

## SPECIFIC TERMS AND CONDITIONS FOR INTERNATIONAL BULK SMS ("IBS")

The Bulk Messaging Services ("Service") is made available by Celcom to the Customer subject to these specific terms and conditions for the Service ("Specific Terms and Conditions for IBS" or "STC for IBS") which shall always be read together with the General Terms and Conditions for Celcom Enterprise Solutions ("GTC") published on Celcom's Website (<https://business.celcom.com.my/>) as of the Effective Date (as defined herein). Nothing in this STC for IBS shall be construed as limiting any other rights Celcom may have under the Agreement unless specifically stated otherwise. The Agreement shall come into effect on the date of execution of the SAF by the Customer ("Effective Date") and shall continue to be in force until terminated or expires in accordance with the Terms and Conditions.

### 1. Definitions

In this STC for IBS, unless the context otherwise requires, the capitalized terms have the meanings assigned to them below and in the GTC.

**"Authorized Traffic"** refers to the Application-to-Person (A2P) messages transmitted solely and strictly from International Source to the Subscribers;

**"Authorized Entity"** refers to either one of the followings: (a) a body of corporation, company or an entity founded and registered outside of Malaysia; or (b) local branches, outlets and/or subsidiaries of international corporation and/or institutions duly registered under the Malaysian Companies Act 2016;

**"Bulk SMS"** means the short messaging service ("SMS") disseminated in large numbers via short code(s) specified in SAF for delivery to Subscribers' mobile devices or terminals which will be used by the Customer for the purpose of mobile marketing and notifications only. For avoidance of doubt, the short code(s) assigned to the Customer belong to Celcom;

**"Celcom's Service Delivery Platform" or "Platform"** means Celcom's digital wireless network, servers, platform, hardware, software and/or any other equipment which Celcom uses in connection with the Service;

**"Charges"** means charges for the provision of the Bulk SMS by Customer to Subscribers as prescribed in the SAF and which are payable by the Customer to Celcom;

**"Commencement Date"** means the date of commencement of the Service as specified in the SAF;

**"Complaint"** means any complaint made in relation to the provision of the Service by the Customer whether by the Subscribers or by any lawful, regulatory, governmental or statutory body, including but not limited to MCMC against the Customer;

**"Content Code"** means the Malaysian Communications and Multimedia Content Code including any sub-codes and guidelines, as amended or revised from time to time;

**"Commission Determinations"** means the Commission Determinations prescribed under Chapter 2 of Part V (Determination) of the Communications and Multimedia Act 1998 including but not limited to Commission Determination on the Mandatory Standards for the Provision of Mobile Content Services and Commission Determination on the Mandatory Standards on Quality of Service (Public Cellular Service);

**"Customer"** refers to the definition prescribed in the General Terms and Conditions for Celcom Enterprise Services

**"General Consumer Code"** means the General Consumer Code of Practice for the Communications and Multimedia Industry in Malaysia, as amended or revised from time to time;

**"HTML"** means Hyper Text Markup Language;

**"International Source"** refers to the source of Bulk SMS traffic which fulfills the following criteria: (a) originating from outside the geographical boundary of Malaysia; or (b) originating from within the geographical boundary of Malaysia but is transmitted for the benefit of international brands;

**"MO"** means mobile originating;

**"MT"** means mobile terminating;

**"Monthly Report"** means monthly report produced by Celcom for the purpose of payment of Charges or any other Fees as may be determined by Celcom from time to time;

**"Customer's Clients"** means any third party authorized by the Customer through contractual relationship to use the short code(s) assigned to Customer by Celcom under this Agreement as a channel of broadcast of Bulk SMS to the Subscribers for the purposes of marketing and notification in so far as allowed by MCMC. The third party must be an Authorized Entity;

**"Customer's Service Delivery Platform"** means the Customer's digital wireless network, platform, servers, hardware, software and/or any other equipment which the Customer uses in connection with the Service;

**"SAF"** means service agreement form for the Service(s) subscribed by the Customer and executed by the Parties;

**"Service"** refers to International Bulk SMS ("IBS"), which enables the Customer to disseminate Bulk SMS to the Subscribers or the Customer Client's Subscribers;

**"Subscribers"**: (a) for International Bulk SMS, means Celcom customers (any legal entity or natural person) who subscribe to Bulk SMS broadcast from the Customer or Customer's Clients;;

