

## 1. DEFINITIONS

For the purposes of these specific conditions, the following shall mean:

**POST Telecom:** POST Telecom S.A., a société anonyme (public limited company) under Luxembourg law, headquartered at 1, rue Emile Bian, L-1235 Luxembourg, trade and company registration number B 43290, a subsidiary of Entreprise des Postes et Télécommunications (POST Luxembourg), an independent public institution under Luxembourg law, established under the Law of 10 August 1992, headquartered at 8A, Avenue Monterey, L-2020 Luxembourg.

**Contract:** contract between POST Telecom and the content provider. This contract consists of these specific conditions, general conditions applicable to service provision, as well as the SMS-MO Premium order form (to be enclosed with these specific conditions), duly completed by the content provider.

**SMS (Short Message Service):** a short written message sent or received via a mobile telephone.

**SMS-MO (SMS Mobile Originated):** a short written message sent from a mobile telephone.

**SMS-MT (SMS Mobile Terminated):** a short written message received by a mobile telephone.

**SMS-AO (SMS Application Originated):** a short written message billed to the content provider at the time of sending.

**SMS-C (SMS Centre):** short message (SMS) host server for the POST mobile network.

**SMS-Open:** a direct connection between the content provider and the SMS-C of the POST mobile network.

**Dedicated connection:** access to the POST mobile network SMS-C via a leased line.

**Switched ISDN:** access to the POST mobile network SMS-C via an ISDN line on the POST fixed-line network.

**Access via Internet:** access to the POST mobile network SMS-C via Internet TCP/IP by means of a secure protocol (VPN).

**Short code:** a three- to five-digit number accessible from mobile telephones. In order to receive the desired content (information, logo, ring tone, game, etc.), the client will need to send an SMS request to this short code.

**Content Provider:** contracted customer of POST Telecom or of the aggregator and their employees, agents, sub-contractors, consultants of this customer and, more generally, any person acting on behalf of this customer and using the POST mobile network to provide mobile services.

**Aggregator:** a direct customer of POST Telecom, who acts as a technical intermediary between the content provider and POST Telecom for the purposes of providing mobile services.

**User:** a person using and/or purchasing mobile services from the content provider and a valid mobile telephone number (MSISDN) from POST Telecom.

**ILR:** a public institution established under the Law of 21 March 1997 on telecommunications as a national regulatory authority <http://www.ilr.lu>.

**Unsubscription (OPT OUT):** request made by a user to the content provider to unsubscribe from their service or no longer feature in their files, in order not to receive messages or communications from them or the partners with whom they would share this user's information.

**Value-added service (Service – Mobile service):** a service offered by the content provider using the POST Telecom public telecommunications network and enabling the user to obtain information, send information, communicate with other users and make payments for products and/or services. A higher tariff than the normal tariff for local communication traffic must be paid for this service. This indemnity shall be passed on by POST Telecom to the short code holder according to this provision agreement.

**Managed or automated discussion services:** services using personnel (humans) or automated response systems. These are SMS/MMS discussion services which do not establish any direct connection between two or more users who send/receive their SMS/MMS via radio technology and not via a direct connection to the SMSC/MMSC and which are not employed or mandated, directly or indirectly, by the content provider.

**Direct billing:** recourse to POST Telecom to bill for a product or service directly to the user, with their express consent. POST Telecom shall request payment for the product or service from the user and shall respect the procedure implemented and the established payment methods.

**Pay-per-use:** a one-off payment for a mobile service.

**Subscription:** a regular service following the signature of a commitment.

**Publicity materials:** the content provider's brochure, website, mobile site and any other commercial media promoting its products and services.

**Publicity via radio, television, press, magazines, and any other printed media, posters, teletext, websites, mobile sites, etc.**

**Direct marketing practices such as post and email or, more generally, any form of promotion for products or services intended for the user.**

**Service hours:** a minimum of Monday to Friday, 8 consecutive hours between 0600 and 2200, except on official Luxembourg public holidays.

**Competitions:** any competition offering the participant an opportunity or chance to win a prize, gift, good, consumable, invitation to an event, digital or other good, as well as all competitions requiring users to pay and exercise a skill or judgement or to demonstrate their knowledge, shall be considered for the purposes of this contract to be based on chance if the task or question cannot reasonably prevent a significant proportion of participants from receiving a prize, unless the content provider can demonstrate, by means of certification from the national authority, that such a competition excludes any lottery-type processing.

