

***SMS Service Provision Code of
Conduct***

Participating Parties

Operators (including Service Providers):

KPN
Vodafone
T-Mobile
Tele-2

SMS Service Providers:

CM Telecom
Mobile Interactive Group
KPN Callfactory
Motricity
Netsize
Telefuture

Content Providers:

Artiq Mobile
Yomo Concepts
Jesta Digital
JJP Mobile

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Whereas:

- Operators and Service Providers agreed on a Code of Conduct in 2003, with the aim of safeguarding legal certainty and transparency for End Users in the market for premium SMS Services;
- the Parties decided at the time of the review in 2008 to lay down a fully amended integral Code which would also include the earlier amendment to the Code agreed on 1 May 2003;
- It was necessary in 2004, 2008, 2009, and 2011 to review this Code of Conduct on the basis of experience gained and in order to ensure continued compliance with new and amended requirements of End Users;
- the Parties have drawn up the following text for that purpose;

the Operators, Service Providers, SMS Service Providers and Content Providers who have signed this Code have agreed as follows;

CHAPTER I GENERAL PROVISIONS

Article 1. Definitions

'Subscription Service' is defined as: An SMS Service for which it is necessary to unsubscribe or which is purchased for a period of time determined in advance, and which pertains to the receipt of more than one SMS reversed charged message per initiation by the End User and which pertains to one service. The SMS reversed charged messages are of a periodical nature, which expressly includes the '1 to many chat services' (this is a service through which an SMS message is sent to several people (with their permission), in such a way that several people may also receive any response to same).

'Affiliate' is defined as: a third-party enterprise, not being a Content Provider, which advertises the SMS Services of such Content Provider.

'Binary SMS Messages' are defined as: an SMS message consists of 140 bytes of 'user data'. For purposes of sending SMS text messages, these user data may be filled with a maximum of 160 GSM 7-bit characters. If the 140 bytes are not used for text, the messages are referred to as 'binary SMS messages'. Usually, messages require a data volume larger than 140 bytes. In those cases, several binary SMS messages are linked. For instance, ring tones may consist of one, two or three binary SMS messages. Picture SMS messages, for example, even require a minimum of three binary SMS

messages. WAP Push is a type of binary SMS message.

'Content Provider' is defined as: the supplier of the content of the SMS Service provided to the End User.

'Participant' is defined as: A party affiliated with the Foundation in accordance with the Foundation's Articles.

'One-Off SMS Service' is defined as: A service is considered a One-Off SMS Service if the End User receives one premium SMS MT message. As an exception to the above, a service is also considered a One-Off SMS Service if it follows from the nature of the service that individual SMS messages cannot be considered as an independent service. This is the case for services such as (i) ring tones and logos consisting of several binary SMS messages, (ii) 1-to-1 chat services and goal alerts the precise number of messages for which cannot be defined and (iii) services for which it is necessary (for instance for billing reasons and VAT payment) to send several SMS messages for a One-Off SMS Service. The termination of a One-Off SMS Service will not require the End User's unsubscribing; the Service will end automatically.

'End User' is defined as: the user of a fixed or mobile connection with which SMS services can be purchased.

'Shared Short Code' is defined as: a shortened number used by an SMS Service Provider for several SMS Services offered by several Content Providers.

'Code of Conduct' is defined as: the SMS Service Provision Code of Conduct as agreed effective from 1 July 2011.

'Compliance Office' is defined as: the authority that carries out the Foundation's supervisory and enforcement duties.

'Operators' are defined as: network providers via whose network End Users can purchase SMS services.

'Parties to this Code of Conduct' or 'Parties' are defined as: the signatories of this Code of Conduct and the parties to which this Code of Conduct applies pursuant to a contractual relationship between one of the signatories and another party.

'Service Providers' are defined as: providers of public mobile telecommunication services on the electronic communication network of a third party via whose network End Users are able to purchase SMS Services, including MVNO (Mobile Virtual Network Operator) and MVNE (Mobile Virtual Network Enabler) parties.

'SMS Services' are defined as: One-Off SMS Services and/or Subscription Services.

'SMS Service Providers' are defined as: providers who have concluded agreements with Operators for purposes of providing and/or making available SMS Services to End Users (also referred to as Gateway or SMS Brokers).

'SMS Services Filter' is defined as: the online filter maintained and operated by the Foundation which offers End Users the possibility of indicating that they wish to be excluded from the use of paid SMS Services.

'SMS Premium Charged Message' is defined as: an SMS message sent by the End User for which costs are charged to the relevant End User by the Operator or the Service Provider on behalf of SMS Service Providers; the rates for such SMS messages sent may deviate from the rates that are normally charged to the End User by the Operator or the Service Provider for the sending of SMS messages. The normal rate for SMS messages sent by an End User charged by an Operator or Service Provider depends on the subscription form or prepaid type used by the relevant End User.

'SMS reversed charged message / Premium SMS MT message' is defined as: an SMS message received by the End User for which the Operators or Service Provider charge the relevant End User costs on behalf of certain SMS Service Providers.

'The Foundation' is defined as: the Mobile Services Codes of Conduct Foundation [*Stichting Gedragcodes Mobiele Diensten*].

'Unique Short Code' is defined as: a shortened number which is used by an SMS Service Provider for a single Content Provider. The relevant Content Provider may offer one or several SMS Services via the Unique Short Code.

Article 2. General

1. The Parties to this Code of Conduct undertake to comply with the provisions of this Code of Conduct. If a party to this Code of Conduct concludes an agreement with a party that has not adopted this Code of Conduct and if such agreement provides for services covered by this Code of Conduct, the former party will impose the obligation to comply with the provisions of this Code of Conduct on the latter party under such agreement.
2. Existing agreements will be adapted in such a way as to ensure that this Code of Conduct will also become a part of any pre-existing agreements.
3. The Parties to this Code of Conduct consider the conditions laid down in the Code of Conduct of such importance that they will make every effort to apply these conditions even if the Code of Conduct should lose its effect.

4. The SMS Service Provision Advertising Code forms a part of this Code of Conduct. In the event of any contrariety between the provisions of the SMS Service Provision Advertising Code and the provisions of this Code of Conduct, the provisions of the Code of Conduct will prevail.

