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Tashi InfoComm Limited

SMSC Gateway Application Form

Client Information

Date: DD / MM/ YYYY

Name of Organization / Individual /

Mobile No: Alternate mobile No..... Phone No:

Email Id for bill:

Address:

.....

SMSC Service Detail

Push SMS: Yes No

Pull SMS: Yes No (Need short code for pull SMS. Short code charges shall be applicable)

Short Code: _ _ _ _

I/We hereby declare that all the information provided are true and correct. I declare that I have read, understood and agree to the terms and conditions of service printed overleaf. I/We also agree that the undersigned, duly authorized hereto by their respective institution or individuals.

Name:
mobile No:
Designation:

Affix
Legal
Stamp

Signature of Applicant on Legal Stamp

Billing Details (FOR OFFICE USE ONLY)

SMSC Gateway Rental

SMSC monthly charges will depend on the package type

SMSC Service Package Type: Package A: SMSC rates for large business enterprise
 Package B: SMSC rates for small business enterprise

Short code rental amount Nu:

For actual cost of SMSC gateway and short code please refer clause 22 charges and rate at the end of this page.



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Terms and Condition

1. DEFINITION

- 1.1 "SMS MT" shall mean Application Originated SMS and terminated on **TICL network** by **CLIENT** , using the national network of **TICL**.
- 1.2 "SMS MO" shall mean SMS originated by subscribers of TICL and terminated on the Client's Application.
- 1.3 "SMSC" means Short Message Service Center.
- 1.4 "Customer" means Corporate Clients, mobile phone users, Registered Organizations, and other Mobile Service Providers with whom **CLIENT** has contract relations.

2. SCOPE OF THE AGREEMENT

- 2.1 **CLIENT** , in its capacity of content provider, may route SMS MT messages through **TICL's SMSC** to be delivered to the respective Mobile Phones users of TICL. **CLIENT** may also integrate SMS applications that require sending of SMS MT and receive SMS MO to a Short Code using **TICL** network. Any Short Code provided / availed under this service shall remain the property of TICL.

3. ROLE AND RESPONSIBILITY OF THE CLIENT

- 3.1 **CLIENT** acknowledges that TICL has no control on the contents of the SMS sent by the customers. TICL shall forward the SMS in the same form as is received by it from Client or vice-versa. Client will be responsible for the contents of the SMS sent by its customers. The Content / Information will not infringe the copyright or other rights including right to privacy / publicity or be defamatory of any third party
- 3.2 **CLIENT** acknowledges that TICL shall not be responsible/liable for all or any of the acts and omissions of Client.
- 3.3 **CLIENT** also acknowledges that **TICL** shall not be responsible in any manner due to errors caused by Client on account of Internet delays, disconnection, time-outs, routing problems, etc.
- 3.4 **CLIENT** shall not send any unsolicited messages, spam and other malicious messages to any of the destinations.
- 3.5 **CLIENT** shall not send unsolicited, commercial SMS to TICL or other subscribers without a prior written approval from TICL. Where Client is authorized to send such SMS, it shall provide the means to unsubscribe for the commercial messages through return SMS. These SMS to unsubscribe services will be sent periodically.
- 3.6 **CLIENT** shall send only SMS meant for termination on TICL's network only and shall not send SMS meant for other operator's network. No separate routing of SMS shall be carried out using the SMPP interface provided. TICL will provide in its SMPP 3.4 connectivity the feature of alphanumeric sender id which shall be fixed between the parties prior to the commissioning of the service.
- 3.7 **CLIENT** shall be solely responsible at its own cost for obtaining all necessary approvals, sanctions, permissions, copyrights, licenses for providing the service to its customers from any Municipal, Local, Regional or Government Authority or any duly authorized public servant.

4. ROLES AND RESPONSIBILITY OF TICL

- 4.1 **TICL** will provide all the necessary assistance during the tenure of this Agreement. This will include providing 24*7 supports to address service issues of Client. Critical issues of delay in termination and throughput issues will be addressed in minimum possible time.
- 4.2 **TICL** will provide following connectivity to Client:
 - Connectivity: IP based connectivity over IP VPN
 - SMSC Protocols: SMPP 3.4 or HTTP with a message per second rate that is mutually agreed between the parties based on the identified requirements
 - Short code for receiving messages from TICL subscribers on payment of applicable charges which may be reviewed by TICL from time to time. Support for 2 IP addresses for the connectivity to SMSC.
 - Off-line delivery reports at the end of each period. No real time delivery report shall be provided for bulk SMS services.