**"Subscribers' Personal Data"** means any data relating to the Subscribers, including but not limited to the Subscribers' name, phone number and any other data capable of identifying the Subscribers;

**"SMS Pull"** means SMS initiated by the Subscribers;

**"SMS Push"** means SMS initiated by the Customer; and

**"WAP"** means wireless application protocol.

## **2. Period of Agreement**

2.1 The Customer agrees to subscribe to the Service for a minimum subscription period as specified in the SAF ("Minimum Subscription Period") commencing from the Commencement Date. Upon expiry of the Minimum Subscription Period and provided that the Customer is not in breach of any terms of the Terms and Conditions, subscription to the Service will be automatically renewed continuously for a subsequent periods of one (1) year each ("Extended Subscription Period") until and unless otherwise terminated in accordance with the Terms and Conditions. Service Period refers to the Minimum Subscription Period and all Extended Subscription Period(s).

## **3. Provision of Service**

3.1 The Service will be provided to the Customer using Celcom's Service Delivery Platform as specified in the SAF.

- 3.2 Unless otherwise provided in the Agreement, the provision, receipt and use of the Service and Celcom's Services are non-exclusive and Parties may enter into similar arrangements with third parties.

#### **4. Fees, Charges and Payment**

- 4.1 Upon execution of the SAF by the Customer, the Customer shall pay to Celcom a non-refundable one-time Activation Fee, where applicable. During Service Period, Customer shall pay the Monthly Subscription Fee, Charges and other fees and charges, if any, (collectively "Fees") as specified in SAF.
- 4.2 The Bulk SMS detailed records will be included in the Customer's Bill.
- 4.3 In the event of termination of the Agreement, Customer's deposit (if any) shall not be refunded by Celcom but shall be applied to set-off any outstanding amount due from the Customer.
- 4.4 The Fees and Charges shall be paid by the Customer to Celcom within sixty (60) days from the date of invoice.
- 4.5 The Customer shall have to meet the minimum numbers of SMS per month as specified in the SAF ("Minimum Commitment") in order to enjoy the reduced rate prescribed in the SAF. Failing which the normal rate shall apply and invoice will be issued accordingly.

#### **5. Monthly Report**

- 5.1 Celcom shall provide the Customer with the Monthly Report containing logs generated from Celcom's data which indicate the volume of any Bulk SMS transmitted by Celcom to the Subscribers on the fourteenth (14<sup>th</sup>) day of the following month, either successfully delivered or unsuccessfully delivered.
- 5.2 The Monthly Report shall be final, binding and conclusive and shall be the only report used to settle all payment payable by Customer to Celcom under the Agreement.
- 5.3 The Customer shall, if requested, provide Celcom with its monthly transactional report of the Service no later than seven (7) days from the date of request.

#### **6. Service Delivery Platform**

- 6.1 Celcom shall provide Customer with access to Celcom's Service Delivery Platform so as to enable Customer to connect to Celcom's Service Delivery Platform to ensure that it functions and interfaces properly with Celcom's Service Delivery Platform.
- 6.2 The Customer shall be solely responsible for and shall at its own expense establish, operate and maintain the Customer's Service Delivery Platform to enable it to connect to and integrate with Celcom's Service Delivery Platform and to ensure it functions and interfaces properly with the Celcom's Service Delivery Platform at all times for the purpose of providing the Bulk SMS contemplated under this Agreement.
- 6.3 The Customer shall ensure that all equipment, software and facilities used in the Customer's Service Delivery Platform shall be in accordance with rules, regulations and technical requirements as may be specified by Celcom from time to time.
- 6.4 The Customer shall, at Celcom's request, provide documents detailing the type and specifications of the Customer's Service Delivery Platform no more than five (5) days from the date of the request.
- 6.5 In the event of Celcom upgrading Celcom's Service Delivery Platform or part thereof ("Celcom's Upgraded Service Delivery Platform") which as a result may require an upgrade on the Customer's Service Delivery Platform, Celcom shall provide prior written notice which shall not be later than thirty (30) days ("Upgrade Notice") to the Customer and the Customer shall upgrade Customer's Service Delivery Platform correspondingly to enable Customer's Service Delivery Platform to continue to connect and integrate with Celcom's Upgraded Service Delivery Platform.
- 6.6 In the event Customer elects not to upgrade the Customer's Service Delivery Platform, the Customer shall, within fourteen (14) days from receipt of Upgrade Notice, notify Celcom of its intention not to upgrade. In the event that the provision of the Service is interrupted or affected in any way or if it is in Celcom's opinion that Celcom is not able to provide the Service properly or efficiently as a result of the Customer's election not to upgrade the Customer's Service Delivery Platform, Celcom: (a) shall not be responsible or held liable to the Customer in any manner whatsoever; and/or (b) may without prejudice to any other rights and remedies Celcom may have under this Agreement, terminate this Agreement immediately without any prior notice to the Customer.

