

## **Terms & Conditions T&C- V125 (Terms & Conditions for Smart Choices)**

### **1. Your Acceptance**

- 1.1. This is an agreement between SmarTone Mobile Communications Limited ("SmarTone" or "the Company") and you ("you"), a user of Smart Choices service ("the Service"). BY USING THE SERVICE, YOU ACKNOWLEDGE AND AGREE TO THESE TERMS AND CONDITIONS. If you do not agree to any of these terms and conditions, you may not use the Service.

### **2. The Service**

- 2.1. The Service is only available to SmarTone's customers who have subscribed to the Company's monthly mobile telephone services (except customers who have subscribed with a business registration or are using SmarTone PayGo).
- 2.2. The Service is currently free to use, but the Company reserves right to make any changes in the future.
- 2.3. Information provided through the Service is for reference only. The Company is not responsible for the accuracy of the information provided. Any products, services, updates, purchases or business transactions executed following the content on the Service are taken at your sole risk. You expressly understand and agree that the Company shall not be responsible for any damages, claims or other liability arising from any such products, services, updates, purchases or business transactions through the Service.
- 2.4. The Company expressly disclaims all warranties of any kind, whether express or implied, including, but not limited to, warranties of title, implied warranties of merchantability, fitness for a particular purpose and non-infringement.
- 2.5. The Company makes no warranty that the content, materials, goods and/or service will meet your requirements, or that your access to the site will be uninterrupted, timely, secure, or error free; nor does the Company make any warranty as to the results that may be obtained from the use of goods or service or as to the accuracy or reliability of any information or content obtained through the Service or that defects in software or hardware problems will be corrected.
- 2.6. This disclaimer of liability applies to any damages or injury caused by any failure of performance, error, omission, interruption, deletion, defect, delay in operation or transmission, computer virus, communication line failure, theft or destruction or unauthorized access to, alteration of, or use of record, whether for breach of contract, tortious behaviour, negligence, or under any other cause of action.
- 2.7. In no event shall the Company, or any person or entity involved in creating, producing or provision of any contents, materials, goods and/or services through the Service be liable for any direct, indirect, incidental, special or consequential damages resulting from the use or the inability to use the Service or for cost of procurement of substitute goods and services or resulting from any goods or services purchased or obtained or messages received or transactions entered into through the Service, including but not limited to, damages for loss of profits, use, data or other intangible losses.
- 2.8. Using the Service will incur data usage. Local data usage will be charged at the Company's standard rate or deducted from your subscribed data plan (as the case may be). Standard roaming data charges will apply while using the Service abroad. If you

have applied for Roaming Data Pack, all data usage will be deducted from the plan.

Please visit

[http://www.smartone.com/jsp/mobile/going\\_abroad/roaming/english/dayplan\\_charges.jsp](http://www.smartone.com/jsp/mobile/going_abroad/roaming/english/dayplan_charges.jsp)

for details.

- 2.9. Usage rules established by the Company relating to the Service may be controlled and modified by the Company for compliance purpose and the Company reserves the right to enforce such usage rules without notice to you.

### **3. Disclaimer of warranties**

- 3.1. The Company will use reasonable efforts to include up-to-date and accurate information on the Service but makes no representations, warranties or assurances as to the accuracy, effectiveness or completeness of the information provided. The Company will not be liable for any errors in, omissions from, or misstatements or misrepresentations concerning (whether express or implied) any such information. The Company shall not be liable for any damages or injury resulting from your access to or inability to access the Service, or from your reliance on any information provided at the Service. The sender of any communications to the Service or otherwise to the Company shall be responsible for all contents and information contained therein, including its truthfulness and accuracy and that such content and information will not infringe any third party's rights.
- 3.2. Users are solely responsible and liable for any loss, damage or injury resulting from your dealings with other users of the Service including advertisers. Your communication or business dealings with other users and/or advertisers found on or through the Service, including payment and delivery of related goods or services, and any other terms, conditions, warranties or representations associated with such dealings, are solely between you and the other user and/or advertiser. The Company is not responsible for the availability, content or services of other third-party providers, online merchants or advertisers that may be linked to or posted on the Service. All personal information you submit through the Service is governed by the Privacy Policy Statement of the Service. The Company may use or copy all other information submitted or communicated by you to or through the Service (except personal data) for any purposes including disclosure to third parties and/or developing, manufacturing and/or marketing goods or services.
- 3.3. The Company does not guarantee or warrant that the data or files that may be downloaded from the Service do not contain destructive features such as viruses, worms or other destructive materials. The Company is not liable for any damages or harm caused by such features. The Company will not have or accept any liability, obligation or responsibility whatsoever for any loss, destruction or damage (including without limitation consequential loss, destruction or damage) however arising from or in respect of any use or misuse of or reliance on the electronic service delivered through the Service.
- 3.4. The Company is not responsible for the content of materials posted on the Service by users and shall not be liable for any infringement of intellectual property rights or any other claims arising out of materials posted by users on the Service.

### **4. Information available through the Service and user submissions**

- 4.1. The information available through the Service, including but not limited to text, photographs, graphics, video and audio content (hereafter referred to as "the

Information") is protected by copyright either on its own, as a collective work or compilation under the copyright laws of the Hong Kong Special Administrative Region and other countries, and is owned or controlled by the Company or the party credited as the provider of the Information.