Article 3. Provision of information to End Users

1. On its website, the Foundation will make an online database available to End Users which provides an up-to-date overview of all Subscription Services that can be accessed via the Operators' and Service Providers' networks. The database will in any case include the information listed in Annex 1 to this Code of Conduct.
2. SMS Service Providers and Content Providers will be obliged to supply the information referred to in paragraph 1 of this Article to the Foundation on a weekly basis, in a format to be determined by the Foundation.
3. The Parties to this Code of Conduct shall ensure that their websites have a hyperlink to the database on the Foundation's website as referred to in paragraph 1 of this Article, which gives access to the database in no more than two clicks from the homepage.
4. The Parties to this Code of Conduct shall ensure that the database referred to in paragraph 1 of this Article can also be accessed by their telephone helpdesks.
5. The Operators shall ensure that the provision of information on invoices and/or in communications regarding invoices in respect of SMS Services is transparent. Such provision of information should in any case include a reference to www.smsgedragscode.nl in the invoice. In addition, if they are not already doing so upon the entry into force of this Code of Conduct, the Operators will have a best-efforts obligation to list the relevant Short Codes in specified invoices as soon as possible.

Article 4. Disconnected numbers

1. The Operators to this Code of Conduct shall notify SMS Service Providers and the SMS Service Providers shall notify the Content Providers of any telephone numbers that have been decommissioned ('disconnected numbers'). If certain Service Providers are unable to provide such information, the Operators via whose networks they offer their services will provide such information instead.
The Operators to this Code of Conduct shall notify the SMS Service Providers and the SMS Service Providers, in their turn, shall notify the Content Providers:
 - a. immediately by means of a response to the SMS message sent by the SMS Service Provider, and/or
 - b. on a bi-weekly basis, by means of a digital format listing the disconnected numbers no later than within one month of the relevant disconnection.
2. If a party to this Code of Conduct reports a disconnected number immediately in the manner described in paragraph 1(a) of this Article, and, during a three-day period, it has issued such a notification regarding a certain number, the SMS Service Provider shall ensure that all

Subscription Services linked to the relevant number are de-activated forthwith. This way, if the number is re-used, the new End User will not be confronted with Subscription Services he or she has not signed up for.

3. If disconnected numbers are communicated on a periodical basis in the manner described in paragraph 1(b) of this Article, the SMS Service Provider shall ensure that all Subscription Services in respect of the relevant telephone number are de-activated no later than within ten working days of the receipt of the numbers, so that, if these numbers are re-used, the new End Users will not be confronted with Subscription Services they have not signed up for.
4. Operators and Service Providers will in any case prohibit SMS Service Providers from sending messages to telephone numbers which have been reported as unsubscribed by the Operators and/or Service Providers. This will emphatically also cover the sending of reminders, for instance in the case of televoting services.
5. Operators and Service Providers will not reconnect any disconnected numbers earlier than six weeks following the disconnection of the number.

CHAPTER II RULES OF CONDUCT THAT APPLY TO ALL SMS SERVICES

Article 5. General Rules of Conduct

1. In any message received by the End User, the Short Code of the relevant service will be listed (in the header) as the sender.
2. Premium SMS MT messages will be sent only to End Users who have pro-actively requested same from the relevant telephone number (the 'opt-in formula').
3. With effect from 1 January 2012, SMS Service Providers and Content Providers have been obliged to exclude any telephone numbers which have been registered by End Users for the SMS Services Filter (www.smsdienstenfilter.nl) from the use of SMS Services as quickly as possible, and in any case within 2 hours, and to discontinue the provision of SMS Services to those numbers within the same period. The provision of SMS Services to telephone numbers that have been blocked by End Users may only be resumed after deblocking and a new application for the SMS Service by End Users or by Operators on behalf of End Users.
4. A Content Provider that receives a request for an SMS Service from a mobile number that has been blocked for Premium SMS use via the SMS Services Filter is obliged to send a free SMS Message with the following text: 'You cannot use the service because your number has been blocked for it. You can remove the block at www.smsdienstenfilter.nl. You will then receive the service.'. SMS Service Providers or Content Providers may not lift blocks imposed by End Users (or cause them to be lifted) otherwise than by referring, in the manner stipulated in the present Article, to the possibility of lifting the block oneself.
5. In all promotional communications regarding SMS Services, the Content Provider should comply with the Advertising Standards [*Reclame Code*] and the special SMS Service Provision Advertising Code, which, as Annex 3, forms a part of the present Code and which has been

acknowledged by the Advertising Standards Foundation [*Stichting Reclame Code*] (see <http://www.reclamecode.nl>). If the Dutch Advertising Standards Committee [*Reclame Code Commissie*] or the Appeals Tribunal has established that the Content Provider has violated the Dutch Advertising Standards and/or the special SMS Service Provision Advertising Code, the Content Provider will be presumed to have breached this Code of Conduct. In that event, the Foundation and/or the Compliance Office may submit the decision of the Dutch Advertising Standards Committee [*Reclame Code Commissie*] to the Enforcement Committee [*Commissie Handhaving*].

6. The Parties to the Code of Conduct will not be permitted to use numbers other than shortened numbers (Shared or Unique Short Code) for offering and/or advertising Premium SMS Services. In the absence thereof, the Operator will be entitled to disconnect the number, inform the Independent Post and Telecommunications Authority [*OPTA*] accordingly and follow the procedures laid down in Article 14 of this Code of Conduct.
7. The SMS communications related to subscribing to and unsubscribing from SMS Services and all related paid messages should be sent directly via the SMS Service Provider that is also purchasing the Short Code from the relevant SMS Service.
8. If the content delivery takes place via WAP Push, the same content must also be delivered by SMS within 3 minutes after the WAP Push message has been sent. Both the WAP Push message and the SMS message may be sent as a premium message, on the understanding that the same content item may not be charged for twice. The SMS message must be a premium message and the WAP Push message may consist of a number of (premium) messages (concatenated). Parties have a best-efforts obligation to first send the WAP Push message and then the SMS message. The construction of the SMS message in which the same content is delivered as in the WAP Push message is as follows:

SMS message	'Link for content' (also sent as service message) Info www.smsgc.nl
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9. A chat service can consist of fictitious persons, in which case the End User must not be given the impression in the MT messages that it is possible to make physical appointments.