## **7. Service Delivery Platform Capacity**

- 7.1 The Customer shall as soon as it is aware, inform and furnish details to Celcom of any expected increase in transaction volume that is likely to be substantially higher than the average monthly transaction as per Celcom's record. Service that generate high transaction volumes within a limited time including but not limited to voting, polling and contests in collaboration with or in connection with television or radio shows, shall not be carried out without a prior written agreement from Celcom.
- 7.2 Celcom may at any time independent of any earlier transaction volume forecast made, request additional or new transaction volume forecast from the Customer. Such requests shall be fulfilled within ten (10) days from the request date.
- 7.3 The Customer shall ensure that the capacity and performance of the Customer's Service Delivery Platform are able to meet the expected increase in transaction volume.
- 7.4 The Customer shall at Celcom's request provide a document detailing the capacity and performance specifications of its equipment. The Customer shall fulfil such request within ten (10) days from the said request..

## **8. Service Delivery Platform Security**

- 8.1 The Customer acknowledges that since the Service is provided using and/or connected to Celcom's Service Delivery Platform, it shall at all times comply with any instruction issued by Celcom from time to time and shall ensure that the provision of the Service does not interfere, disturb or breach the security and integrity of Celcom's Service Delivery Platform.
- 8.2 If any interference, disturbance or breach the security and integrity of Celcom's Service Delivery Platform occurs and originates from the Customer's Service Delivery Platform, the Customer shall be fully responsible for the same and shall immediately take action so as to remedy the said interference, disturbance or breach of security. If the Customer is not able to remedy the said interference, disturbance or breach, the Customer shall immediately notify Celcom of the same and shall promptly commence work with Celcom to resolve the interference, disturbance or breach.
- 8.3 Without prejudice to Celcom's other rights to recover damages or obtain further relief against the Customer, all costs arising out of or in connection with the works required for resolution of the interference, disturbance or breach shall be borne by the Customer.

## **9. Customer's Obligations**

- 9.1 The Customer shall when required by Celcom and upon giving Customer fourteen (14) days' notice, submit to Celcom all communication scripts, including but not limited to SMS scripts, of the Bulk SMS to the Subscribers.
- 9.2 The Customer undertakes that it shall implement terms of use on the Customer's Clients that are consistent with the Terms and Conditions (where applicable) and the Customer shall:
  - (a) only send the Bulk SMS to Subscribers who have agreed to receive the quantity, frequency and types of Bulk SMS ("opt-in") that is those who initiate the purchase or the subscription of the Bulk and who have been informed of their rights to and the process for opting out from receiving future Bulk SMS;
  - (b) ensure that the Subscribers are informed of and provided with obvious and clear means of opting out from receiving future Bulk SMS if they do not wish to continue receiving such messages ("opt-out");
  - (c) cease to provide the Bulk SMS to Subscribers who no longer wish to receive the Bulk SMS as soon as possible or in any event no later than twenty-four (24) hours of the Customer or Celcom receiving a written request to do so failing which Celcom shall withdraw the Subscribers' name and number from Celcom's Service Delivery Platform;
  - (d) ensure that such Bulk SMS transmitted does not contain any messages the Subscribers did not specifically request for including but not limited to Inappropriate Content;
  - (e) in each Bulk SMS transmitted:
    - (i) inform the Subscribers the author, source and/or sender of the Bulk SMS;
    - (ii) clearly describe any applicable price information for the Bulk SMS; and
    - (iii) provide a valid contact number in the Bulk SMS text body in to enable the Subscribers to contact the Customer and/or the author, source and/or

supplier of the Bulk SMS as and when needed;