## 2. INTRODUCTION: OPERATION AND PURPOSE OF THE SMS PREMIUM OFFER

2.1. Under the SMS Premium offer, POST Telecom makes an SMS-Open connection and short code available to content providers. Users of the POST mobile network will be required to send an SMS to the short code in order to benefit from the relevant service. The content provider will use the SMS-Open connection to receive the request SMS and send the desired content. The content in question may be sent to the user in various forms (SMS, WAP, Internet, MMS, etc.).

2.2. The content provider chooses the pricing tariff that they wish to apply. POST Telecom shall bill its customers and/or subscribers for the use of the service and then reimburse the content provider based on this pricing tariff.

2.3. The purpose of these specific conditions is to define:

- the conditions and procedures according to which POST Telecom makes a short code and an SMS-Open connection available to the content provider on its network.
- the commitments, rights and obligations of each of the parties.

## 3. INFORMATION ON THE SERVICE

3.1. Information on value-added services must under no circumstances be misleading.

3.2. POST Telecom asks the content provider to describe the service that they wish to offer users, by completing the Premium SMS-MO service order form.

The content provider undertakes:

- to ensure that the Premium SMS-MO service they offer complies with good moral standards and the description given in the order form (type of service,

target users, pricing tariff chosen, service operation and forecast traffic).

- to notify POST Telecom of the service content or any modification thereto, within a minimum of two weeks of launching the service, or of any modification to the service affecting any of the information featuring in the order form.

3.3. The content provider undertakes to provide evidence of the subscription or consent of private users or an MSISDN without delay and upon the simple request of POST Telecom. If no evidence can be provided, all revenue derived from the user or the MSISDN in question may be reclaimed or deducted from the next payment.

## 4. PROVISION AND LAUNCH OF A SHORT CODE NUMBER

4.1. Short codes shall be provided to content providers under the SMS-Open service and within the limit of the available numbers, taking into account the preferences of the content provider and the ILR conditions of assignment. The short code is and remains the property of POST Telecom; POST Telecom reserves the right to modify this short code for technical and/or regulatory reasons and shall give the customer reasonable advance notice of any such modification.

4.2. The content provider must notify POST Telecom at least two weeks prior to the date of commercial launch, in order that POST Telecom may effect the operational validation of the final content of the service.

## 5. CONNECTION TO THE POST MOBILE NETWORK BY MEANS OF AN SMS-OPEN CONNECTION

5.1. POST Telecom undertakes to provide all means necessary, particularly technical, in order that, firstly, users may send SMS to the service offered by the content provider and, secondly, its server may be accessed in order that the content provider may send SMS to users who have requested content.

5.2. In order to implement their service, the content provider must be connected directly to the POST Telecom network by means of an SMS-Open connection. This access may be provided via leased line, ISDN or Internet.

5.3. The content provider shall be responsible for the connection to the POST mobile network SMS-C, which must be made in compliance with the technical specifications for use of the POST Telecom SMS-Open service. In the event of any modification to these technical specifications, POST Telecom shall communicate details thereof to the content provider, who undertakes to comply within a reasonable time. In the event of technical non-compliance of the content provider's equipment, POST Telecom reserves the right to suspend the SMS-Open connection without the provider or users having any claim or right to any kind of compensation in this respect. Marketing of the SMS Open service is subject to the operational availability of the POST mobile network SMS-C. As manager of the SMS-C, POST Telecom shall determine which services are to be supported by this centre, based on its technical and financial possibilities. POST Telecom reserves the right to restrict and/or deny access to the service to certain users in order to protect itself against fraud and/or excessive consumption.

5.4. POST Telecom reserves all rights to introduce and effect improvements and amendments to the SMS-C. It shall strive to guarantee the performance, service quality, availability and reliability of the SMS-C it operates, in order to guarantee delivery of the SMS-Open service according to the legitimate expectations of its customers.

5.5. With the exception of fraud or gross negligence, POST Telecom may not be held responsible by the content provider for any damage caused by the non-availability of the SMS-C or the access lines.