TICL shall deliver SMS immediately upon receipt from **CLIENT** or subscribers, as the case may be. **TICL** will put in its best endeavors to achieve the best success rate in delivery of the SMS messages so routed through it.
- 4.3 **TICL** will provide all the documents, details and information statutorily required for the commencement of the Services. TICL infrastructure shall support expiry of individual SMS. Also, TICL shall provide a minimum of 3 retries of the undelivered SMS in 24 hours' time and all SMS undelivered in 24 hours should be marked as failed. TICL shall support SMPP extensions like Picture SMS, Flash SMS, Unicode SMS and EMS. TICL shall, when required, provide concatenation of SMS.



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4.4 **TICL** may suspend SMS service to Client due to:

- Receipt of unsolicited short messages, malicious content from **CLIENT** in contrast with any applicable law in force and action or the restrictions or provisions thereof.
- Is directed by regulatory authorities or a court of law to do so.

4.5 **TICL** shall notify **CLIENT** in writing or via mail and obtain an explicit acknowledgement by Client prior to any traffic suspension.

4.6 In the event of suspension of service due to conditions stated under 4.4 a) above, **TICL** and **CLIENT** shall cooperate in the attempt to limit and ultimately remove the cause malicious SMS and **TICL** shall be responsible to restore the service within reasonable time after causes have been removed.

5. CONSIDERATION

5.1 In consideration of **TICL** offering the services as mentioned in this agreement with respect to MT & MO SMS, Client shall pay charges as enumerated under clause 22 charges and rate of this agreement. The rates levied by **TICL** are exclusive of any taxes or levies.

5.2 **TICL** shall be responsible to send the invoices to **CLIENT** within one week of the end of the billing cycle. **CLIENT** shall be responsible to reconcile the invoices and report any discrepancy to **TICL** before the due date of payment of the invoice.

5.3 **CLIENT** shall be responsible to make payments to **TICL** within 15 (fifteen) working days of the end of the previous billing period or before the due date of the invoice, whichever the latest. Invoices will be sent via email to Client to speed up payment. A penalty amounting to 2% per month or part thereof on the outstanding amount shall be levied for late payments.

6. INDEMNITY & LIABILITY

6.1 All damages, such as those caused by Force Majeure, indirect (material and immaterial), pure or consequential, immaterial and/or financial, special, incidental or punitive damages, including but not limited to loss of profit, loss of revenue, customers of the other Party, loss of data, loss of use, loss of savings, loss of goodwill or opportunity, or interruption of service, are excluded from each Party's liability.

6.2 **CLIENT** shall defend, indemnify and hold **TICL** harmless from and against all liability, damages, losses, claims, costs, penalties, suits or actions suffered by **TICL** arising out of or resulting from, in whole or in part, a default, negligence or willful misconduct or breach of the terms and conditions of this agreement by Client and /or its employees.

6.3 Neither Party may exclude or limit its liability if the damages suffered by other Party are caused by fraud or are caused recklessly, knowingly or having reason to know that it would be likely to result in such damage.

6.4 Neither party will use the trade name or logo of the Other Party without prior written consent of the other party to this Agreement.

6.5 All other damages, such as those caused by Force Majeure, indirect (material and immaterial), pure or consequential, immaterial and/or financial, special, incidental or punitive damages, including but not limited to loss of profit, loss of revenue, customers of the other Party, loss of data, loss of use, loss of savings, loss of goodwill or opportunity, interruption of service or claims of third parties, are excluded from each Party's liability.

7. COMMENCEMENT OF THE SERVICES

The Parties agree that the SMSC facility shall commence within one week of execution of this agreement or on a mutually agreed date whichever is earlier.

8. DURATION AND TERMINATION

8.1 The term of this Agreement shall valid from the date of execution of this Agreement and shall renew perpetually unless terminated by the parties by providing written notice as outlined under Clause 8.2 below.

