.1.12 Advertising and promotion of Messaging Services must not facilitate, encourage or permit Customers to be "click baited" into signing up to other services, whether or not such services are offered by the relevant A2P SMS Partner or Content Provider or an affiliated advertiser.

4.2 Disclaimers

- 4.2.1 Where a disclaimer is used in any advertising or promotion the disclaimer must not:
 - a. be inconsistent with anything contained in the principal message of the advertising; or
 - b. negate the principal message of the advertising; or
 - c. be introducing a new or additional offer.
 - 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'.
- 4.2.2 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.
- 4.2.3 The disclaimer must:
 - a. be placed next to the offer; or

- b. be close to the offer or linked to the offer by an asterisk footnote or other symbol; or
- c. for television or radio advertising, form part of the advertisement visually or orally.

4.3 Advertising aimed at Persons under 14 years

- 4.3.1 In addition to the other provisions of Clause 4 above, 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.

4.4 Age-Restricted Services

- 4.4.1 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 at children.
- 4.4.2 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 and 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.

4.5 Restricted Content

- 4.5.1 RSPs should 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 clause 3 of the Films, Videos, and Publications Classification Act 1993.
- 4.5.2 A RSP rating of content as Restricted Content does not preclude it being classified as objectionable by the Office of Film and Literature Classification ("Office") and cannot be relied on as a defence to charges involving objectionable material.

5 Customer Consent, Authorisation & Initiation

5.1 General Requirements for Customer Consent and Authorisation

- 5.1.1 No Messages or Messaging Service should be sent to Customers unless the Customer has Consented to receiving them prior:
 - a. Via Express or Inferred Consent in accordance with the interpretation of Consent as defined in the UEMA for Non-Premium Messaging Services and Non-Premium Subscription Messaging Services; or
 - b. Via Express Consent in accordance with the interpretation of Express Consent as defined in the UEMA for Premium Messaging Services and Premium Subscription Messaging Services.
- 5.1.2 Where verbal consent is given by a Consumer to receive Messages a person who contends that a Consumer consented to receiving a commercial electronic Message has the onus of proof in relation to that matter (this is the Content Provider).

- 5.1.3 The Customer must be clearly and reasonably informed in advance of the nature, cost and content of the Messaging Service they are consenting to be provided with.
- 5.1.4 In a situation where the customer has initiated the Message (MO) and the correct key word is used, they must always be sent a response back (MT).
- 5.1.5 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.
- 5.1.6 Subject to compliance with the Privacy Act 2020, A2P SMS Partner must retain records of all Customers' Consent for their Messaging Service are retained for a minimum period of twelve (12) months, unless exempted under any legislation.
- 5.1.7 Where these actions were undertaken wholly or in part via mobile, the A2P SMS Partner must retain sufficient information for the RSP and the A2P SMS Partner to reconcile the transaction with its internal records if required.

5.2 Additional Requirements for Age Restricted Messaging Services

- 5.2.1 An A2P SMS Partner or Content Provider must not offer Age Restricted Services without ensuring the controls are in place as referred to in Appendix 1 Clause 5 below (User Safety).
- 5.2.2 A2P SMS Partners 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. The application for a Customer to 'opt in' to Age Restricted Services 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 RSP's processes to verify a Customer's identity;
 - d. The identification used (e.g. a valid driver's licence, proof-of-age card, passport or birth certificate in the name of the Customer); and
 - e. A declaration that the Customer is at least 18 years of age.

6 Message Delivery Failures

6.1 Message Delivery Failure Requirements

- 6.1.1 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 A2P SMS Partner, RSP or Content Provider, the A2P SMS Partner or Content Provider may wish as a measure of good faith to the Customer, send the content to the Customer at no charge.
- 6.1.2 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.

7 Invalid Customer Requests

7.1 Invalid Customer Requests

- 7.1.1 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.
- 7.1.2 The Message content must contain at least the following:
 - a. the name of the Messaging Service that the Message relates to;
 - b. advice that the Message could not be understood and provide an

- c. example of the correct Message if appropriate; and
- c. the relevant Terms and Conditions.

