

DEFINITIONS

“Charges” means the charges made for use of the Service, as set out at clause 2 and calculated using the rates set out at Schedule 1, varied from time to time in accordance with clause 19 and any third party charges as described in clause 2.6;

“Content” means all textual, visual, audio or other material appearing on or available through the Service which may be supplied by the Service Provider from time to time;

“Credit Limit” means the amount of credit the Subscriber is allowed in respect of the Charges for each calendar month;

“Deposit” means an amount equivalent to the Subscriber’s Credit Limit as proposed by the Subscriber and consented to by the Service Provider from time to time;

“Intellectual Property Rights” means all patents, utility models, registered and unregistered trade marks and service marks, trade and business names, copyright (including database rights), rights in domain names, design rights and registered designs, know how and any other intellectual property rights (including applications for or rights to apply for any rights) whether enforceable in Kenya or otherwise;

“Minimum Term” means the minimum term of this Agreement as set out in clause 1;

“Network” means the satellite and terrestrial system that provides the Service to the Subscriber;

“Registration” means acceptance by the Service Provider of the Subscriber’s application to register with the Service Provider for the Service;

“Service” means the mobile satellite and terrestrial communications service which enables the Subscriber, via the Network, to make and receive calls and SMS messages and such other services (including the Content) as are made available to the Subscriber by the Service Provider from time to time;

“Service Provider” means Indigo Telecom Ltd, a company whose registered office is at PO Box 1063-00502, Nairobi, Kenya;

“SIM Card” means a subscriber identity module;

“SMS” Means short message service (text) messaging, which is incorporated as part of the service enabled by the Service;

“Subscriber” means, the user, whose name appears on the contract and activation form.

“Subscriber Unit” means the individual equipment unit necessary for initiating and receiving communications via the Network;

1) MINIMUM TERM

1.1) Subject to the provisions of clauses 4 and 8, this Agreement will continue for a minimum of 12 months from the date of Registration. Thereafter, it may be terminated as set out at clause 8

2) CHARGES

2.1) The Service Provider will send the Subscriber a monthly invoice for the Charges incurred and not previously billed.

2.2) The Subscriber agrees to pay all Charges within 14 days of the date of the relevant invoice.

2.3) The Service Provider will accept payment of the Charges by credit card, cheque or bank transfer, as agreed with the Subscriber from time to time.

2.4) Notwithstanding clauses 6.1 and 8.3, any unpaid Charges will be added to the following monthly invoice. The Service Provider may charge interest on unpaid Charges at a rate of 2% Per month on outstanding amounts.

2.5) The Service Provider reserves the right to vary the Charges from time to time upon giving written notification to the Subscriber in accordance with clause 19.

2.6) The monthly invoice referred to in clause 2.1 above shall include charges for any items and additional services for which the Subscriber has signed up using the SMS component of the Service.

2.7) The service provider may use any means necessary to recover due charges from the subscriber, including but not limited to repossessing of equipment, black listing of the subscriber with appropriate credit agencies and refusal to supply more services and goods.

3) SERVICE

3.1) The Service Provider will use reasonable endeavours to provide the Subscriber with a quality of service generally expected of a competent mobile telecommunications service provider exercising due skill and care and providing access to a network similar to the Network.

3.2) The quality and availability of the Service may be affected by factors beyond the Service Provider's control including, but not limited to: physical obstructions, atmospheric conditions and other causes of radio interference; insolvency of, default or industrial action by any third party providing telecommunications networks on which the Network relies or faults in any such telecommunications networks; too many Subscribers trying to use the Network at any one time; or the functioning of the Subscriber Unit.

3.3) The Service Provider reserves the right to vary the technical specifications of the Service from time to time with or without notice.

4) CONDITIONS OF USE OF THE SERVICE

4.1) The Subscriber agrees not to use the Service to receive, store, display, send or publish any material which is offensive, abusive (racially, ethnically or otherwise), indecent or defamatory; causes a nuisance or annoyance to any third party (including repeated unsolicited communications without reasonable cause); violates any law regarding unfair competition, anti-discrimination, false advertising or consumer protection or any other applicable law, regulation or code or in any way is otherwise unlawful.