- (f) provide only the necessary Service as opted in by the Subscriber and ensure that the provision of the Service is relevant and useful to the Subscribers;
  - (g) provide assistance to Celcom from time to time in relation to technical, administrative and service oriented issues relating to the Service;
  - (h) provide necessary support and adhere to Celcom's request for support in carrying out its obligations under this Agreement not more than two (2) days from the date of such request in writing. The request can be made by Celcom at any time whenever deemed necessary;
  - (i) ensure that all Bulk SMS transmitted comply with all applicable laws, ordinances, codes rules, regulations, guidelines, notices, instructions, directives, directions and determinations of all the relevant lawful, regulatory, governmental or statutory authority including but not limited to the CMA, General Consumer Code, Content Code and Commission Determinations or with any notices, instructions, guidelines or directives given by Celcom in connection with the Service from time to time. Such applicable laws, codes or regulations shall include those relating to Inappropriate Content or any other matter which in the reasonable opinion of Celcom may adversely affect the use of the Service as a whole;
  - (j) ensure that all Bulk Message transmitted comply with any notices, instructions, guidelines or directives given by Celcom in connection with the Service from time to time;
  - (k) ensure that the Service is provided in accordance with the highest standards of professionalism;
  - (l) when requested by any lawful, regulatory, governmental or statutory authority, promptly provide or disclose the requested information to the respective authorities and/or bodies in relation to the Service. In the event that the Customer is requested to disclose information by Celcom in relation to the Service, the Customer shall provide and disclose the same information to Celcom;
  - (m) ensure that only authorized personnel will have administrator privilege to manage the Service on Customer's end. Customer further acknowledges that any act or omission done by the administrator shall be considered as done by the Customer and Customer therefore shall be responsible for the same;
  - (n) address all Complaint(s) and/or queries received from the Subscribers in respect of the Bulk SMS immediately and resolve the Complaint(s) and/or queries within three (3) days. In the event the Complaint(s) and/or queries are escalated by Celcom to the Customer to resolve, the Customer shall provide Celcom with the status of the Complaint(s) and/or queries within three (3) days and where requested by Celcom, the Customer shall provide Celcom with sufficient details of the Complaint(s) and/or queries;
  - (o) ensure that the Bulk SMS is provided with minimal disruption to the Subscribers;
  - (p) maintain proper and accurate records relating to the Service, if any, under this Agreement during the Term of this Agreement and for the duration required by law and shall at the request of Celcom provide to them, copies of such records;
  - (q) assist Celcom in providing support services to the Subscribers with respect to the use of the Service, including but not limited to call centre services;
  - (r) evaluate requests from Celcom to provide new features or facilities through developing Customer's equipment and to use its best endeavours to provide such new features and facilities to the Subscribers; and
  - (s) ensure that the Bulk SMS provided shall be of good quality measured in terms of ensuring that: (i) the content shall be updated at all times; (ii) the Bulk SMS shall be of value to the intended Subscribers; (iii) the Bulk SMS shall not be delivered more times than what has been requested by the Subscribers; and (iv) the Bulk SMS shall not contain elements of advertisement or solicitation to make purchases without the consent of the Subscribers.
- 9.3 The Customer shall be solely responsible for its contractual relationship with the Subscribers and the Customer's Clients in respect of the use and provision of the Service.
- 9.4 The Customer agrees that Celcom exercises no control whatsoever over the Bulk SMS and is a passive conduit in transmitting and handling the Bulk SMS. The Customer shall bear sole responsibility for: (a) the Bulk SMS transmitted using the Service; and (b) the acts, omissions or breaches of the Subscribers and Customer's Clients with respect to the use of the Service.

## **10. Restrictions on Use of Service**

- 10.1 In addition to the other obligations of the Customer in this Agreement, the Customer shall not, and shall ensure that the Customer's Clients shall not use the Service or permit the Service to be used by the Customer's Clients or any other third party (where applicable): (a) to transmit Bulk SMS containing Inappropriate Content; (b) to transmit Bulk SMS which is harmful to Celcom or will bring disrepute to Celcom; (c) to transmit any Bulk SMS which is from and/or for the benefit and interest of any International Source; and/or (d) as a means of payment of goods and/or services other than payment method

authorized by Celcom.