8 Customer Database Management

8.1 Database Management

- 8.1.1. A2P SMS Partners and RSPs must take reasonable steps to ensure Content Providers:
 - a. Actively maintain any databases used to hold Customer contact data, in accordance with Privacy Act 2020 requirements including ensuring Customer contact data is current and accurate and expired data is purged;
 - b. Promptly remove or unsubscribe dormant or quarantined handset numbers from their databases; and
 - c. Do not re-use deleted Customer contact details for marketing purposes.
- 8.1.2 A2P SMS Partners and RSPs must implement processes to ensure that Customers who obtain a new mobile number from a RSP do not receive content or Messaging Services subscribed to by the previous user of that number. To facilitate this, A2P SMS Partners 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.
- 8.1.3 Where a MT Message delivery attempt to any number that directly results in a Delivery Receipt showing permanent failure, as defined by the RSP, may be used by the A2P SMS Partner 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.

8.2 Messaging Service Logs

- 8.2.1 A2P SMS Partners 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. Date and time stamp.
 - d. Message content; and
- 8.2.2 Subject to compliance with the Privacy Act 2020 or any other legislation, logs referred to in clause 8.2.1(a), 18.2.1(b) and 18.2.1(c) must be retained for a minimum of twelve (12) months from the date the Customer's Messaging Service ended and Message content in clause 18.2.1(d) for 60 days.
- 8.2.3 The A2P SMS Partner does not need to physically keep the information required to meet 8.2.2 but must ensure that the information is available if requested. For example, they may choose to require their upstream providers and Content Providers to store this information.

9 Customer Support Requirements

9.1 Customer Support Minimum Requirements

- 9.1.1 For all Messaging Services A2P SMS Partners are required to provide helpdesk support for Customers with at least one of the following provided:
 - a. Either a free phone number or a local calling number that charges not more than the local calling rates; and
 - b. In addition, a website URL or email address may be provided to enable

the Customer to get helpdesk support.

- 9.1.2 The A2P SMS Partner must offer a support channel that allows Customers to call and raise concerns or requests for investigation during Business Hours. Outside of these hours, an acceptable alternative is an email address.
- 9.1.3 For additional Premium Messaging and Subscription Services Customer Support requirements please refer to Section [E](#).

D. COMPLAINTS HANDLING

10 Principles – Customer Complaints Handling

10.1. Approach to Complaints resolution

- 10.1.1 All RSPs, A2P SMS Partners and Content Providers must commit to the 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.
- 10.1.2 Parties to this Code who are entitled to be members of the Scheme are encouraged to do so. Where any Party to this Code is a member of the Scheme, the provisions of the TCF Customer Care Code will take precedence over the provisions in this Code in relation to Customer Complaints.
- 10.1.3 Parties to this Code must 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.
 - e. Customers who lodge complaints should be treated fairly and with courtesy and respect.

10.2 Complaints

- 10.2.1 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; and
 - 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.
- 10.2.2 A Complaint must not be frivolous, vexatious or trivial. Complaints should not relate to:
 - a. Equipment and/or applications the Customer owns which the party the Customer is complaining to does not support;
 - b. 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; or
 - c. Matters which the Party to this Code is prevented by law from resolving.

11 Process – Customer Complaints Handling

11.1. General Requirements

- 11.1.1 A Customer making the following types of Complaints about Messaging Services should be directed as set out below:
 - a. Billing queries, the complaint must be directed to the Retail Service Provider;
 - b. Network failure, the complaint must be directed to the RSP;

- c. Message content, the complaint must be directed to the RSP
- 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 commercial electronic Messages or scams, the complaint should be directed to the Department of Internal Affairs.

11.1.2 The RSP may refer the customer to the aggregator or content provider to assist with the resolution of the complaint.

11.2. Visibility and Accessibility

11.2.1 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 another format as agreed with the Customer.

11.2.2 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.

11.2.3 Complaint-handling processes must include an internal escalation process.

11.2.4 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.