- 5.6. POST Telecom shall determine the price to the content provider of the initialisation of and subscription to the SMS Open service and the price per SMS. These prices may be modified according to the procedures described in the general conditions applicable to POST Telecom telecommunication services.
- 5.7. ISDN communications and internet access are not included in the SMS-Open offer and are therefore additional, to be borne by the client. Similarly, any surcharge levied on SMS received on its network by a national or foreign operator shall be passed on to the content provider where applicable. The following are included in the SMS-Open prices offered by POST Telecom for internet access: access to the SMS-C, but not the fees for access via ISDN or via leased lines.
- 5.8. The transmission and access protocol between the SMS-C and the customer's application shall be defined by POST Telecom. The customer shall be responsible for the installation and configuration of the transmission and access protocols and any related costs.
- 5.9. POST Telecom may not be held responsible for any interruption, whether temporary or permanent, to traffic to foreign operators. Such interruptions may not therefore result in any even partial reimbursement of the subscription.
- 5.10. POST Telecom may not be held liable for poor connections and/or connection failure and/or the content provider's non-compliance with technical specifications.
- 5.11. Furthermore POST Telecom reserves the possibility of making an option available to users who so wish, enabling them to deny access to the service or to any other service available under the SMS Premium offer.
- 5.12. Certain foreign operators only permit SMS to be sent to their clients under certain conditions (SPAM). SMS may only be sent to foreign operators with the agreement of POST Telecom in such cases.

## 6. MESSAGES

- 6.1. The content provider undertakes:
- not to send SMS MT on behalf of the service of a third party content provider by making a POST Telecom short code available to them, without first communicating the contact details of the third party provider to POST Telecom;
  - to send SMS-MT via its service only to users who have formally approved this action;
  - to ensure that SMS-MT made available to the content provider for the provision of its service are used for this purpose alone;
  - to identify the service by indicating the name of the service in all SMS-MT. The name indicated must be the same as that used in any communications relating to this service;
  - to identify itself formally in the SMS-MT, particularly by systematically providing the short code for their service;
  - to assume sole responsibility for all information, service messages or content of whatever nature delivered to POST Telecom customers and/or subscribers via the service;
  - to comply with the laws and regulations in force concerning the content of SMS messages and particularly Article 11 of the Law of 30 May 2005 on specific provisions for the protection of persons with regard to the processing of personal data in the electronic communications sector, concerning the use of automated call systems without human intervention (automated calling machines), fax machines or electronic mail for the purposes of direct marketing without the prior consent of a POST Telecom subscriber;
  - not to disseminate, without the prior written consent of POST Telecom, SMS messages which affect or could affect the SIM card, such as the downloading of directories, etc.

## 7. OPERATION OF THE SERVICE AND UNSUBSCRIPTION (OPT OUT)

- 7.1. The content provider undertakes:
- to operate the service strictly as described in the registration form;
  - not to imply in communications relating to its service that its service is instantaneous or in real time, given that the asynchronous nature of the SMS medium and the necessary processing time on the POST mobile network do not permit delivery of a 'real time' service;
  - to communicate the operation of its service clearly in any communication mentioning the short code, by providing the information that the service is only accessible from a mobile telephone, that the user must type the message from the "message" menu of their mobile telephone, that the characters to be typed in the body of the message are as follows: "... " and finally that the user must send the relevant message to the short code;
  - to inform users of the frequency with which its services are updated, knowing that each MSISDN (mobile number) not having received an SMS MT for 2 consecutive months must be considered to constitute an OPT OUT. This process prevents unsolicited messages, as well as enabling a call number to be reassigned in order to manage numbering resources;
  - to provide users with a simple unsubscription procedure that is easy to access and inform POST Telecom accordingly. It must be possible to implement the unsubscription within one working day. The content provider must provide various possibilities for requesting an OPT OUT. At least all of the following options must be offered:
    - sending an SMS message.
    - sending an email or a letter.
- 7.2. An OPT OUT SMS message is an SMS MO beginning with the word "STOP" (non-case sensitive).
- 7.3. An SMS MT (free or without charges for services with added value for the user) must be sent to the user in confirmation of the unsubscription, citing the precise service.
- 7.4. The content provider may indicate how to resubscribe to the same service in the same SMS, but must begin the SMS with the OPT OUT confirmation. This SMS must be factual and not of an adult nature (Example: "I miss you" is not a valid confirmation).
- 7.5. An OPT OUT SMS sent to a short code shall end the mobile services of this short code as follows:
- If the short code is used for a single service, it shall end this service.
  - If the short code is shared between different services:
    - A Stop mechanism specific to each service operated on the same short code (Specific STOP service), such as an SMS MT beginning "STOPABC", shall have immediate effect.
    - If the content provider has not implemented the Specific STOP service, they and the aggregator shall immediately terminate all services to which the user is subscribed, with immediate effect.
    - If the Specific STOP service begins with the word 'Stop' (not corresponding to a Specific STOP service), the content provider and the aggregator must use all means necessary (SMS, telephone, etc.) within 4 hours (service hours) to establish which service the user would like to OPT OUT from. If the customer is uncontactable during this period, all services must be terminated.
- 7.6. No minimum subscription duration may apply to a mobile service.
- 7.7. If POST Telecom receives a request from one of its customers, POST Telecom must be able to transmit this request to the content provider via electronic media. The latter must offer a blocking mechanism:
- to unsubscribe an MSISDN from any mobile service offered by the content provider;
  - to deactivate all SMS MT for each mobile service intended for these MSISDN for as long as the blocking mechanism is in place at the request of

POST Telecom. The content provider is not authorised to accept a new request from the user for a blocked MSISDN without the authorisation of POST Telecom.