- 10.2 The Customer shall not: (a) transmit any Bulk SMS to the Subscribers via other local mobile operators' SMS gateway; and (b) transmit Bulk SMS to MSISDN's of other mobile operators of Malaysia and Customer hereby fully indemnify Celcom from any complaint or claim brought by such recipients in this regard.
- 10.3 The Customer agrees and acknowledges that the Service shall only be used by the Customer and the Customer's Clients (where applicable) for the purpose of transmitting Bulk SMS from and/or for the benefit and interest of an International Source via the Authorized Traffic. For the avoidance of doubt, the Customer and the Customer's Clients (where applicable) shall not transmit Bulk SMS from and/or for the benefit and interest of the Prohibited International Brands as per Appendix A to the SAF.
- 10.4 The Customer shall not mask the short code(s) used for the provision of the Service including but not limited to; in the name of any government agency and/or autonomous body and/or high commission and/or any embassy and/or foreign mission and/or other important bodies' names as the sender identity. Customer further acknowledges that any masking of sender identity shall be upon MCMC's approval and consent from Celcom. Customer shall be under the obligation to abide by the rules and regulations imposed by relevant lawful, regulatory, governmental or statutory authority in relation to masking of sender identity. Celcom shall not be liable for any issues arising from Customer's non-compliant of this clause.

## **11. Consequences of Breach**

- 11.1 In the event that the Customer is in breach of Clauses 9 and 10 of this STC or any such breach that may result in disputes and/or Complaint(s) from any lawful, regulatory, governmental or statutory authority or the Subscribers and without limiting other rights Celcom may have under this Agreement, the Customer shall be liable: (a) to compensate Celcom the amount it has earned by transmitting or authorising transmission of such Bulk SMS for each incident of breach; and (b) to indemnify Celcom for such fines imposed by the lawful, regulatory, governmental or statutory authority including but not limited to MCMC over said breach.
- 11.2 In addition to Clause 11.1 above, Celcom reserves the right to: (a) impose liquidated and ascertained damages ("LAD") of a sum calculated and specified in the SAF or such other sum of damages directly attributable to the Customer to be notified by Celcom from time to time, the sum of which the Customer agrees and acknowledges to be a fair and justifiable estimate of the damages that will be incurred by Celcom; (b) immediately suspend the related short code(s) in accordance with the Complaints threshold specified in Schedule A by giving a written notice to the Customer; and/or (c) terminate the Agreement by giving a written notice to the Customer.
- 11.3 Customer agrees and acknowledges that Celcom has the right to impose the LAD for any breach that has come to Celcom's attention regardless of it being through Complaint(s) received from any third party or through Celcom's own discovery and investigation.

## **12. Celcom's Rights**

- 12.1 Without limiting the other rights Celcom may have under the Agreement Celcom hereby reserves the rights, at its sole discretion:
  - (a) to terminate or withdraw any one or more of the short code(s) under the Service without compensation or being liable to the Customer or any third party, and without assigning any reasons by giving the Customer thirty (30) days prior written notice, and shall not be liable to provide the short code(s) for provision of the Service after the expiry of that period;
  - (b) to audit at no additional cost to Celcom, amongst others, the Service, Service transactions, Customer's Service Delivery Platform, the systems and business processes employed by the Customer or the Customer's Clients (as the case may be) for purposes of ensuring the Customer's compliance to the Agreement. The Customer agrees to provide access and to co-operate with Celcom, at no additional cost to Celcom, in respect of any such audits conducted, including where the audits stem as a result of the authorities' right to audit Celcom and its services;
  - (c) to impose Charges for the provision of Bulk SMS upon the successful delivery;
  - (d) to provide any information including but not limited to the Service, MSISDN's and/or details of the service delivery platform and/or details of the Subscribers to the law enforcing agencies as and when required and/or requested by any lawful, regulatory, governmental or statutory authority; and
  - (e) to revise and/or increase the Bulk price rates as and when required with giving the Customer thirty (30) days prior written notice.

## **13. Relationship Between Parties**

- 13.1 This clause sets out the relationship between Celcom, the Customer, Customer's Clients (where applicable), and the Subscribers.