11.3 Process and Timeframes

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

- a. In accordance with Clause 11.1.2, refer the complaint to the appropriate Party;
- b. On receipt of complaint by the Party to this Code responsible for resolving it, acknowledge receipt of written complaints as soon as practicable but in any event within 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 11.3.1(iv), 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 11.3.1(iii) 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 enquire 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; and
 - (ii) where requested by the Customer, inform the Customer of the availability of external options for the Customer's Complaint to be handled.

11.4 Recording Customer Complaints

- 11.4.1 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.
- 11.4.2 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.
- 11.4.3 Parties to this Code must keep information they deem necessary to show their compliance with this Code.

12 Complaints Related to Advertising

- 12.1 As set out in Clause 11.1 all complaints related to advertising must be referred to the Content Provider in the first instance and then to the Advertising Standards Authority.
- 12.2 RSPs will provide the Advertising Standards Authority with the name and contacts details for any A2P SMS Partner 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.

13 Escalated Complaints

13.1 Escalation Path

- 13.1.1 Where a complaint has been referred to the Party identified in Clause 11.1 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 RSP who will undertake to resolve the complaint in accordance with Clause 11.2 and otherwise in a manner it considers appropriate, based on available information and with reference to any relevant independent third party.

13.2 RSP Customer Complaints Handling

- 13.2.1 Upon receipt of an escalated Customer complaint, the RSP must email the following information to the relevant A2P SMS Partner's Customer care:
 - a. The Short Code;
 - b. The date the Customer made contact with the RSP helpdesk in relation to the escalated complaint;
 - c. The Customer's mobile number; and

- d. A brief description of the Customer's issue/complaint.
- 13.2.2 Subject to compliance with the Privacy Act 2020, RSPs must retain all records relating to an escalated complaint for a minimum of two (2) years.

13.3 Escalated Customer Complaints to A2P SMS Partner

- 13.3.1 The A2P SMS Partner must:
 - a. Propose a resolution to the Customer about escalated Customer complaints within two (2) Working Days of the email from the relevant RSP;
 - b. Upon proposing a resolution of an escalated Customer complaint, reply to the email from the relevant RSP's Customer care representative or team (as the case may be) 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 RSP 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. Subject to compliance with the Privacy Act 2020, A2P SMS Partners must retain all records relating to a complaint for a minimum of one year.

13.4 Customer Complaints unresolved by A2P SMS Partner

- 13.4.1 Where a Customer complaint escalated by a Customer to a RSP is still not resolved by the A2P SMS Partner to the Customer's satisfaction, the RSP will work with the Customer to see if they can reach a satisfactory outcome.
- 13.4.2 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 any avenue beyond an A2P SMS Partner / Service Provider's internal complaints handling process for resolution of a complaint.

14 TCF Customer Care Code

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

15 Other Avenues for Complaint

The Customer can also seek advice from the following organisations:

The Advertising Standards Authority; www.asa.co.nz

The Department of Internal Affairs; www.dia.govt.nz

The Commerce Commission; www.comcom.govt.nz

E. ADDITIONAL REQUIREMENTS FOR SUBSCRIPTION SERVICES

16 Additional Requirements for all Subscription Services

16.1 Service Operations

- 16.1.1 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);
 - b. Details of the 'STOP' command; and
 - c. Contact details for Customer Support as specified in Clause 9 of this Code.
- 16.1.2 The 'STOP' command and opt out procedures detailed in Clause 17.4 must be available to Customers using any Subscription Service.
- 16.1.3 Customers must be free to leave a Subscription Service at any time.

16.2 Customer Support

- 16.2.1 All Subscription Services, whether Premium or non-Premium, must:
 - a. Provide Contact Details for Customer Support as specified in Clause 9 of this Code;
 - b. Provide 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);
 - c. Ensure any sign-up cost, where applicable, must be displayed in a manner that is clear, legible and contrasts with the background and the noun '[join/subscription]' or the verb '[join/subscribe]' must be used.

Example: 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]"*.