- Should a blocked user ask a content provider to unblock their MSISDN, the latter must redirect them to POST Telecom.

## 8. CUSTOMER SERVICE DEPARTMENT

- 8.1. The content provider's customer service department must be available during working hours, via the contact details specified in their publicity materials and reminder messages.
- 8.2. Deadline for first response to a user request:
- Request via mail or telephone: within 8 hours (service hours).
  - Request via courier: within 5 hours (service hours).

## 9. AVAILABILITY AND INTERRUPTION OF SERVICE

- 9.1. The content provider undertakes:
- to indicate to users, in its publicity communications or via message, the hours and days of availability of its service if the service is not continuously available.
  - to send users a free SMS-MT error message under the following circumstances:
    - outside the hours of the service;
    - if the service is inaccessible;
    - if the SMS-MO request cannot be processed.
- 9.2. As a general rule the service quality must meet the reasonable expectations of the user.
- 9.3. The content provider must give their aggregator and POST Telecom more than 24 hours' advance notice of any scheduled maintenance.
- 9.4. Any change in the nature of the services offered must be notified to the aggregator and POST Telecom at least 2 working days in advance.

## 10. USER INFORMATION AND PROMOTION OF THE SERVICE

- 10.1. It shall be the content provider's responsibility to promote their service. The content provider shall be solely responsible for communications thus made.
- 10.2. Information provided to users to promote a service must not be misleading.
- 10.3. Commercial SMS/MMS promotions:
- must not incur any cost to the user;
  - must include a reminder of the simple, free or non-premium rate unsubscription process;
  - must be restricted to products and services identical or similar to those originally provided. The content provider must obtain the user's specific consent before promoting other or unrelated products or services;
  - The Law of 14 August 2000 on electronic commerce applies.
- 10.4. The content provider undertakes:
- to warn the user that the short code will only function on the POST mobile network. If the content provider wishes to offer their service via another operator, they must also have a short code for this operator;
  - to mention, clearly and legibly in any communication relating to their service and, in the particular case of a service not simultaneously available on all operators' networks, the name(s) of the operator(s) offering the service.
- 10.5. In all communications relating to their service, the content provider undertakes:
- to announce tariff prices in euros, inclusive of all taxes and charges, per SMS and/or transaction and/or period, clearly, audibly or visibly, particularly in terms of the font size used relative to the publicity message;
  - to keep available for users and POST Telecom, on request, all means necessary to enable them to make claims and exercise their rights, particularly their right of opposition (OPT OUT);
  - to indicate the date and time of the information in the message where this is necessary in order to

provide the user with full information (e.g. meteorological or traffic information).

10.6. The content provider undertakes to avoid producing promotional media for their service which might cause confusion between it and POST Telecom.

## 11. BILLING

Services must not be misleading.

### 11.1. Pay-per-use

The following data must be clearly visible on all the content provider's publicity materials (including their website) in such a way that it may be read without effort:

- Name of the service.
- Exact description of the service.
- Price of the service in euros. If multiple Premium messages or payments are necessary in order to access the full service as it is described, the maximum amount payable should be indicated ("max.").
- The contact details for the content provider's customer service department (telephone number or email address).
- All prices given must be clearly inclusive of VAT.

### 11.2. Payment by subscription

#### 11.2.1. Information which must feature in publicity materials

The following data must be clearly visible on all the content provider's publicity materials (including their website) in such a way that it may be read without effort:

- Name of the service.
- Contact details for the content provider's customer service department.
- Unsubscription (OPT OUT) mechanism.
- Subscription price.
- Service price (indicate one of the following 2 phrases):

- Services billing users EUR 6 or more per week":  
Example: "64xxx – Join the Ringtone Club for EUR 6/week, SMS not included". The wording shall be as follows: "6XXXX Join/Subscribe to (name of service and optional description of maximum 35 characters) for (price of the service in euros) per (billing frequency), SMS not included."

- Services billing users less than EUR 6 per week: Example: "64xxx – Join Club News for EUR 0.35/SMS received, max 10 SMS per week". The wording shall be as follows: "6XXXX Join/Subscribe to (name of service and optional description of maximum 35 characters) for (price per SMS received in euros) max. (number of SMS) SMS per (billing frequency)."