Article 6. Help function

1. The SMS Service Provider and the Content Provider shall provide an optimal help function. At least one of the following (minimum) options applies, which the SMS Service Providers and the Content Providers are of course free to supplement:

- Model A

In the case of a Shared Short Code or a Unique Short Code, sending the command <keyword> + HELP to a Short Code results in a free answering SMS message containing: the frequency and rate of the purchased service, the name of the Content Provider plus such provider's helpdesk number and/or website and any costs of these facilities. In addition, such message must state that the End User may unsubscribe from the Subscription Service/Services by sending UIT ('OFF') or STOP ('STOP') to the Short Code concerned (the Short Code must be specified in the message).

- Model B

In the case of a Shared Short Code, sending the command HELP to a Short Code – i.e. without the keyword affix – results in a free answering SMS message containing: the name of the SMS Service Provider plus such provider's helpdesk number and/or website and any costs of these facilities. The message also contains a link to the website www.smsgedragscode.nl. In addition, such message must state that the End User may unsubscribe from the Subscription Service/Services by sending UIT ('OFF') or STOP ('STOP') to the Short Code concerned (the Short Code must be specified in the message).

- Model C

In the case of a Unique Short Code, sending the command HELP to a Short Code – i.e. without the keyword affix – results in a free answering SMS message containing: the name of the Content Provider plus such provider's helpdesk number and/or website and any costs of these facilities. The message also contains a link to the website www.smsgedragscode.nl. In addition, such message must state that the End User may unsubscribe from the Subscription Service/Services by sending UIT ('OFF') or STOP ('STOP') to the Short Code concerned (the Short Code must be specified in the message).

2. If the End User sends a message to a Short Code which is not recognised, the message will be answered in the same way as described in Article 6(1) under Model B or Model C (depending on the type of Short Code).

Article 7. Spam

1. The Content Provider will adhere to the limitations ensuing from Section 11.7 of the Dutch Telecommunications Act [*Telecommunicatiewet*]. If a Content Provider does not also adhere to the limitations ensuing from Section 11.7 of the Dutch Telecommunications Act after the end of the term specified in Article 14(e), the SMS Service Provider will be obliged to effect the immediate discontinuation of the relevant breach, either following a request to that effect from the Compliance Office or on its own initiative. The SMS Service Provider will do so by

rendering it technically impossible for SMS messages to be sent under the relevant service.

2. Databases/files of existing customers may not be used by the SMS Service Provider or the Content Provider for offering new services, unless the End User has expressly so agreed in advance; the active consent of the End User is required in this respect.

CHAPTER III RULES OF CONDUCT THAT APPLY TO ONE-OFF SMS SERVICES

Article 8. Communication of rates for One-Off SMS Services

In advertising or informative communications to an End User regarding One-Off SMS Services, the following requirements will apply to each type of SMS Service (with the exception of Subscription Services), with due observance of the special SMS Service Provision Advertising Code as referred to in Article 5(5) of this Code of Conduct:

- a) For One-Off SMS Services with a number of SMS messages that is known and limited in advance (such as ring tones, Java games and polyphonic ring tones):
 - In cases where the SMS Service Provider or Content Provider uses one Premium SMS MT message and where there are additional telephone costs, the costs of the premium message will be communicated to the End User together with the phrase: *'plus the costs of the use of the mobile telephone'* (or a similar phrase or notice).
- b) For One-Off SMS Services the exact number of messages of which is not known in advance (such as quizzes and goal alerts):
 - In cases where the SMS Service Provider or Content Provider uses one Premium SMS MT message and where there are additional telephone costs (other than standard MO costs), the costs of the premium message will be communicated to the End User together with the phrase: *'plus the costs of the use of the mobile telephone'* (or a similar phrase or notice).
 - In cases where one Premium SMS MT message plus one normal MO message are used, the rate per MT message will be communicated to the End User.
 - In cases where a One-Off SMS Service consists of several messages (for instance for technical reasons), this should be stated in unequivocal terms, together with the statement of the total rate for the comprehensive communication exchange.
- c) For chat services, the following applies:
 - A free welcome message is obligatory. The order of the text in the welcome message must always be as follows:
 1. **The nature of the SMS Service:** logically and unambiguously state that a chat service is concerned. The word 'chat' should always be mentioned here;

2. **Information on the price and the frequency**, which states unambiguously what costs will be involved in the chat service (total premium costs for one MO Message sent), as well as the number of messages that will be received per chat. The above must be indicated as follows: €3/chat, send 1 is receive max. 2. or €1/chat, send 1 is receive 1. There must be a punctuation mark between the price statement and the number of messages to be received;
3. **Information on the helpdesk**, by at least providing the appropriate website. The statement must always start with www.;
4. **Information on unsubscribing**, by stating that no action is necessary to unsubscribe.

The welcome message must always be clear and understandable for the End User. The welcome message may therefore not be one long, consecutive sentence. This means that components 1, 2, 3 and 4 above should be separated by a punctuation mark, so that it is clear to the End User that they are separate components of the welcome message.

It follows from the above that the following welcome message may be considered in compliance with the provisions of this Article and should therefore be used:

'Welcome to the SMS chat, € 1.50/chat, send 1 is receive 1. Info? www.xyz.nl. Stop? Don't send a message.'

- After a period of one (1) month of inactivity on the chat service, the End User must receive the welcome message again after the first MO Message that he/she sends in.
- A maximum of two Premium SMS MT messages may be sent for each SMS MO message.
- The Content Provider may send a total maximum of four (Premium) SMS MT messages within any 72-hour period following the most recent MO message sent by the End User, as long as the maximum number of Premium SMS MT messages per SMS MO message is not exceeded. After this 72-hour period, no (Premium) SMS MT messages may be sent, unless the service is newly initiated by the End User by sending an MO message.

d) For chat services, the following also applies:

In order to inform End Users of the costs, after the start of a chat service, free information SMS messages must be sent by the Content Provider:

1. For each chat service and as soon as €50 in costs has been incurred during the first calendar month after the start of the service, the End User must receive – once and free of charge – the following information message:

‘Free message: you are using chat service 1234. The total cost up to now is €50. Info? www.smsgc.nl’

2. On the last day of the calendar month or the first day of the next following month, the End User will then receive the following free information message if more than €50 in costs has been incurred during the calendar month concerned and the End User sent an MO message less than 72 hours previously:

‘Free message: you are using chat service 1234. The cost for this service is €x per chat. Send 1 is receive 1 (or 2). Info? www.smsgc.nl’

3. On the last day of the calendar month or the first day of the next following month after the start of the chat service, the End User will receive the following free information message if the End User sent an MO message less than 72 hours previously:

‘Free message: you are using chat service 1234. The cost for this service is €x per chat. Send 1 is receive 1 (or 2). Info? www.smsgc.nl’

The message referred to in (3) will not apply if the free information message has already been sent on the basis of the notification referred to in (2).