16.3. Advertising & Promotion: Fees and Charging

- 16.3.1 Where the term "standard charges apply," "standard fees apply" or similar is used, an explicit definition of what those standard changes are must be outlined to the customer in the Terms and Conditions.
- 16.3.2 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 A2P SMS Partner must ensure that the "free" Messaging Service is not subject to any charge, fee or cost.
- 16.3.3 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.
- 16.3.4 If a Customer would incur charges for replying to a marketing, prompt or inducement Message sent as part of a Messaging Service, the A2P SMS Partner must ensure those charges are identified in the marketing, prompt or inducement Message.
- 16.3.5 Where the promotion of a Subscription Service is being run, the promotional material must include, in addition to the information set out in Clause 16.3.1 above:
 - a. The terms and conditions and be accessible during the promotional period;
 - b. The dates of the promotion
 - c. Any Short Codes used as part of the service;
 - d. How a user may opt out (during the promotional period and outside the promotional period).
- 16.3.6 All Subscription Services which are billed when the content is delivered must not advertise a minimum subscription period.

16.4 Customer Consent, Authorisation and Initiation Requirements

- 16.4.1 **Non-Premium Subscription Services:** Minimum Inferred Consent is required for non-Premium Subscription Services.
- 16.4.2 **Premium Subscription Services:** Prior receipt of Express Consent is required for Premium Messaging Services and Premium Subscription Messaging Services.
- 16.4.3 **Confirmation of Express Consent**
 - 16.4.3.1 Where Express Consent has been provided for a Premium Subscription Messaging Service, a confirmation of Subscription Message must be sent.
 - 16.4.3.2 The confirmation of Subscription Message must be sent as a standard, dedicated Message.
 - 16.4.3.3 The confirmation of Subscription 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.

17 Termination and Opt-out for all Subscription Services

17.1 Termination General Requirements

- 17.1.1 A2P SMS Partners must ensure that appropriate, legally compliant procedures are in place to enable the Customer to notify the A2P SMS Partner 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.
- 17.1.2 All Messages composed and/or conveyed by A2P SMS Partners 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.
- 17.1.3 An A2P SMS Partner 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.
- 17.1.4 The A2P SMS Partner must ensure the Customer can unsubscribe via the mobile handset and at least one of the advertised Customer support channels as specified in Clause 9 of this Code.
- 17.1.5 The A2P SMS Partner must comply with the requirements of UEMA in relation to all unsubscribe facilities.

17.2 Opt-out via non-Mobile Channel

- 17.2.1 Where a Customer unsubscribes from a Subscription Service or marketing material by telephone or some means other than their mobile phone, the A2P SMS Partner must comply with that request within two (2) Working Days following receipt for requests to unsubscribe from that Subscription Service.
- 17.2.2 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.
- 17.2.3 If a billed Message is sent after an unsubscribe request is received the A2P SMS Partner must facilitate a refund to the Customer for all charges incurred after the request is received.
- 17.2.4 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 standard, dedicated Message and 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.

17.3 Opt-out via non-Mobile Channel (Premium service only)

17.3.1 The Message referred to in Clause 17.2.4 above 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 re-join the Subscription Service;
- c. Include Contact Details for Customer Support as per Clause 9 of this Code.

17.3.2 The Message must not include any Restricted Content, including any adult-related language or concepts.

17.4 Opt-out via Mobile Channel

17.4.1 Any Customer notification or request to unsubscribe received via mobile channel must be complied with within ten (10) minutes of receipt. With the exception of the Unsubscribed Confirmation Message detailed in Clause 17.4.6 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.

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

17.4.3 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 A2P SMS Partner 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".

17.4.4 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.

17.4.5 If a billed Message is sent after the 'STOP' Message has been received, the A2P SMS Partner must facilitate a refund to the Customer for all charges after the 'STOP' Message is received.

17.4.6 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 standard, dedicated Message.

17.4.7 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 re-join the Subscription Service;
- c. Contact Details for Customer Support in accordance with Clause 9 of this Code.

17.5 Effect of Opt-outs on Short Codes

17.5.1 If multiple Subscription Services 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 if the A2P SMS Partner or Content Provider is unable to differentiate which service is being unsubscribed from.

17.5.2 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 if the A2P SMS Partner or Content Provider is unable to differentiate which service is being unsubscribed from.