Do not include the words "SMS not included" when no SMS MO is required in order for the user to be able to use the service (excluding OPT IN and OPT OUT SMS). Occasionally, these services may be worded as follows: "Services billing users EUR 6 or more per week".

- All prices must include VAT.
- The content provider must display the following precise wording in the top right-hand corner of paper or television advertisements or on the website landing page: "Abonnement: (cost of the service in euros) par (billing frequency)" in French, or "Abonnement (cost of the service in euros) pro (billing frequency)" in German.
- The characters used for this text must be similar in size.
- For online publicity for a mobile service:
  - Which is only available on subscription: the content provider must include a tick box, accompanied by a "Continue" button corresponding to a stage in the process of consenting to the subscription. The following words must feature next to the tick box: in French "En cochant cette case, je souscris à l'abonnement ABONAME"; in German "Indem Ich dieses Kästchen markiere, schliesse ich ein Abonnement ABONAME"; in English "By ticking this box, you subscribe to the subscription ABONAME". ABONAME corresponds to the name of the subscription. The "Continue" button must not

permit access to the subsequent stages of consent to the subscription unless the user has ticked the box.

- Which is available on a pay-per-use basis or on subscription: the distinction between the two options (per-use billing or subscription) must be clearly indicated.

#### 11.2.2. Reminders

If the service subscription costs EUR 0.50 or more via SMS MT, or EUR 6 or more per week, the content provider must send an SMS MT (free for the user) at least once per month to remind subscribed users of:

- the price per period (if a set price) or per message (if a variable price), inclusive of VAT;
- the unsubscription procedures;
- the contact details for the content provider's customer service department.

This reminder may appear at the end of a service message but must remain free for the user.

It must be drafted, in order of preference: in the service language selected by the user, or in the language of the publicity materials, or in French if the language cannot be identified.

This SMS-MT must include the following wording:

- For services relating to certain events, when the amount or number of SMS is not yet known (e.g. an SMS for each goal scored): in French "Vous avez dépensé X EUR / SMS reçu pour le service de notification ABONAME de YOURNAME. Pour vous désinscrire, envoyez STOP au 64xxx. Helpline xxxxxx", in German "Ihre Ausgaben zum Dienst ABONAME an YOURNAME belaufen sich auf X EUR / SMS. Zum abbestellen den Dienstes, senden Sie STOP an die 64xxx. Helpline: 26xxxx", in English "You have spent X EUR / SMS received for the ABONAME notification service from YOURNAME. To leave, sms STOP to 64xxx. Helpline: xxxxxx."
- For any other service, in French "Vous avez dépensé X € en un mois pour votre abonnement au Club ABONAME de YOURNAME. Pour vous désinscrire, envoyez STOP au 64xxx. Helpline: xxxxxx", in German "Die Ausgaben dieses Monats für ihr Abonnement des Clubs ABONAME betragen X €. Um den Dienst abzubestellen, senden Sie STOP an die 64xxx111. Helpline: xxxxxx", in English "You have spent X € this month for your subscription to Club ABONAME. To leave, sms STOP to 64xxx. Helpline: xxxxxx".

- The following variables must be replaced by data corresponding to the service: X (amount in euros), ABONAME (subscription name), YOURNAME (service name), 64xxx (short code), 26xxxxx (contact details for the customer service department).

No other word may precede this precise wording.

Publicity materials must describe subscriptions to the services and no other content or service, for example, participation in a draw or obtaining the results of a test must not be used to promote a ring tone subscription.

For value-added services on subscription, the content provider must provide POST Telecom with a copy of all publicity materials to be used, at least 14 days prior to the envisaged date of publication or public presentation online, on paper or any other medium, so that POST Telecom may identify any potential infringement.

#### 11.2.3. Transparency

Subscriptions must not be linked to any other content or service. For example, participation in a draw or obtaining the results of a test may not be associated with a ring tone subscription.

The content provider's publicity materials must describe the services included in the subscription and no other content or service. For example, a test may not be used as publicity material for a ring tone subscription.

## 12. BRANDS AND LOGOS

In the absence of written notification to the contrary, throughout the duration of the contract,

the content provider authorises POST Telecom to use its brand and its logo in its commercial documentation on tariff information and its websites.

The contract does not confer upon either party any right of ownership or use of the other party's brand or logo. Use of the brand and logo are strictly restricted to the duration of the contract.

Any graphic reproduction of the logos and brands must be undertaken in compliance with each party's graphic charter.