- 13.2 In entering into contracts with the Subscribers and Customer's Clients (where applicable) in relation to the Service, the Customer shall ensure that all such contracts adequately address the Customer's obligations to Celcom as set out in this Agreement.
- 13.3 In the event of any Customer's Clients breaching any provisions of the agreement between Customer and Customer's Client rendering breach of this Agreement by the Customer, and Customer has notice of such breach or ought reasonably to have notice of such breach, the Customer hereby undertakes that it shall immediately discontinue providing and enabling the Service to the respective Customer's Clients.
- 13.4 The relationship between Celcom and the Subscribers is separate, distinct and independent from the relationship between Celcom and the Customer, between the Customer and the Subscribers, and between the Customer and the Customer's Clients (where applicable). In these premises, Celcom shall not be liable for any loss or damage, cost or expense, howsoever incurred by the Customer in respect of or arising out of: (a) any claim by the Customer's Clients and/or Subscribers against the Customer; (b) any claim between the Customer and any of the Customer's Clients; or (c) any claim between the Customer and the Subscribers, relating to the Service or otherwise.

#### **14. Subscribers' Personal Data and Use of Personal Data**

- 14.1 Celcom may from time to time, request for the Customer's Subscribers database related to the Service pursuant to any Complaint or as required by law or any relevant authority, and the Customer shall provide Celcom with the database within the prescribed time in such request.
- 14.2 The Customer shall not cause, permit or allow the Subscribers' Personal Data or any other data capable of identifying the Subscribers contained in Celcom's log or otherwise to be copied, duplicated, transcribed, sold to, revealed to, used for any purposes other than as prescribed under the Agreement, or used by any other person or entity without the consent of the Subscribers.
- 14.3 The Customer agrees to notify Celcom immediately of any unauthorized possession, use or disclosure of Subscribers' Personal Data by any person or entity not authorized by this Agreement to have such possession, use or knowledge. The Customer will promptly furnish Celcom full details of such possession, use or knowledge and will cooperate fully with Celcom in any litigation against third parties deemed necessary by Celcom to protect the Subscribers' Personal Data.

#### **15. Customer's Warranties, Representations and Undertakings**

- 15.1 The Customer hereby acknowledges, warrants, represents and undertakes for the benefit of Celcom as follows:
  - (a) it has obtained the necessary license, right and/or approval by the relevant lawful, regulatory, governmental or statutory authority which regulates the Service and the distribution of the Service, and shall comply with all applicable laws, rules and regulations;
  - (b) the short code(s) used for the provision of the Service remains at all times the property of Celcom and are subject to the terms and conditions of the Agreement and/or other lawful, regulatory, governmental or statutory authority, including but not limited to MCMC, authorized to administer the short code(s);
  - (c) the Customer will not at any time transfer or allow the short code assigned to it by Celcom for the provision of the Service to be transferred to a third party without Celcom's prior written consent;
  - (d) the Customer shall perform the Service under this Agreement in such manner that is in Celcom's best interest as to not adversely affect the reputation and goodwill of Celcom or its business associates or affiliates; and
  - (e) the Customer shall not do any acts, omissions and/or conducts which is in breach of this Agreement.

#### **16. Intellectual Property Rights**

- 16.1 The Customer warrants that the provision and use of the Service including the content of the Bulk SMS conforms to and is in compliance with all laws relating to property and/or proprietary rights including but not limited to Intellectual Property Rights and does not infringe the Intellectual Property Rights of any person or entity.
- 16.2 The Customer warrants that it has been granted the license, right and/or approval to provide the Service and content of the Bulk SMS to the Subscribers by the owners of the Intellectual Property Rights of the Service, appointed collecting societies and/or any person or entity entitled to remuneration for use of the content of the Bulk SMS.
- 16.3 The Customer warrants that it has paid and shall continue to pay all the necessary license fees and royalties to the owners of the Intellectual Property

Rights of the Bulk SMS, appointed organisations and/or collecting societies and/or any person or entity entitled to remuneration for use of the content of the Bulk SMS.