17.5.3 In cases where an A2P SMS Partner is providing multiple Messaging Services on a

common Short Code, support for advanced 'STOP' commands is allowed provided that:

- 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.

F. ADDITIONAL REQUIREMENTS FOR PREMIUM SUBSCRIPTION SERVICES

18 Additional Requirements for Premium Subscription Services

- 18.1 There are two ways a Customer can initiate a request to subscribe to a Premium Subscription Messaging Service, either:
- Directly subscribing via Message sent from their mobile to the designated Short Code; or
 - 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.
- 18.2 Regardless of the request initiation method, all Premium Subscription Messaging Services must 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.
- 18.3 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.
- 18.4 The Request Subscription Message is required to be sent as a standard, dedicated Message.
- 18.5 The Message must contain the following information in the order listed:
- Include the name of the Subscription Service and optional description;
 - Include the Subscription Service cost and Frequency of Messages or event trigger
 - Include the phrase "To [join/subscribe] reply YES to <Short Code>"; and
 - Contact Details for Customer Support as specified in Clause 9 of this Code.
- 18.6 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.
- 18.7 Premium Subscription Services must in all cases provide confirmation to the Customer that they have entered into a Subscription Service and meet the following requirements:
- This must be the first Message sent to the Customer before any Premium Messages; and
 - The confirmation of subscription is required to be sent as a standard, dedicated Message.
- 18.8 The Message content must contain the following information in the order listed:
- Confirm the Customer has entered a Subscription Service arrangement;
 - Include the name of the Subscription Service and optional description;
 - Include Subscription Service cost;
 - Include details on the Frequency of Messages or Event;
 - Include details of the 'STOP' command;
 - Contact details for Customer Support as specified in Clause 9 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

- 18.9 If a Customer is 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.
- 18.10 Where the \$30 Expenditure notification applies, 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 and the Short Code; and
 - d. Contact details for Customer Support as specified in Clause 9 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

- 18.11. Subject to prior written permission from the relevant RSPs, A2P SMS Partners 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.
- 18.12. This facility is primarily intended for high volume interactive media Messaging Services where the messaging charge is clearly communicated.

G. ADDITIONAL REQUIREMENTS FOR PREMIUM NON-SUBSCRIPTION SERVICES

19 Additional Requirements for Premium Non-Subscription Services

19.1 Fees and charging

- 19.1.1 A2P SMS Partners, on behalf of Content Providers, must 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.
- 19.1.2 Charging information must be provided to the Customer Refer in accordance with Advertising and Promotion requirements of Clause 4 of this Code.

19.2 Stimulation Messages

- 19.2.1 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 service provider infer any Consent to receive further communications from the service provider. At no point in time, outside of that one-off transaction, should that Customer be sent any Stimulation Message.

- 19.2.2 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.
- 19.2.3 Any Stimulation Messages sent in breach of this clause will be considered spam.

19.3 Delivery Failures

- 19.3.1 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, whichever 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.

H. NEW SERVICE PROVISION

20 Short Code Obligations

20.1 Applications for a Short Code

- 20.1.1 All A2P SMS Partners and/or Content Providers seeking to use a Short Code to send Messaging Services must submit its applications on the provisioning form set out in Appendix 4 or such other form as the RSPs may require from time to time.

20.2 Short Code variation application requirements

- 20.2.1 When a Messaging Service operating on a Short Code is sought 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;

- 20.2.2 The A2P SMS Partner must submit its applications on the provisioning form set out in Appendix 4 or such other form as the RSPs may require from time to time.

20.3 Short Code cessation

- 20.3.1 When a Messaging Service operating on a Short Code is to be replaced with an alternative or different one, with an approved Messaging Service using the same Short Code, the RSP has the discretion to decide on the delay time (if any) between concluding the original Messaging Service and launching the new Messaging Service.
- 20.3.2 Should the Content Provider, via the A2P SMS Partner wish to increase the price point of an active Subscription Service, the A2P SMS Partner must notify the Customer at least one (1) calendar month before the price point change takes effect.
- 20.3.3 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.
- 20.3.4 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 30 days before the launch of the new Age Restricted Service.
- 20.3.5 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.