- e) If the content delivery takes place via WAP Push and therefore also via SMS, the End User must be informed of this in an SMS message that contains at least the following sentence: ‘Your product is being sent in 2 ways so as to guarantee that you receive your product visibly on your mobile phone. Info? www.smsgc.nl’.

CHAPTER IV RULES OF CONDUCT THAT APPLY TO SUBSCRIPTION SERVICES

Article 9. Start of the SMS Service

1. The initial registration for a Subscription Service may be effected either via (mobile) internet or by mobile telephone.
2. Before a Subscription Service commences, the End User should register, should have received a confirmation of registration and should subsequently have confirmed the initial registration as referred to in paragraph 1. This latter confirmation will be considered to have been made if, following his or her receipt of the confirmation of registration referred to in Article 11 of this Code of Conduct, the End User actively sends an SMS message from the mobile telephone to which the messages are to be sent, containing:
 - for Shared Short Codes: **<keyword> and ‘OK/JA’ to the <Short**

Code>,

- for Unique Short Codes: the word '**OK/JA**' to the **<Short Code>**

Article 10. Initial registration

1. In the event of Unique Short Codes, a Subscription Service may be commenced and discontinued at all times by sending the word **AAN** or **ON** (possibly preceded by a keyword), and **UIT** or **STOP**, respectively, to the relevant Short Code, in a message that is not case sensitive. For instance: the word **ON** is sent to Short Code **1234** to register for a service and the word **STOP** is sent to Short Code **1234** to unsubscribe from the service.
2. In the event of Shared Short Codes, the Short Code should be followed by the keyword, and by the word **AAN** or **ON**, or **UIT** or **STOP**, respectively, with a space between the keyword and **AAN** or **ON**, or **UIT** or **STOP**. For instance: the words **ASTRO ON** are sent to Short Code **1234** to register for a service and the words **ASTRO STOP** are sent to Short Code **1234** to unsubscribe from the service.

Article 11. Confirmation of registration

1. In the event of a registration for a Subscription Service, a message confirming the registration will always be sent to the End User by means of a free SMS message.
2. The confirmation of registration to the End User will consist of one SMS message, will not contain any extra space between lines and will always start with the following aspects, in the order determined in the third paragraph of this Article: the service/service name, the description of the nature of the service, the rate (total costs per content item, per week or per month), the Short Code, the frequency (the maximum number of messages or content items per day, per week or per month), the word *abonnement* ('subscription'), the procedure for unsubscribing and a reference to the help desk information (for instance: the website, 0900-number or teletext page containing the relevant background information). The SMS Service Provider or Content Provider will be entitled to use abbreviations in the confirmation of registration only if such are listed as approved abbreviations in Annex 2 to the Code of Conduct.
3. The order of the text of the confirmation of registration is and will remain as follows, on the understanding that sub-paragraph a or f may be left out:
 - a. **Call to action**, which describes the act to be performed by the End User, such as 'now answer OK to 1234',
 - b. **The name and the nature of the SMS Service**, logically and unambiguously linked to the fact that the Service involves a subscription, for instance: 'ABCD is a ring tone subscription' or 'for your ABCD ring tone subscription'. The word 'subscription' should always be mentioned here;
 - c. **Information on the price and the frequency**, which states unambiguously which costs will be involved in the SMS Service on a weekly basis, as well as the number of

content/credit items that will be received on a weekly basis, for instance: €6/wk, 4 items/wk. If payment for content is made on a monthly basis, the price and the number of content/credit items should be specified on a monthly basis. There must be a punctuation mark between the price statement and the frequency notification; If registration costs or similar costs apply, the type of costs must be written out in full, including the price statement, and the costs for the first week (or month) and following weeks (or months) must be stated separately;

- d. **Information on the helpdesk**, by at least providing the appropriate website or teletext page; In the case of a website, the statement must always start with www.;
- e. **Information on unsubscribing**, by describing the act to be performed by the End User in order to unsubscribe from the SMS Service, for instance: 'stop? Text stop to 1234';
- f. **Call to action**, which describes the act to be performed by the End User, such as 'now text OK to 1234'.

The confirmation of registration must always be clear and understandable for the End User. The confirmation of registration may therefore not be one long, consecutive sentence. This means that components b, c, d and e above should be separated by a punctuation mark, so that it is clear to the End User that they are separate components of the confirmation of registration.

It follows from the above that, by way of an example, the following confirmation of registration may be considered in compliance with the provisions of this Article:

'Now text OK to 1234 for your subscription to ABCD ring tones. 3 items/wk, €6 /wk. Info: www.xyz.nl. Want to unsubscribe? Text STOP to 1234. Now text OK to 1234!'

4. Irrespective of the price of the service and in accordance with Article 9 of this Code of Conduct, the confirmation of registration for the Subscription Service following the End User's registration should request the active consent through a free SMS MT message which should be answered, which should also contain the information listed in paragraphs 2 and 3 of this Article; this is the re-confirmation of the End User's wish to actually purchase/commence the service in question.
5. If the End User does not actively consent in accordance with Article 9(2), the Subscription Service will not be commenced, rendering it impossible to register through 'tacit consent'.
6. It is not permitted to send a reminder SMS to the End User if the End User has not sent OK/JA after receiving the confirmation of registration.
7. If the End User does actively consent (by sending OK or JA) in accordance with Article 9(2), the Subscription Service will be commenced and the End User will receive a welcome message.
8. If the content delivery takes place via WAP Push and therefore also via SMS, the welcome message must contain at least the following sentence: 'Your product is being sent in 2 ways so as to guarantee that you receive your product visibly on your mobile phone'.