- 16.4 The Customer shall provide to Celcom on a yearly basis or upon request from Celcom proof of evidence that license, right and/or approval has been obtained and all license fees and royalties have been paid to the rightful owners of the Intellectual Property Rights, appointed organisations and/or collecting societies and/or any person or entity entitled to remuneration for use of the Service.
- 16.5 Without prejudice to Celcom's right to defend a claim alleging infringement of the Intellectual Property Rights of a third party, the Customer shall, upon the request of Celcom and at the Customer's expense, conduct the defence of such a claim by a third party which alleges the infringement of the Intellectual Property Rights. The Customer shall not make any admission of guilt or liability on behalf of Celcom without Celcom's prior written approval.
- 16.6 Without prejudice to Celcom's rights under the Agreement, the Customer shall indemnify Celcom in respect of any and all damages, costs and expenses (including but not limited to loss of profit and reasonable solicitor's fees) in connection with any third party claim against Celcom that any of the Bulk SMS provisioned by the Customer or its use infringes any Intellectual Property Rights.
- 16.7 Without prejudice to Celcom's rights under the Agreement, if it is determined by an independent tribunal of fact or law or if it is agreed between the parties to the dispute that an infringement of the Intellectual Property Rights has occurred, the Customer shall immediately and at its sole expense: (a) modify the Service including the content of the Bulk SMS in order to avoid further or continuing infringement of the said intellectual property rights; or (b) remove the infringing elements of the Bulk SMS failing which this Agreement may be terminated in accordance with the Terms and Conditions.

## **17. Limitation of Liability**

- 17.1 Parties agree that each Party's entire liability in contract, tort or otherwise to each other under this Agreement shall not at any time exceed the limit of liability sum specified in the SAF ("Limit of Liability"). The Limit of Liability shall not apply to the extent that the liability may not be limited or excluded under applicable laws. Nothing in the Agreement will limit or exclude the Customer's liability in relation to: (a) damage to Celcom's property, if any, by the Customer and all costs related thereto; (b) Customer's fraud, fraudulent misrepresentation, gross negligence, violation of applicable laws, or willful default; (c) Customer's breach of its obligations pertaining to Celcom's cyber security requirements, personal data protection or confidentiality; (d) Customer's indemnity obligations; and (e) Customer's payment obligations.

## **18. Disclaimer of Liability against the Customer**

- 18.1 The Customer is responsible for implementing sufficient procedures and checkpoints to secure its Customer's Service Delivery Platform and ensuring that it satisfy the Customer's particular requirements for accuracy of data input and output, and taking reasonable precautions to ensure that whatever method selected by the Customer for its use is free of viruses, hacking, spamming, worms, trojan horses and other items of a destructive nature. Celcom shall not be responsible for the aforementioned matters.

## **19. Indemnity**

- 19.1 The Customer's indemnity obligations under the Agreement shall extend to any claims brought by Customer's Clients (including any of its related corporations as defined under the Companies Act 2016) and/or Subscribers against Celcom, and shall include without limitations claims arising out of or in connection with the General Consumer Code and Content Code.

## **20. Suspension**

- 20.1 Without limiting other rights Celcom may have under this Agreement, Celcom may suspend immediately, in whole or in part, with or without notice, the Service if:
  - (a) the Customer does not comply with any instruction or directive issued by Celcom from time to time in compliance with the relevant laws;
  - (b) it is necessary to address emergency repairs on Celcom's Service Delivery Platform or threats or actual breach of the security of Celcom's Service Delivery Platform or other circumstances beyond Celcom's control;
  - (c) the number of Complaint(s) exceeds the threshold stipulated in Schedule A or as determined by Celcom from time to time;



- (d) the Customer or any of its agents, officer, directors or employees has committed any act of fraud, misrepresentation, negligence or dishonesty (including the provision of any false or misleading information or the making of any misrepresentation to Celcom or the Subscribers in connection with the Service); and/or
  - (e) the Customer or any of its agents, officers, directors or employees has committed any act or omission which may adversely affect Celcom.
- 20.2 Celcom may restore the suspended Service: (a) upon Celcom's receipt of instruction from the lawful, regulatory, governmental or statutory authority having jurisdiction over the matters herein; and/or (b) for suspension necessitated by Clause 20.1(c) above, upon the Customer making payment of the LAD specified in the SAF or such other damages directly attributable to the Customer to be notified by Celcom from time to time.
- 20.3 A Reconnection Fee at the amount specified in the SAF is required for reconnection of each short code upon the uplifting of any suspension pursuant to the Terms and Conditions.