I. CODE COMPLIANCE AND ADMINISTRATION

21 Code Compliance

21.1 Compliance with Code

- 21.1.1 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.
- 21.1.2 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 for review.
- 21.1.3 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 Clause 21.

21.2 General Compliance Responsibilities

- 21.2.1 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.
- 21.2.2 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.
- 21.2.3 It is recognised that a Person may be any combination of a Content Provider, A2P SMS Partner and RSP. It is up to that Person to ensure they comply with all the provisions of the Code relevant to them.
- 21.2.4 A2P SMS Partners 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 A2P SMS Partners may allocate their obligations under this Code to the relevant Content Provider, the A2P SMS Partner will remain responsible for fulfilling those obligations such as promoting awareness of the Code in dealings with Content Providers and its customers and taking prompt action to investigate and resolve issues when they arise.
- 21.2.5 For the purposes of this Code, the A2P SMS Partner 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 A2P SMS Partner or passed to the Content Provider to complete whilst still complying with other provisions of Clause 21 above.

21.3 Additional CCF Requirements

- 21.3.1 Notwithstanding any standard requirements of the CCF:
 - a. In the event of any Notice of Potential breach submitted by a RSP about an A2P SMS Partner, the Compliance Officer will provide the A2P SMS Partner with a Compliance Issue Notice providing the A2P SMS Partner no more than ten (10) Working Days to fix the issue.
 - b. In the event of any Notice of Potential Breach submitted by an A2P SMS Partner about a Content Provider, the Compliance Officer will provide the Content Provider with a Compliance Issue Notice providing the Content Provider five (5) 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.

21.3.2 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.

21.3.3 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.

21.3.4 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.

21.4 Dispute Resolution

21.4.1 Any dispute in relation to any decisions made by a Party to this Code under Clause 14 will be resolved in accordance with the procedures outlined in the contract between that Party and other party(s) involved in the dispute.

22 Administration of the Code

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

22.2 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.

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

APPENDIX 1: ADDITIONAL OBLIGATIONS FOR SPECIFIC MESSAGING SERVICES

1 Print, WAP & Web-based Advertising

- 1.1 Price point information must be prominent and visible to readers. For Standard Charge Messaging Services, the phrase 'texts cost no more than the Standard Charge' should be used.
- 1.2 For print advertisements spanning more than one page the cost information must be on the first page.
- 1.3 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.

2 Voiceover and Virtual Chat

2.1 Voiceover material

- 2.1.1 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.

2.2 Virtual Chat Service

- 2.2.1 Advertising for Virtual Chat Services should specify:
 - a. Limits to minimum user age, or Age Restricted if that applies;
 - b. If the services are 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 Appendix 1 Clause 5 (User safety);
 - e. Specific warning of the risks of disclosing contact details;
 - f. Clear communication of the cost to send and receive Messages; and
 - g. Ensure that publicly available elements of the Service do not contain contact details, addresses or any other means of direct contact.

3 Virtual Chat Services including Opt-Out

- 3.1 In addition to the general requirements set out in the main body of the Code, Premium and Premium Subscription Chat Services must include the following additional Messages:
 - a. Warnings must be provided to new Customers concerning the dangers of disclosing personal details in the Virtual Chat Service, and advising against doing so; and
 - b. Warnings must be given to new Customers about the potential dangers of Age Restricted services.
- 3.2 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
- 3.3 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

- 3.4 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.
- 3.5 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.
- 3.6 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.

4 Video Services

- 4.1 **Video Services must include the following information and may be provided after the Customer has initiated the Video Service, but must be provided before the Video Service is engaged:**
 - a. Notification of whether the A2P SMS Partner can see the Customer; and
 - b. Notification if the Video Service is recorded and the purpose for which it is being recorded.