9. In order to inform End Users of the costs, after the start of a Subscription Service, free information SMS messages must be sent by Content Provider:

a. For each service and as soon as €50 in costs has been incurred during the first calendar month following registration, the End User must receive – once and free of charge – the following information message:

'Free message: you are using subscription service 1234. The total cost up to now is €50. Info? www.smsgc.nl'

b. On the last day of the calendar month or the first day of the next following month, the End User will then receive the following free information message if more than €50 in costs has been incurred during the calendar month concerned:

'Free message: you are using subscription service 1234. The cost of this service is €x per week. Info? www.smsgc.nl'

c. On the last day of the first calendar month or the first day of the next following month following registration, an End User who has subscribed for the service must receive the following free information message:

'Free message: you are using subscription service 1234. The cost of this service is €x per week. Info? www.smsgc.nl'

The message referred to in (c) will not apply if the free information message has already been sent on the basis of the notification referred to in (b).

Article 12. Deregistration

1. When someone deregisters from a certain service, a message confirming the deregistration should always be sent by SMS Message. The End User is not charged for such confirmation messages.
2. If the End User nevertheless continues to receive messages after his or her proper deregistration, the SMS Service Provider and the Content Provider must solve this problem in the shortest possible term, in accordance with the provisions of Article 13 of the Code of Conduct. If it has been established that the End User has continued to receive messages after his or her proper deregistration, the SMS Service Provider or Content Provider will reimburse the End User for the user costs.
3. If, upon the deregistration (UIT or STOP) on a Shared Short Code, the End User does not mention the keyword of the relevant service, he or she will be automatically deregistered from all Subscription Services offered on the relevant Short Code. This means that the

deregistration command UIT or STOP on a Shared Short Code will result in the End User's deregistration from all Subscription Services provided via such Short Code.

4. Every content delivery to an End User's mobile telephone should include the following text: 'info? www.smsgc.nl'. This website, which is owned by the Foundation, explains how the End User can deregister from Subscription Services. The website www.smsgc.nl need not be mentioned in the registration and deregistration messages.
5. For technical reasons, Article 12(4) does not apply to service messages such as MMS and WAP Push. In the case of service messages, this information must be stated clearly visible on the download page without the End User needing to scroll.
6. The Subscription will be considered to have been terminated if the Content Provider does not offer the content associated with a Subscription Service to the End User for a continuous period of 2 weeks and fails to comply with the agreement for the Subscription. After that period of inactivity, the Content Provider may not reactivate the service. The End User does not need to actively unregister by sending STOP.

CHAPTER V COMPLAINTS, COMPLIANCE AND ENFORCEMENT

Article 13. Handling of complaints from End Users

With due observance of the starting points listed below, the End User will be free to decide whether he or she submits questions, comments or complaints to his or her Operator, Service Provider, the SMS Service Provider facilitating the relevant SMS Service or the Content Provider offering the service. The party to which the End User submits a complaint will handle such complaint.

1. Handling of complaints by SMS Service Providers and Content Providers
 - a) In cases where the End User submits complaints, questions or comments to the SMS Service Provider or Content Provider regarding the content, operation or communication of an SMS service provided by the relevant SMS Service Provider or the Content Provider, the SMS Service Provider or Content Provider shall provide a satisfactory response. If, for example, the End User wishes to deregister, the service will be halted as soon as possible. A complaint submitted by an End User will always be handled and not passed on to another Party.
 - b) If the SMS Service Provider (not being the End User) submits a request for the provision of the (comprehensive) message history to the relevant Content Provider, this Content Provider should provide the requested information within three working days of receiving the said request. If this term is exceeded, the SMS Service Provider will be obliged to compensate the End User in the context of the complaints procedure.
 - c) If the registration of a Subscription Service proves not to have been in accordance with

the provisions of the Code of Conduct, the End User will be presumed not to have given his or her consent for the relevant SMS Service and he or she will be compensated for the amount in dispute. Such compensation will be paid out by the SMS Service Provider or Content Provider who has handled the complaint, within 30 days of it being established that the complaint is well-founded.

- d) The SMS Service Provider or Content Provider that assumed the handling of the complaint will have a best-efforts obligation to complete such handling within ten working days; if this term is exceeded, the End User will be actively informed by the party handling the complaint. If the End User receives compensation, same will be paid by the party that assumed the handling of the complaint, within 30 days of it being established that the complaint is well-founded.
- e) SMS Service Providers and Content Providers shall ensure that all the End User's registration, consent and deregistration messages (Short Code, message, time of the message, mobile number and content) plus his or her full Premium SMS MT message history and any costs charged to the End User are stored at least two years – within the limits of the applicable privacy and other rules and regulations – for consultation in the event of any complaints or disputes. SMS Service Providers and Content Providers will also be obliged to store such information so as to provide information at the End User's request and in order to resolve and prevent any cases of fraud. The records of registration should be kept for at least two years following the termination of the SMS Service. SMS Service Providers and Content Providers, and any legal successors or following holders of specific Short Codes, are subject to a best-efforts obligation for the provision of information as referred to in this Article for two years after termination of the SMS Service by the End User.
- f) The obligation to store records in respect of the Premium SMS MO and Premium SMS MT message history as described in the preceding paragraph will not apply if the registration for the SMS Service took place before this Code of Conduct entered into force on 1 March 2010; in that event, a one-year obligation to store records will apply, within the limits of the applicable privacy and other rules and regulations.
- g) If, after correctly deregistering, the End User nevertheless continues to receive messages, the SMS Service Provider and the Content Provider will make every effort to solve this problem in the shortest possible term and they will be responsible for the immediate reimbursement to the End User of any user costs that have arisen after the deregistration.

2. Handling of complaints by the Operator

- a) In cases where the End User submits any complaints, questions or comments to the

Operator, the Operator will provide a satisfactory response. If, for example, the End User wishes to deregister, the service will be halted as soon as possible. A complaint submitted by an End User will always be handled and not passed on to another Party.