- 4.2. The Company reserves the right to omit, suspend or edit all information compiled by the Company on the Service at any time in its sole discretion without giving any reason or prior notice. You are responsible for making your own assessment of all information contained on the Service and shall verify such information by making reference, for example, to original publications and obtaining independent advice before acting upon it.
- 4.3. You may not copy, reproduce, distribute, publish, display, perform, modify, transmit, or in any way exploit any part of the Service under the Agreement whether wholly or partially unless with prior written consent of the Company.
- 4.4. By submitting to or posting any Information on the Service, users agree to assign to the Company all of such user's copyright subsisting in such Information and such Information shall be assigned to the Company immediately upon being submitted or posted.
- 4.5. The Company has the right to edit, remove, modify, publish, transmit, and display any submissions you make to the Service including but not limited to any messages and information in relation to sale and/or provision of any products or services.

## **5. Message board**

- 5.1. Users shall not upload, post, transmit, or distribute or otherwise make available on this service any libelous, defamatory, obscene, pornographic, abusive, or otherwise illegal material.
- 5.2. Users agree that they will not threaten or verbally abuse other users, use defamatory or indecent language, or deliberately disrupt discussions with repetitive messages, meaningless messages or spam. Users agree not to use language that abuses or discriminates on the basis of race, religion, nationality, gender, sexual preference, age, region, disability.
- 5.3. Messages that users have uploaded or posted on this service shall not be of any commercial nature.
- 5.4. Any violation of clause 5.1, 5.2 and/or 5.3 may result in immediately and permanently suspended from accessing all or any part of the Service.
- 5.5. Any opinion, comments or information of any person made given or distributed in or through the Service shall not be viewed as endorsed or agreed by the Company or representing the Company's opinions or intentions.

## **6. Hyperlinks**

- 6.1. The Service (and the Third Party's Contents contained in the Services) may contain links (the "Links") to the other website(s), application(s), device(s), system(s) or service(s) platform(s) operated or owned by third party's companies (the "Third Party Platforms"). The Company shall not be responsible or liable for the contents, product/services available at or operation of the Third Party's Platforms, and does not endorse, recommend or warrant (whether express or implied) the contents, products/services or their quality provided at the Third Party Platforms, and you agree to bear the possible risks arising from having access to the Third Party Platforms.
- 6.2. Users shall read the terms of use and privacy policy applicable to such Third Party's Platforms.

- 6.3. Users agree that the Company shall not be responsible or liable for any direct or indirect loss and damage suffered by you due to the availability of the Links, or in connection with any transaction conducted by you (including but not limited to payment and purchase/service order) or any actions taken by you upon your reliance on or use of the Third Party Platforms.
- 6.4. The Service may contain materials contributed by third parties. To facilitate access to information provided by or via third parties, the Service may provide or assist in providing links to external websites through its webpages. The Company states that it has not approved or endorsed the materials contributed by third parties on the Service or any external websites linked to the Service. The provision of any such materials or links to external websites shall not constitute any form of co-operation or affiliation with the Company of any such third parties or external websites. Provision of, or assistance in providing, materials contributed by third parties on the Service or links to external websites gives rise to no statement, representation or warranty, express or implied, that the Company agrees or does not disagree with the contents of any such materials or external websites and the Company will not have or accept any liability, obligation or responsibility whatsoever for any loss, destruction or damage (including without limitation consequential loss, destruction or damage) however arising from or in respect of any use or misuse of or reliance on the contents of any such materials or external websites delivered on or via the Service or inability to use any of them.

## **7. Indemnity**

- 7.1. Users are solely responsible for all claims or demands by any third party for loss or damage of any kind arising in connection with any use of or reliance on any information provided by you at the Service (including without limitation news, messages, photographs, data, statements) or in connection with any dealings with you through the Service. Users agree to indemnify and keep the Company harmless from and with respect to any such claims, loss or damage including without limitation legal fees.

## **8. Intellectual Property rights**

- 8.1. The design of the Service along with any service features (“Applications”) and the trademarks, service marks and logos contained therein (“Marks”) are owned by the Company and is protected by applicable intellectual property laws including but not limited to copyright. Except to the extent permitted by law, you shall not use such Applications and/or Marks in any way whatsoever except for use of the Service. You shall not modify, rent, lease, loan, sell, distribute or create derivative works based on the Applications in any manner.

## **9. Privacy Policy**

- 9.1. Your privacy is important to the Company. The Company has developed a Privacy Policy that covers how it collects, uses, discloses, transfers and stores your information. Please visit [smartone.com/privacypolicyen](http://smartone.com/privacypolicyen) for full details of the Company’s Privacy Policy.
- 9.2. The Company will do its best to keep your privacy safe, but still need your help. Please protect your own personal information carefully.

## **10. Applicable Laws**

- 10.1. You shall comply with the laws of Hong Kong Special Administrative Region that apply to your use of the Service.
- 10.2. You expressly agree to the exclusive jurisdiction for any claim or dispute with the Company or relating in any way to the use of the Service resides in the courts of Hong Kong Special Administrative Region.

#### **11. Limitation of Liability**

- 11.1. The Company shall under no circumstances be liable whether in contract, tort, statute or otherwise (including without limitation for negligence, breach of contract, defamation) for any special, direct, indirect or consequential loss or damage (including without limitation, loss of revenue, loss of data or goodwill) which is suffered, sustained or incurred by you, or any person arising (directly or indirectly) from or out of or relating to the Social Mobile service.

#### **12. The Company reserves the right to revise the terms and conditions of the Service from time to time.**