8.2 Either Party shall have the option to terminate this agreement at any time by giving 3 months' notice in writing without assigning any reasons. The charges that are due or payable for use of the service until such termination, shall be paid to **TICL** by the Client within 15 days of service termination date.

8.3 In the event any party to this Agreement commits a material breach of any of the provisions of this Agreement, the other Party may, at its option and without prejudice to its other rights and remedies, give the defaulting party 15 days written notice to rectify the breach. In the event the defaulting party fails to rectify/remedy the breach, this Agreement shall, at the option of the non-defaulting Party, stand terminated.

8.4 Upon termination of this agreement and upon request from the other party each party shall return any and all information to the other party to this Agreement, to whom such information belongs and shall immediately cease to use the same in any manner.



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9. REPRESENTATIONS

- 9.1 Both the Parties to this Agreement represent and warrant to each other that, as of the date of this Agreement, it has the power to enter into and observe the obligations under this Agreement. The Parties to this Agreement also represent to each other that this Agreement and the transactions contemplated by it, do not contravene any laws or regulations of Bhutan.
- 9.2 **CLIENT** confirms that it will ensure that the service provided by it shall not violative of any statutes, rules, directives, guidelines in force and which may be amended by competent authorities from time to time.
- 9.3 It is expressly agreed that **TICL** shall not be held liable directly or indirectly to third party for the use of the services, which is being provided by **CLIENT** in the event of any claim made by the third party on account of the breach or violation of IPR or any right accruing to the third party from the use of **TICL** SMSC by **CLIENT**
- 9.4 **TICL** and **CLIENT** severally represent and warrant that this Agreement constitutes a valid and binding obligation upon them and enforceable against them severally in accordance with its terms.
- 9.5 Both the parties agree and acknowledge that they shall always, during the existence of the Agreement be bound by and comply with the directions, rules, regulations and notifications issued by various regulatory authorities in Bhutan from time to time.

10. VIRUS PROTECTION

- 10.1 Both parties shall take adequate care and protection to ensure that the SMS so routed from **CLIENT** to SMSC of **TICL** or visa-versa (for SMS-pull), are free of all viruses, trojans and other malware.

11. NON-EXCLUSIVITY

- 11.1 This agreement shall be on a non-exclusive basis, and each Party to this Agreement shall be at liberty to enter into similar arrangements with other organizations during the currency of this agreement.

12. ASSIGNMENT

Neither Party hereto shall have the right to assign or otherwise transfer, in whole or in part, any of its rights and obligations under this Agreement, and /or any agreement entered into between the Parties hereto under this Agreement, to any person or entity without prior written consent of the other Party hereto, except that either Party may assign this Agreement to an affiliate or to a successor to all or substantially all of the assets or business of such Party.

13. AMENDMENT

The Parties to this agreement may affect any addition, deletion and or alteration to this Agreement in writing after mutual discussion and agreement.

14. WAIVER

No waivers by either party of any of their terms hereof or of any breach thereof shall constitute or be deemed to be a waiver of any such terms or if any breach in any other case whether prior or subsequent thereto.

15. RELATIONSHIP

- 15.1 This Agreement shall not create nor be deemed to create a joint Venture, partnership firm, agency or employer-employee relationship between the Parties hereto and shall be on a principal-to-principal basis.

16. SEVERABILITY

If any provision of this agreement shall be found by any Government or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or un-enforceability of such provision shall not affect the other provisions of this agreement and all provisions not affected by such invalidity or un-enforceability shall remain in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision, which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

17. FORCE MAJEURE

Neither of the Party shall be liable for any delay or deficiency in the performance of its obligations if this delay is imputable to force majeure. Following events are considered to be force majeure (not exhaustive list): act of God, flood, earthquake, storm, thunderstorm, frost, explosion, lighting, fire, epidemic, war, outbreak of hostilities (whether or not war is declared), riot, strikes or other labour unrest, civil or military disturbance, embargo, social conflicts, sabotage, fiber or cable cut, expropriation by governmental authorities, interruptions by regulatory or judicial authorities, interruption or break-down of electricity supply or other acts of events that are outside the reasonable control of the concerned party.



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18. NOTICE

Any notice or other communication required or permitted to be given between the parties under this agreement shall be given in writing at the following address or such other addresses which may be intimated in writing.