- b) If the Operator (not being the End User) submits a request for the provision of the (comprehensive) message history, and/or the necessary data for determining whether an End User has taken an informed decision, to the relevant Content Provider, this Content Provider should provide the requested information within three working days of receiving the said request. If this term is exceeded, the Operator will be obliged to compensate the End User in the context of the complaints procedure.
- c) If the registration of a Subscription Service proves not to have been in accordance with the provisions of the Code of Conduct, the End User will be presumed not to have given his or her consent for the relevant SMS Service and he or she will be compensated for the amount in dispute. Such compensation will be paid out by the Operator within 30 days of it being established that the complaint is well-founded.
- d) The Operator will have a best-efforts obligation to complete such handling within ten working days; if this term is exceeded, the End User will be actively informed by the Operator handling the complaint. If the End User receives compensation, same will be paid by the party that assumed the handling of the complaint, within 30 days of it being established that the complaint is well-founded.
- e) SMS Service Providers and Content Providers shall ensure that all the End User's registration, consent and deregistration messages (Short Code, message, time of the message, mobile number and content) plus his or her full Premium SMS MT message history and any costs charged to the End User are stored at least two years for consultation in the event of any complaints or disputes. SMS Service Providers and Content Providers will also be obliged to store such information so as to provide information at the End User's request and in order to resolve and prevent any cases of fraud. The records of registration should be kept for at least two years following the termination of the SMS Service, within the limits of the applicable privacy and other rules and regulations.
- f) The obligation to store records in respect of the Premium SMS MO and Premium SMS MT message history as described in the preceding paragraph will not apply if the registration for the SMS Service took place before this Code of Conduct entered into force on 1 March 2010; in that event, a one-year obligation to store records will apply.
- g) Operators will be entitled, on behalf of Parties, to provide the records of the registration and deregistration obtained pursuant to Article 13(2)(e) plus the overview of the

comprehensive Premium SMS MT message history to the End User to whom the relevant costs have been charged and to guarantee that such End User is entitled to request such information.

- h) In addition, the Operators will have a best-efforts obligation to provide for an arrangement for the suspension of the payment obligation in respect of premium SMS services provided in the event that the End User contests the payment and/or submits a complaint to the Telecommunications Disputes Committee if they do not have such an arrangement upon this Code of Conduct taking effect. The definitive arrangement will be part of the Code of Conduct.

3. Telecommunications Disputes Committee

- a) The Operators to this Code of Conduct are members to the Telecommunications Disputes Committee.
- b) Any disputes between an End User who is a natural person and not acting in a professional or commercial capacity on the one hand and one of the Parties to this Code of Conduct on the other regarding the conclusion or performance of the agreement providing for the services provided or to be provided by the relevant Party may be submitted, either by the relevant End User or by the relevant Party, to the Telecommunications Disputes Committee if it has become clear that the Parties will not be able to resolve their dispute amicably.
- c) In the event of any disputes regarding the costs of SMS Services, the Operators undertake not to advance in their defence that the End User's claim should be disallowed because the services in question are not provided by the Operator itself or because the Disputes Committee is not competent in respect of such services.

Article 14. Enforcement via the Compliance Office

- a) The Foundation will appoint an authority (hereafter 'the Compliance Office') which will carry out the Foundation's enforcement and supervisory duties.
- b) The Compliance Office will be authorised to take enforcement action against any established violations of the Code of Conduct, either at the request of Members of the Foundation or on its own initiative.
- c) The Compliance Office will call to account a Party (hereafter 'the violating Party') or one or more natural persons that are or were connected with it by substantially determining or having determined the policies of the said Party or Affiliate.
- d) If a Party fails to comply with one or more provisions of this Code of Conduct, the member of the

Foundation that has established the relevant breach by such Party shall report the breach to the Compliance Office as soon as possible (no later than within one week) following its discovery of same.

- e) The Compliance Office will determine whether the act violated the Code of Conduct and will, if it is of the opinion that this is the case:
- (i) directly call to account the Party in breach and instruct it to adjust its services immediately and in any case within two working days of receiving the notice from the Compliance Office in connection with the breach, or to suspend or cancel the relevant SMS Service in such a way that the breach of the Code of Conduct is discontinued within two working days, and/or
 - (ii) to provide the relevant SMS Service Provider with a copy of the notice of the breach if the party in breach is a Content Provider, and/or
 - (iii) in the event of a breach that can be clearly demonstrated and if the service is not adjusted by the party in breach within two working days, instruct the Party in breach to cease promoting the relevant SMS Service and to suspend or cancel same, and/or
 - (iv) in a situation as described in Article 14(e)(iii), the Compliance Office may also instruct the SMS Service Provider to ensure that the relevant SMS Service be suspended or cancelled.
- f) The SMS Service Providers will be responsible for keeping the Content Providers' contact information at the Compliance Office up-to-date.
- g) Furthermore, if it is of the opinion that the instruction/instructions issued by the Compliance Office pursuant to sub-paragraph e of this Article has/have not been entirely complied with, the Compliance Office will submit a request for enforcement to the Enforcement Committee in the event of a breach of the SMS Code of Conduct, in the manner further provided for in Articles 15 and 16 of the Code of Conduct. Such a request should be submitted within two weeks of the expiry of the term referred to in Article 14(e)(i). Also if, in the opinion of the Compliance Office, a ruling on the provision of services or conduct of the Party in breach is desirable, for instance because such provision of services or conduct repeatedly fails to comply with the Code of Conduct, the Compliance Office will submit a request for enforcement to the Enforcement Committee if the SMS Code of Conduct is breached, in the manner further provided in Articles 15 and 16 of the Code of Conduct.