## 13. SERVICE CONTENT, SERVICE LOYALTY AND THE PROTECTION OF MINORS

The content provider undertakes:

- to comply with the code of good conduct convened between Luxembourg operators, a copy of which is published on the POST Telecom website;
- not to use the telephone number of a private individual for its service without their express agreement;
- to comply with the purpose of its service as declared at the time of signature of the contract or in subsequent amendments to the said contract;
- not to compromise the public image of the POST Telecom brand;
- not to deliver services intended exclusively for adults to minors and to comply with legislation relating to the protection of minors. Thus, access to the services of a short code must be denied, where the service or content is intended exclusively for adults if, following confirmation from the user or information from a third party, it transpires that the content has been communicated or delivered to a minor;
- to take every precaution to avoid marketing a payable service or service intended exclusively for adults such that it may be consumed by minor not declared to be of full age without the authorisation of their legal guardian;
- to have the strictest respect for public order and good morals.

## 14. SPECIFIC SERVICES

### 14.1. Managed or automatic SMS or MMS chat services

The content provider must only bill for SMS MO.

Its publicity materials must:

- Follow the instructions set out in the code for "Premium Pay-Per-Use Services"
- Clearly indicate, next to the price, in the same size and the same colour:
  - A description of the service which reflects its precise nature: entertainment service, managed service, etc.
  - That this is managed by operators.

### 14.2. Competitions

These must be:

- Free of additional charges (standard SMS), unless these are clearly indicated in the publicity material.
- If there is no additional charge, the content provider must offer participants reimbursement of their Premium payment.
- Competitions must comply with Luxembourg legislation, particularly the Law of 20 April 1977 (games of chance and betting on sporting events), Articles 301 and 302 of the Penal Code, and the Law of 30 July 2002 (unfair competition). Pursuant to the Law of 30 July 2002:
  - The content provider must permit users to participate in competitions without any obligation to purchase.
  - The regulations for a competition must be submitted to a bailiff prior to any marketing and communicated free of charge to any person who so requests.
  - The number of prizes, the value thereof, and the conditions of participation must be communicated clearly and precisely.
  - If the communication leads the user to believe that they have won a prize, the content provider must deliver the prize to the user in question.



Competitions may neither encourage users to take out a subscription, nor be part of a subscription.

## 15. COMPLETENESS OF MESSAGES SENT

- 15.1. POST Telecom shall take all measures to ensure the completeness of SMS sent from its SMS-C, as well as to ensure the maximum availability of its SMS PREMIUM platforms and to restore the functionality of its SMS PREMIUM platform as swiftly as possible.
- 15.2. POST Telecom undertakes to take all measures to ensure the permanence, continuity and quality of the service. It assumes, in this context, an obligation of means.

## 16. TARIFFS, REIMBURSEMENT AND INVOICING

- 16.1. The content provider shall choose the pricing tariff for the service at the time of reserving the short code. The pricing tariff for the service shall be published in the official price list of POST Telecom services.
- 16.2. In the context of an SMS or MMS CHAT offer, operated individually or by a computer application, only MO messages may be billed.
- 16.3. POST Telecom shall administer the billing of its clients and/or subscribers as well as the recovery of the monies in question. Bills shall be issued monthly for clients who have opted for prepaid offers; amounts for the use of the service shall be deducted from their communications credit.
- 16.4. If the application offered to the user incurs costs to the user of EUR 0.50 or more per SMS MT, or an amount of EUR 6 or more per week, the content provider shall send at least one free message per week to the user to remind them:
- of the subscription to the payable service or message (in the case of varying prices), inclusive of VAT;
  - the unsubscription (OPT OUT) procedures;
  - the content provider's contact details for consultation on the service offered.
- 16.5. Costs associated with the SMS-Open connection (installation and subscriptions), costs associated with the SMS Premium service (initialisation and subscriptions), as well as all SMS-MT addressed to users by the content provider shall be billed at the tariffs stipulated in the POST Telecom offer.
- 16.6. The reimbursement amounts payable by POST Telecom to the content provider based on the turnover generated by the service shall be specified in the POST Telecom offer. These reimbursements depend on the pricing tariff chosen by the content provider.
- 16.7. POST Telecom reserves the right not to reimburse the content provider monies due for transactions relating to the SMS PREMIUM / SMS Open service in the event of non-payment of the service by a customer, if the non-payment is due to:
- a situation of insolvency, which has been recorded by the office of a bailiff or other legal agent under legal recovery proceedings and on the basis of a certificate of irrecoverability;
  - a judicial ruling on an adversary procedure to the effect that the refusal to pay was justified following negligence attributed to the content provider in respect of their commitments under Article 6 (messages), Article 4 (operation of the service and OPT OUT) or regarding the protection of minors. The same applies if it results from a judicial ruling to the effect that negligence may be attributed to the content provider for having called into question the accuracy of records or transactions billed to the customer, or if the content provider has not demonstrated the reliability of the records or transactions by providing evidence of the user's explicit agreement to the transaction. On request, this evidence should be provided in the form of computer files ("log" files). The legal fees shall be borne by POST Telecom.
- In both cases, no settlement may be made by POST Telecom within three months of the date of the judicial ruling or certificate of irrecoverability.