5 User Safety and Risk Assessment

- 5.1 **User Safety and Risk Assessment for Virtual Chat services, Age-Restricted and Contact and Dating Services**
 - 5.1.1 All Virtual Chat Services must comply with appropriate safety measures as required by this Code.
 - 5.1.2 A2P SMS Partners:
 - 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.
 - 5.1.3 Prior to implementation A2P SMS Partners 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 18. These measures include:
 - a. Mechanisms to prevent access from users under 18;
 - 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; and
 - e. Measures to allow users to report on inappropriate content or communication.
 - 5.1.4 Content Providers of Virtual Chat services must take all reasonable steps to prevent access by users under 18 years of age. Advertising for the service should not be placed in media, where the target audience is below 18 years of age.
 - 5.1.5 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.
 - 5.1.6 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.
 - 5.1.7 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.

- 5.1.8 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.
- 5.1.9 Virtual Chat Services must employ mechanisms that ensure that users under the age limit for the particular service are detected and removed.
- 5.1.10 User behaviour in Virtual Chat service, which may be illegal under New Zealand criminal law, such as grooming people under 16 for sex (refer clause 131B of the Crimes Act 1961) or in breach of the Harmful Digital Communications Act 201, will be reported to the Police.

6 Additional Service Operation Requirements

6.1 Virtual Chat

- 6.1.1 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;
 - c. Operator Messages must always be sent in reply to Messages sent by a Customer; and
 - d. Operators must not initiate new communication with users to stimulate Message activity.
- 6.1.2 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.
- 6.1.3 Under an operator chat service model a Customer must not be able to connect and talk with another Customer.
- 6.1.4 All Messages sent into the mobile Chat system are directed to a moderator.
- 6.1.5 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.

6.2 Contact and Dating Services

- 6.2.1 A2P SMS Partners who operate Contact and Dating 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.

6.3 Betting Tipster Services

- 6.3.1 A2P SMS Partners 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.
- 6.3.2 A2P SMS Partners must make clear that opinions on particular selections given in Messaging Services or promotional material are opinions and not statements of fact.

6.4 Advice Services

- 6.4.1 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.

6.5 WAP Messaging Services

- 6.5.1 WAP Messages may be used for both marketing Messages and content delivery.
- 6.5.2 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 clause E of this Code.
- 6.5.3 WAP Messages used for marketing Messages must include details of the 'STOP' command.
- 6.5.4 A2P SMS Partners 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 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 RSP on request;
 - c. Any website linked to such a WAP Push Message includes a link enabling the Customer to opt-out of marketing.

6.6 MMS Messaging Services

- 6.6.1 MMS services may be used for both marketing services and content delivery ensuring that the content is supported across the majority of the intended handsets;
- 6.6.2 The content must be suitable for those aged 18 years or younger unless it is an Age-Restricted Service in which case the provisions of Clause 4.4 of this Code apply.
- 6.6.3 The content should be delivered in a way that allows the Message to be saved.

APPENDIX 2: CODE COMPLIANCE FRAMEWORK SELF CERTIFICATION REQUIREMENTS

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

- a. Clause 3.3 regarding Customer information about Messaging Services;
- b. Clause 4 regarding general Advertising and Promotion;
- c. Clause 5 regarding Customer Consent and Initiation;
- d. Clause 17 regarding Termination of Services;
- e. Section C regarding Complaints handling; and
- f. Sections D & E regarding Subscription-based Messaging Services.

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

APPENDIX 3: EXAMPLES OF RESTRICTED CONTENT

1.1 Limitations of Examples of Restricted Content

The examples of Restricted Content below are 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 of Film & Literature Classification or current laws or statutory definitions.

1.2 Examples of Restricted Content

Language: Frequent use of highly offensive language or explicit sexual references.

Nudity: Nudity depicting male or female genitals or female nipples, whether or not such genitals or nipples are real.

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.

Violence: Violence which dwells on the infliction or intended infliction of pain or on injuries or death or depictions of sexual violence. In respect of mobile games in particular:

- a. Violence towards realistic depictions of humans or realistic depictions of animals such as scenes of dismemberment, torture, sadism and other types of excessive violence; and
- b. Graphic, detailed and sustained violence towards realistic depictions of humans or realistic depictions of animals or violence towards vulnerable or defenceless humans or animals.

Drug use: Depictions of illegal drug taking or solvent abuse or instructive details on illegal drug taking or manufacture of drugs or solvent abuse.

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.