- h) Furthermore, if the Compliance Office is of the opinion that instructions issued by it pursuant to sub-paragraph e of this Article have not been complied with or have not been fully complied with, the Compliance Office may institute emergency proceedings before the Dutch Advertising Standards Committee [*Reclame Code Commissie*, or *RCC*]. The Compliance Office will then submit a complaint to the Advertising Standards Committee on the basis of the instructions because the Compliance Office finds that the special SMS Service Provision Advertising Code is being breached by the Party allegedly in breach. The Party allegedly in breach and the Compliance Office undertake to be present at the Advertising Standards Committee's session on the first date available for the hearing to provide a further explanation of the complaint and the defence. Both the Compliance Office and the Party allegedly in breach undertake to provide the Advertising Standards Committee with information and/or relevant documentation in the shortest possible term to enable the Advertising Standards Committee to reach a decision on the basis of proper information. The decision of the Advertising Standards Committee will be rendered in writing within three working days of the session and will be considered 'enforceable regardless of any appeal'. This means that, if the Advertising Standards Committee confirms that the Party allegedly in breach has indeed breached the special SMS Service Provision Advertising Code, the communications in dispute and any other communications of the Party in breach that are essentially equivalent to the communications in dispute may no longer be made public, with immediate effect. An appeal may be lodged with the Appeals Tribunal [*College van Beroep*] against the decision of the Advertising Standards Committee within seven days of the date of the decision. The same conditions will apply to proceedings before the Appeals Tribunal as apply to proceedings instituted before the Advertising Standards Committee. If it becomes clear that the Party in breach has not immediately complied with the decision of the Advertising Standards Committee, the Compliance Office will submit a request for enforcement to the Enforcement Committee. Such a request will be submitted to the Enforcement Committee no later than within two weeks of the Compliance Office establishing the non-compliance with the decision of the Advertising Standards Committee.
- i) Members of the Foundation may lodge an appeal with the Enforcement Committee against the finding of the Compliance Office within thirty days of the request of the Compliance Office being filed in the manner described in Article 14(e). If a Party wishes to lodge an appeal against a finding of the Compliance Office, such Party should be a member of the Foundation, in which case the appeal may be submitted to the Foundation's secretariat. If a Party wishes to lodge an appeal against a finding of the Compliance Office and this Party is not a member of the Foundation, the appeal may be submitted to the Foundation's secretariat upon the payment of an annual fee to be determined by the Foundation.
- j) The Compliance Office, at its own discretion but within the limits of the applicable privacy and other rules and regulations, may call on Parties to provide log data and/or marketing communications for investigation of possible contraventions of the Code of Conduct. 'Log data' means registration messages, deregistration messages, and content received in relation to an

End User. Parties are obliged to provide this information within two working days.

- k) In the event of a serious breach of the SMS Service Provision Code of Conduct that can be clearly demonstrated, an Operator can submit a request for enforcement directly to the Enforcement Committee.

Article 15. Enforcement Committee for Mobile Services

1. An Enforcement Committee for Mobile Services (hereafter 'the Committee') has been established.
2. The Committee has three independent members. The Committee consists of a judge, a scientist, and a person with a knowledge of the sector. The members will be appointed for a three-year period by the members of the Foundation's Board. The members may be re-appointed.
3. The members will carry out their duties independently and may not have any interests of any nature in or related to Parties to the Code of Conduct.
4. The members of the Committee cannot be removed from office during their term, unless they so request at their own initiative, unless they breach paragraph 3 of this Article or unless they seriously neglect their duties.
5. The Committee will receive secretarial and financial support from the Foundation.
6. The members of the Committee will receive an expense allowance – to be determined by the Board – for every request for enforcement handled.

Article 16. Duties and powers of the Committee

1. At the request of the Compliance Office or a Party lodging an appeal against a finding of the Compliance Office pursuant to Article 14(e) of the Code of Conduct, it will be the Committee's duty to rule on the act of a Party or one or more natural persons that are or were connected to it with it by substantially determining or having determined the policies of the said SMS Service Provider, Content Provider of Affiliate that was assessed by the Compliance Office. It will be determined whether the act breached the Code of Conduct and, if the Committee finds that this was indeed the case, it will impose an appropriate penalty in accordance with paragraph 2 of this Article.
2. The Committee will impose a sanction only if it is convinced that the Code of Conduct has been breached and the procedure laid down in Article 14 of the Code of Conduct has been followed.
3. In derogation from paragraph 2, the Committee may also impose a penalty if, although the breaches of the Code of Conduct were reversed following the first warning, the Code of Conduct was repeatedly breached by the Operator, SMS Service Provider, Content Provider, Affiliate or one or more natural persons as referred to in Article 16(1) of the Code of Conduct, in such a way as to render the breaches structural in nature.
4. By way of a penalty, either separately or combined, the Committee may:

- a. issue a reprimand;
- b. impose a penalty up to a maximum of EUR 100,000 per established breach;
- c. supplementary to Article 16(4)(b), in the event of a repeated breach by one and the same Affiliate or Content Provider of an SMS Service Provider of the special advertising code in respect of the provision of SMS Services, the Committee may impose a penalty of EUR 25,000 per Affiliate or Content Provider;
- d. prohibit the provision of certain services during a specified period of time;
- e. prohibit a legal entity or a natural person connected to same in the capacity of a managing director from offering SMS Services to End Users during a specified period (black list);
- f. impose the obligation to issue rectifications;
- g. impose the obligation to compensate any demonstrable damage;
- h. impose an order subject to a coercive penalty payment if the Party in breach does not comply with the penalty in a timely manner;
- i. take other measures which it considers proportional and appropriate.

In addition, the Committee may determine that the costs of handling the request should be borne by the Party or Parties that have been found to be in breach for purposes of the penalty, subject to a maximum of EUR 4,500.

5. The Committee's decisions will be binding on all Parties to the Code of Conduct.
6. The Compliance Office will supervise the compliance with the Committee's decisions.
7. The Committee's decisions will be published on the Foundation's website, taking account of requirements related to corporate confidentiality.
8. The Committee will refrain from rendering any decision or imposing any penalty if, prior to such, the request is withdrawn.
9. The Committee will draw up Regulations on the Enforcement of the SMS Code of Conduct [*Reglement Handhaving SMS Gedragscode*] which will be communicated to the Parties to the Code of Conduct. The Regulations will describe, among other things, the procedure and terms applied by the Committee before it renders a decision. The procedure should be in accordance with reasonable requirements of transparency, objectivity and non-discrimination.

CHAPTER VI. FINAL PROVISIONS

Article 17. Code of Conduct's entry into effect

1. This Code of Conduct will take effect on 1 January 2012.
2. Without prejudice to Article 14 of this Code of Conduct, an Operator or SMS Service Provider may discontinue or suspend SMS Services which are not in accordance with this Code of Conduct upon this Code taking effect until they have been adjusted in accordance with the Code of Conduct.