If made to TICL

General Manager
Commercial Department
TashiCell InfoComm Limited
P. O. No. 1502
Norzin Lam,
Thimpu, Bhutan

If made to CLIENT :

Name:
Designation:
email:
Mobile:
Address:

19. CONFIDENTIALITY

- 19.1 All confidential information owned by one party and disclosed to the other party, will remain solely the property of the disclosing party and confidentiality will be maintained and protected by the other. **TICL** and **CLIENT** agree to provide all necessary information to each other to enable satisfactory implementation of the Agreement.
- 19.2 Both Parties hereby undertake that they shall keep secrets and shall not disclose, divulge or reveal about the said information gained or otherwise acquired by the parties from each other, pursuant to this agreement or by virtue of or as a result of the implementation or performance of the Agreement unless permitted by the disclosing party in writing, to any person, firm, body corporate or authority whatsoever, and shall ensure that the same is kept secret and confidential at all times.
- 19.3 Both Parties are free to disclose such information to any person in order to comply with any order or discretion of a judicial, quasi-judicial, administrative or other authority after obtaining confirmation in writing from the other party. Such confirmation shall not be unreasonably withheld by either party.
- 19.4 Provided, however, that nothing herein contained shall prevent **TICL** or **CLIENT** from disclosing or imparting the same to their responsible senior employees or staff members, but only in so far as may be necessary for the satisfactory and proper performance and discharge of their duties and obligations as the case may be hereunder.
- 19.5 **Clauses 19 and its sub-clauses** shall survive the termination of this Agreement for a period of 3 years from the date of termination.

20. APPOINTMENT OF FOCAL PERSON

Each party to this agreement shall appoint a Project Co-coordinator (one point contact) from its side for coordinating the activities under this agreement. The Project Co-coordinator appointed by each party shall have the overall responsibility for providing any clarification required by the other party's Project Co-coordinator.

21. JURISDICTION

This agreement shall be subject to the laws of Bhutan and the courts at Thimphu shall have exclusive jurisdiction in connection with any disputes arising out of or in connection with this Agreement.



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22. Charges & Rates

22.1 Package A: SMSC rates for large business enterprise

Slab	Amount
Basic Slab: Less than 13,500 SMS in a month:	Nu. 4,000 per month
Slab2: 13,501 to 50,000 SMS:	Nu. 0.25 per additional SMS
Slab3: 50,001 to 100,000 SMS:	Nu. 0.20 per additional SMS
Slab4: Greater than 100,000 SMS:	Nu. 0.10 per additional SMS

Note:

The minimum basic slab charge of Nu. 4,000 shall apply for sms of less than 10,000 per month. For volumes higher than that, the additional sms charge for the corresponding shall be used to calculate the final payable amount.

22.2 Package B: SMSC rates for small business enterprise

Slabs	Fixed price	SMS Count	Additional SMS rate
Slab - 1	1,000.00	3,000	0.3
Slab - 2	2,000.00	6,000	0.3
Slab - 3	3,000.00	9000	0.3

Note:

- If customer selects slab-1, they will get maximum of 3000 SMS in a month if they exceed 3000 SMS in a month the additional SMS rate shall be charged. For example: a customer in Slab-1 sends 5000 SMS in a month. The rate shall be calculated as follows (Nu 1000 for 3000 SMS + 2000 *0.30) = Nu. 1600.
- Customer needs to select from the existing slabs (Slab -1, Slab 2, Slab -3) and will be charge as per the additional SMS rate if they exceed the upper limit of SMS count.
- Fixed rental is applicable even if customers do not send SMS in a month.

22.3 Short Code Charges:

Short Code Type	Monthly Charges
Platinum	Nu. 10,000/- (Example: 7777, 1234, 4321, xxxx, yyyy, abcd)
Gold	Nu. 2000/- (Example: 1122, 1212, 2211, 7700, zzyy, yyzz, xyxy)
Standard	Nu. 1000/- (Example 1350, 1905)

The undersigned, duly authorized hereto by their respective institution or individuals, have signed this Agreement in English language on the date first mentioned.

Name:
mobile No:
Designation:
CID No:

Affix
Legal
Stamp

Signature of Applicant on Legal Stamp