Cruelty: Depictions of mental or physical cruelty. Imitable techniques:

- a. Dangerous combat techniques such as ear-claps, head-butts and blows to the neck.
- b. Instructive details on obtaining or manufacturing weapons, such as knives, firearms or bombs.
- c. Instructive details of techniques for use in the commission of a criminal offence.

Depictions of suicide:

Instructive details of harmful body modification techniques (such as tattooing, body piercing, branding, scarification, cosmetic surgery).

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: SHORT CODE PROVISIONING FORM

This form is to be used unless there is bilateral agreement between RSPs and SMS Partners.

#	INFORMATION REQUIRED	RESPONSE
1	A2P SMS Partner company	
2	A2P SMS Partner contact details	
3	A2P SMS Partner's platform(s) being used?	
	END CUSTOMER DETAILS	
4	Company name of end customer	
5	Type of enterprise (end customer)	
6	Physical address of end customer	
7	Phone number of end customer	
8	Local New Zealand 0800 assistance number (if available)	
9	Email address of end customer	
10	Website URL of end customer	
	MESSAGE DETAILS	
11	Description of the service	
12	Type of Messaging	
13	Preferred Start Date	
14	Preferred End Date	
15	How does subscriber opt-in to the service?	
16	How does the subscriber opt-out of the service?	
17	Examples of MT content	
18	Examples of reply from subscriber (MO content)	
19	How is the service advertised?	
20	Are any prizes offered in this service?	
21	Is this service for charity?	
22	What weekly volumes are expected (per week)?	
23	What would be the peak volumes (per hour)?	
	DETAILS OF SHORT CODE REQUESTED	
24	Short Code number requested	
25	Is this a New Code order or a Change to an Existing Code or Migration?	
26	Standard Rated or Free To End User or Other?	
27	Is the Short Code required from all operators?	
28	If Standard Rated, detail compliance with s11(2) UEMA & Clause 21.5.4 of the New Zealand TCF Code.	
29	Has the end customer been advised of TCF rules and regulations and agreed to adhere to these rules and regulations to the best of their ability?	

APPENDIX 5: QUICK REFERENCE GUIDE

Key Elements for Advertising, Promotion and Messages

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

Key:

P = is applicable

- Not applicable

+ = may be applicable

Clause	Subscription		Non-Subscription	
	Premium (exc Std Charge)	Non-Premium	Premium (exc Std Charge)	Non-Premium
Express Consent	P	-	P	-
Inferred Consent	-	P	-	P
ADVERTISING & PROMOTION				
Short Code Number/Name of Service	P	P	P	P
Price point information	P	P	P	P
Frequency of Messages (or event trigger)	P	P	P	-
The noun 'subscription' or the verb 'subscribe'	P	P	-	-
Any initial sign-up cost	P	P	-	-
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	P	✓	P	✓
Terms & Conditions (if applicable)	✓	P	P	P
Opt-out Cost	✓+	✓	-	-
MOBILE MESSAGES INFORMATION TO CUSTOMERS – SUMMARY OF KEY ELEMENTS				
Request Subscription Message	✓	✓+	-	-
Commence with the phrase 'FreeMsg'	✓	-	✓	-
Service name (description of service)	✓	-	-	-
Subscription service cost	✓	-	-	-
Frequency of Messages (or event)	✓	-	-	-
How to subscribe	✓	-	-	-

Clause	Subscription		Non-Subscription	
	Premium (exc Std Charge)	Non-Premium	Premium (exc Std Charge)	Non-Premium
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.	-	-	-	-
Confirmation of Subscription Message:	✓	+✓	-	-
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.	-	-	-	-
Service Operation – Messages to Customers	✓	✓	✓	-
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.	✓	✓	✓	✓
\$30 Expenditure Notifications	✓	-	✓	-
Commence with the phrase 'FreeMsg'	✓	-	✓	-
\$30 spend details	✓	-	✓	-

Clause	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	-	-	✓	✓
30-Day Subscription Reminder	✓	-	-	-
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	-✓	-	-	-
Unsubscribed Confirmation Message (where opt-out received via mobile channel)	✓	✓	-	-
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.	-	✓	-	-