## **21. Termination**

- 21.1 Either Party shall be entitled to terminate any short code or this Agreement by giving at least thirty (30) days prior written notice to the other Party without assigning any reason whatsoever. Celcom shall not be liable for any compensation and damages towards the Customer in the event Celcom exercises its right to terminate for convenience in accordance with the Terms and Conditions. However, termination by the Customer prior to the expiry of the Minimum Subscription Period will always be subject to a Termination Fee as prescribed in the SAF.
- 21.2 Without limiting other rights Celcom may have under the Agreement, Celcom reserves the right to immediately terminate this Agreement with notice forthwith if: (a) the Customer ceases to operate as a provider of Bulk SMS or changes substantially the size and/or scope of its business; (b) there is reasonable suspicion of infringement of Intellectual Property Rights of the Service by the Customer; or (c) if the number of Complaint(s) exceeds the threshold stipulated in Schedule A or as determined by Celcom from time to time.
- 21.3 Upon termination of this Agreement: (a) the Customer's access to Celcom's Service Delivery Platform shall immediately cease; (b) the Customer shall remove the Service and disconnect the Customer's Service Delivery Platform from Celcom's Service Delivery Platform immediately; (c) the Customer shall be responsible to settle all outstanding amount due to Celcom in relation to the Agreement incurred up to the date of such termination.

## **22. Third Party Services**

- 22.1 In the event the Customer allows and authorizes a third party including but not limited to the Customer's Clients to use the Service, either in whole or in part relating to this Agreement, provided always that Celcom's prior written approval shall be obtained and Celcom shall be notified about the details and status of such arrangement at all times, the Customer shall be responsible for the performance, acts and/or omissions of the third party as if the performance, acts and/or omissions are of its own performance, acts and/or omissions.

## **23. Maintenance Support and Problem Reporting**

- 23.1 For any complaints or queries, Customer may contact the following dedicated customer service emails relevant to the Celcom's Service Delivery Platform used in the Service subscribed by the Customer:

Primecast Platform: [ithelpdesk@celcom.com.my](mailto:ithelpdesk@celcom.com.my);

## **24. Anti-Bribery And Anti-Corruption**

- 24.1 The Customer shall comply with Celcom's Anti-Bribery and Anti-Corruption ("ABAC") Policy and ABC Terms and Conditions ("ABAC T&C") as published on Celcom's website at <https://www.celcom.com.my/about-celcom/governance> or other uniform resource locator ("URL") as communicated by Celcom from time to time. Reference to 'Counterparty' in the ABAC T&C shall refer to the Customer. In the event of any inconsistency between the provisions of the ABAC T&C and the provisions of this Agreement, the former shall prevail to the extent of such inconsistency.

## **25. Stamp Duty**

- 25.1 The Parties shall bear their respective costs and expenses in connection with and incidental to the preparation, execution, delivery and completion of this Agreement, including but not limited to all legal fees and out-of-pocket expenses incurred. All stamp duties payable on this Agreement shall be borne by the Customer.

**SCHEDULE A**  
**SUSPENSION DUE TO COMPLAINT(S)**

1. The The Customer agrees and acknowledges that Celcom may suspend or terminate Service or the related short code(s) according to the number of Complaint(s) received as follows:

| <b>Suspension</b> | <b>Source of registered Complaint</b> | <b>No. of Complaint Per Month*</b> | <b>Period of Suspension (Months)</b> |
|-------------------|---------------------------------------|------------------------------------|--------------------------------------|
| 1st               | Customer Service (CS)<br>MCMC**       | 30<br>2                            | 2                                    |
| 2nd               | Customer Service (CS)<br>MCMC         | 30<br>2                            | 3                                    |
| 3rd               | Customer Service (CS)<br>MCMC         | 30<br>2                            | Permanent Suspension (Termination)   |

\*whichever comes first

\*\*refers to MCMC or other lawful, regulatory, governmental or statutory authority.

Example: Customer subscribes to (3) short codes under this Agreement which are A, B and C. Celcom receives 32 Complaint(s) from Customer Service with regards to short code A in one month. Only short code A will be suspended.

2. Customer further acknowledges that suspension will be uplifted upon the Service Provided having completely served the suspension period and settlement of outstanding LAD imposed by Celcom pursuant to the Complaint(s) received or breach discovered. Notwithstanding the foregoing, the final decision to uplift the suspension shall be subject to MCMC's and Celcom's satisfaction upon investigation.