16.8. By signing the contract, the content provider authorises POST Telecom, which accordingly undertakes, to issue monthly statements of the amounts due to the content provider. POST Telecom shall send these statements monthly to the content provider, who undertakes to issue the corresponding invoice, which shall be sent to the following address: POST Telecom S.A., L-2996 LUXEMBOURG.

16.9. Should the amounts indicated on the statement issued by POST Telecom be challenged by the content provider, who must raise their challenge within 30 days of the statement, failing which any such challenge shall be invalid, the latter shall undertake to provide POST Telecom with the number of SMS-MO and MT (sent to and by the service), for the period in question, according to its own records. In order to reach an amicable agreement, POST Telecom shall examine the content provider's information and compare it with its own information. In this case, POST Telecom shall provisionally disburse the amount it had calculated to the content provider.

16.10. POST Telecom shall pay uncontested invoices by bank transfer, within 30 days of the date of receipt of the invoice.

16.11. POST Telecom reserves the right to recover any monies owed to it by the content provider under the contract by withholding any monies it owes to the content provider.

16.12. POST Telecom may request an OPT OUT from a user in the event that the latter has not paid their bills.

## 17. PERSONAL DATA AND CONFIDENTIALITY

17.1. The services offered must comply with the laws and regulations on the protection of persons with regard to the processing of personal data in the electronic communications sector.

17.2. The database of POST mobile numbers constitutes strategic data for POST Telecom. The content provider recognises that it has access to the numbers when providing the service.

17.3. Any processing or compiling of files containing MSISDN numbers (mobile numbers) or other personal data must be declared to the CNPD (National Commission for Data Protection) according to its purpose and use. The content provider shall take all necessary measures to ensure that personal information that they hold or process is protected and remains confidential. This shall be achieved in strict compliance with the provisions of data protection law. Please visit [www.cnpd.lu](http://www.cnpd.lu) for more information.

17.4. The content provider may access user data when delivering the service, particularly telephone numbers. They expressly undertake not to use any data relating to users for any purpose other than that for which it was provided. The content provider undertakes to ensure that their staff and any sub-contractors comply with this provision.

17.5. POST Telecom reserves the right, during the validity of the contract, to stop transmitting the telephone number. In this case, POST Telecom will substitute a reference number and instructions for its use. This is expressly accepted by the content provider.

17.6. Throughout the duration of the contract and for 2 years after it ends, for whatever reason, each of the parties undertakes not to divulge any information concerning the other party. Each party also undertakes to observe strict confidentiality concerning the business of the other party. Each party is bound not to divulge any information to a third party, in any form, concerning the other party or relating to the contract.

## 18. SUSPENSION OR INTERRUPTION OF THE SERVICE BY POST TELECOM

18.1. If the content provider fails to comply with the code of conduct or these conditions, or if the content provider acts illegally, or if POST Telecom has reason to believe that the content provider has

acted illegally, or if POST Telecom receives more than four complaints from users during the course of a week concerning the added-value service, POST Telecom reserves the right to suspend access to the service, or indeed terminate the contract under the conditions provided for in Article 18 above. The suspension shall take place following formal notice by registered letter with acknowledgement of receipt to which no response has been given within 8 days of dispatch.

18.2. By way of exception to the above paragraph, POST Telecom reserves the right to intervene directly or to suspend the services according to the following procedures, in the event that:

- the content of a service appears to be illicit, or in the event that the service does not correspond to the description given by the content provider in the service registration form,
- the content provider fails to comply with the conditions of service honesty and protection of minors (Article 13),
- the content provider fails to respect information relating to users or in the promotion of their service (Article 11),
- the service content or the marketing procedure is prohibited under the laws and regulations in force. In such a situation, POST Telecom shall notify the content provider of all the information it possesses in order that the content provider may immediately close and/or suspend the service.

If the service does not correspond to the description given in the POST Telecom service registration form, the content provider shall have 24 hours from receipt of notification by POST Telecom to remedy the situation or close/suspend the disputed service.