Article 18. Amendments to the Code of Conduct

1. This Code of Conduct may be amended in the following manner only:
 - the three categories of member parties as described in Article 19 of this Code of Conduct each have 1/3 vote ('Vote'); and
 - within each category, the Vote is divided in accordance with the voting ratio that applies to that category, in which respect each member will have an equal vote in the final Vote of the category;
 - if the sum of the votes in favour exceeds 2/3, the amendment will be adopted.

For example:

Category 1: if 4 out of 5 members in this category are in favour, this means $4/5 \times 1/3 (=0.264)$ of the total Vote of this category;

Category 2: if all members in this category are in favour, this means $8/8 \times 1/3 (=0.333)$ of the total Vote of this category;

Category 3: if two of the members in this category are in favour, this means $2/4 \times 1/3 (=0.165)$ of the total Vote of this category;

The outcome of the overall vote will then be 0.762, so that the proposed amendment will be adopted.

2. Proposed amendments to the Code of Conduct may be submitted by member Operators, Service Providers, SMS Service Providers, Content Providers, the Independent Post and Telecommunications Authority and legal entities whose object under their Articles is to represent consumer interests. Proposals should be submitted by sending same to the Foundation's postal address.
3. The Foundation will make every effort to provide a first response to the proposed amendment to the party submitting the proposal within one month of its receipt of the proposed amendment.

Article 19. Applicability of the Code of Conduct

Parties may become Members of the Foundation and will be divided into three categories, to wit:

- Category 1: Operators or other parties, if they facilitate their own SMS Services or SMS Services of SMS Service Providers and charge such services to End Users, including mobile and fixed network providers insofar as they offer SMS Services to End Users, and/or Service Providers insofar as they charge SMS Services to their End Users, either explicitly or as the result of the applicability of this Code of Conduct to their agreement with the operator;
- Category 2: SMS Service Providers;
- Category 3: Content Providers, either explicitly or as the result of the applicability of this Code of Conduct to their agreement with the SMS Service Provider and/or the resellers of SMS

Service Providers.

Article 20. Secretariat of the Code of Conduct

The secretariat of the Code of Conduct and its management will be conducted by the Foundation. Any correspondence regarding the Code of Conduct should be sent to the Foundation's postal address.

Article 21. Disputes procedure

Without prejudice to the provisions of Chapter 5 of this Code of Conduct, any disputes regarding this Code of Conduct should first be communicated to the parties involved and to the Foundation's Board. If this does not lead to a resolution that is acceptable to all parties to the dispute within six weeks, the dispute will be submitted to the competent District Court in The Hague, the Netherlands.

Annex 1 Format for the provision of information on SMS Services

**INFORMATION FOR SMS CODE OF CONDUCT FOUNDATION
ONLINE DATABASE**

1	2	3	4	5	6	7	8	9
Name of the service	Description	Particulars	Abbreviated code	Sender	Subscription command	Unsubscription command	Cost in euros	Frequency
10	11	12	13	14	15	16		
Telephone number of helpdesk	Opening times of helpdesk	Helpdesk cost	Helpdesk e-mail	Helpdesk website	Name and address of Content Provider	Name of SMS Service Provider		

EXPLANATION OF ABOVE FIELDS:		
1	Name of the service:	The name of the SMS Service that is offered (or the same name as the name used in communication)
2	Description:	Brief addition to the name of the service
3	Particulars:	Subscription or non-recurring service
4	Abbreviated code:	This is the abbreviated number (short code) on which the SMS Service is offered.
5	Sender:	This is the abbreviated number (short code) on which the SMS Service is offered.
6	Subscription command:	The subscription command with which the service can be purchased.
7	Unsubscription command:	The unsubscription command with which the service can be halted.
8	Cost in euros:	The cost per content item or per credit
9	Frequency:	The number of content items/credits per week or per month
10	Telephone number of helpdesk:	The telephone number or numbers of the SMS Service Provider and/or of the Content Provider to which questions and complaints can be directed
11	Opening times of helpdesk:	The times at which the helpdesk referred to in 10 is accessible
12	Helpdesk cost:	The cost in euros per minute for the helpdesk referred to in 10

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13	Helpdesk e-mail:	The e-mail address of the SMS Service Provider and/or of the Content Provider to which questions and complaints can be directed
14	Helpdesk website:	The website address or addresses of the SMS Service Provider and/or of the Content Provider to which questions and complaints can be directed and where further information about the SMS Service is provided to End Users
15	Name and address of Content Provider:	The name, address, and place of residence (i.e. the postal address) of the Content Provider
16	Name of SMS Service Provider:	The name of SMS Service Provider

Annex 2 List of approved abbreviations

Words that may not be abbreviated:

Subscription Service [*Abonnementsdienst*]
Subscription [*Abonnement*]
Stop [*Stoppen*]
Unsubscribe [*Afmelden*]
Cost / Costs [*Kost / Kosten*]
Day [*Dag*]
Download
Download costs [*Downloadkosten*]
Costs [*Kosten*]
SMS
Per sent message [*Per verzonden bericht*]
Per received message [*Per ontvangen bericht*]
Wallpaper
Ringtone
Realtone
Sound
Item
Product
Info
Help

Permitted abbreviations:

Per message = /message [*Per bericht = /bericht*]
Per content item = /item
Per chat = /chat
Maximum = max [*Maximaal = max*]
Minimum = min [*Minimaal = min*]
Per week = /wk
Per month = /mth [*Per maand = /mnd*]
Euro = € (for example €0.70)
Including = Incl [*Inclusief = Incl*]
Times = x [*Keer = x*] (for example 3x a funsound)
For example = e.g. [*Bijvoorbeeld = bijv*]

Examples of abbreviations that are NOT permitted:

/r.m. (per received message) [*/o.b. (per ontvangen bericht)*]
/m. (per message) [*/b. (per bericht)*]
p.w. (per week)
prm and p.r.m. [*pob en p.o.b.*]
psm and p.s.m. [*pvb en p.v.b.*]
pm and p.m. [*pb en p.b.*]
pw