In the event of failure to close or suspend the service following notification and within the time limit, POST Telecom reserves the right to suspend the service and potentially terminate the contract if the suspension exceeds one week.

18.3. The content provider remains bound to pay the sums referred to in Article 16 above, throughout the full duration of the suspension.

## 19. LIABILITY

19.1. POST Telecom shall be responsible for directing SMS on its POST mobile network, except in the following circumstances:

- In the event of disruption and/or interruption not directly attributable to POST Telecom;
- In the event of a bad connection or a defective SMS-Open connection;
- Where the transmission of radio signals is affected by the constraints or limits of technical standards imposed on POST Telecom by the regulatory authorities;
- In the case of force majeure as per the general conditions applicable to POST Telecom telecommunication services.

19.2. POST Telecom accepts no responsibility for any direct or indirect damage or losses, especially losses of turnover, associated with any malfunction of its platforms.

19.3. The content provider shall be responsible for the connection established with the POST Telecom server.

19.4. The content provider shall be solely responsible for the content of their service and its promotion. They undertake to assume responsibility for any claim from a third party or POST Telecom clients and subscribers and assume full responsibility in the event of any dispute arising with a content author or another content provider at POST Telecom. The content provider also undertakes to carry out the necessary legal and contractual measures and collaborate with POST Telecom to resolve a dispute, and to bear the full cost of legal defence and the costs of any conviction or settlement.

## 20. DURATION AND END OF CONTRACT

- 20.1. The contract shall be concluded for an indefinite period to run from the time of its signature by the parties. The parties may terminate the contract at any time by giving 2 months' notice by means of a registered letter with acknowledgement of receipt.
- 20.2. Upon expiry of the contract, the short code automatically returns to POST Telecom without the need for notification of whatsoever kind. The content provider shall no longer be authorised to operate or communicate using this short code. The short code may be allocated to another content provider by POST Telecom following a period of 6 months to run from expiry of the contract.
- 20.3. The contract may be rightfully terminated by POST Telecom and without prior notice, without the content provider having any claim to any kind of compensation whatsoever under the following circumstances:
- In the event of messages being broadcast under conditions contrary to these specific conditions or to laws or regulations in force, as provided for in Article 19 above;
  - In the event of the service being suspended for one of the fair reasons cited in Article 19 and for a period of more than two weeks;
  - In the event of the service being suspended on the content provider's initiative for a period of over 12 months.
- 20.4. Should one of the parties fail to honour one of their obligations or commitments under the contract, the

other party may give them formal notice, by registered letter with acknowledgement of receipt, requesting that they remedy the situation. If the party in question has not remedied the situation within 30 days of receipt of the formal notice, the other party is free to terminate the contract without prejudice to any damage resulting from this action.

- 20.5. Once the contract has been terminated, the content provider shall no longer be authorised to operate or communicate using this short code, which automatically returns to POST Telecom upon expiry without the need for any notification of any kind whatsoever.

## 21. TRANSFER

The content provider undertakes formally, on penalty of immediate nullification and termination of the relationship between the parties, not to assign or transfer, in return for payment or free of charge, any or all of the rights and obligations under the contract, in any form whatsoever, without the prior written consent of POST Telecom.

## 22. FRAMEWORK, AMENDMENT AND JURISDICTION

- 22.1. The provisions of these conditions are an integral part of the framework of general conditions applicable to the provision of POST Telecom services.
- 22.2. These conditions may be amended unilaterally by POST Telecom, provided that this does not affect

their purpose. If modifications are made to these conditions, these modifications shall apply to all existing contracts. Content providers shall be informed of these modifications by letter. Should this be the case, the content provider has the right to terminate the contract by registered letter within 30 days of the notification. If there is no response from the content provider within these 30 days, the amendment thus made shall be deemed to have been accepted.

- 22.3. The fact that one of the parties does not, at any given time, demand the other party's strict compliance with one of the provisions or conditions of this agreement, shall not be taken to mean that they have definitively renounced their right to do so.
- 22.4. These conditions cover all the contractual obligations of the parties and shall be applied retroactively to all SMS Premium services previously registered with P&T Luxembourg by the content provider, which have been transferred to POST Telecom.
- 22.5. These conditions shall be subject to Luxembourg law. The content provider and POST Telecom agree to find an amicable solution within 15 days of any dispute arising, before referring the case to the courts. In the absence of an amicable solution, all disputes relating to the implementation or interpretation of these conditions shall be under the exclusive jurisdiction of the courts of the judicial district of Luxembourg.