4.2) The Subscriber agrees not to commit (or allow any person to commit) any act that will damage or potentially damage the operation of whole or part of the Network or in any way have a detrimental effect on the Network.

4.3) The Subscriber agrees to comply with all reasonable instructions, requests for information, security checks and other checks issued by the Service Provider in connection with the use of the

Service.

4.4) The Subscriber will only use the Network in conjunction with the Subscriber Unit.

4.5) The Subscriber will not make reverse charge calls.

4.6) The Subscriber is responsible for all Charges on the Subscriber's account whether accrued by the Subscriber personally or otherwise including charges incurred by the Subscriber through additional SMS related services.

5) CONTENT

5.1) The Service Provider will use all reasonable endeavours to maintain the Content but makes no representations as to the continuity of supply, accuracy, currency or completeness of the Content and is not liable for any action the Subscriber or any other party takes in reliance on the Content.

5.2) The Service Provider reserves the right to vary the Content from time to time.

5.3) The Subscriber agrees not to use the Content in any way that is in breach of confidence or infringes the Intellectual Property Rights, privacy, publicity or any other rights of third parties.

5.4) The Service Provider is not a party to any transaction and does not accept responsibility for any transaction concerning any goods or services offered by a third party in the Content.

6) SUSPENSION OF THE SERVICE

6.1) The Service Provider may suspend all or any part of the Service without notice or, if applicable, refuse to activate the Subscriber Unit and/or Service:

6.1.1) if the Subscriber is in breach of any part of this Agreement including, but not limited to, any failure to pay the relevant Charges;

6.1.2) if the Service Provider has reason to believe that the Subscriber has supplied false particulars upon Registration or has, in any way, entered into this Agreement fraudulently;

6.1.3) if the Service Provider has reason to believe that fraudulent or improper use is being made of the Service and/or the Subscriber Unit;

6.1.4) if the Service Provider is notified of the theft loss or destruction of the Subscriber Unit and/or SIM Card;

6.1.5) to investigate a complaint made against the Subscriber;

6.1.6) if it is necessary to carry out maintenance, modifications or improvements of the Network (although the Service Provider will use its best endeavours to provide alternative Service and/or to keep suspension of the Service to a minimum); or

6.1.7) for reasons beyond the Service Provider's control.

6.2) If the Service Provider suspends the Service for a reason set out in clauses 6.1.1 to 6.1.5, the Subscriber remains liable throughout the period of suspension for all Charges relating to the provision of the Service.

7) SIM CARD AND SUBSCRIBER UNIT

7.1) The Subscriber will be provided with a Subscriber Unit under a separate agreement.

7.2) The SIM Card is provided to the Subscriber under licence and at all times remains the property of the Service Provider.

7.3) The Subscriber agrees to take all reasonable precautions to prevent the loss, theft, unauthorised use of, damage to or destruction of the SIM Card.

7.4) The Subscriber agrees to inform the Service Provider immediately (or as soon as is reasonably practicable) of the loss, theft, actual and potential unauthorised use of damage to or destruction of the SIM Card and/or Subscriber Unit.

7.5) The Subscriber agrees to comply with all reasonable instructions, requests for information, security checks and other checks required by the Service Provider in connection with the occurrence of any event specified in 7.3 or 7.4.

7.6) If the Subscriber informs the Service Provider of an occurrence detailed in clause 7.4, the Service Provider will use its best endeavours to deactivate the SIM Card as soon as is reasonably practicable. The Subscriber remains liable for all Charges incurred as a result of any unauthorised use of the SIM Card or the Subscriber Unit. If the Minimum Term has not expired, the Subscriber is liable for the Charges that relate to the remaining period of the Minimum Term whether or not the Subscriber chooses to replace the SIM Card and/or the Subscriber Unit.

7.7) The Subscriber may be required to pay a fee for each and all replacement SIM Cards as specified by the Service Provider.

8) TERMINATION

8.1) The Subscriber may terminate this Agreement by giving one month's written notification to the Service Provider at any time after the end of the Minimum Term, provided that all Charges properly invoiced to the Subscriber are fully paid prior to such notice expiring.

8.2) Notwithstanding the provisions of clauses 1 and 8.1, the Subscriber may terminate this Agreement immediately upon request in writing to the Service Provider if:

8.2.1) the Service Provider is in breach of an important obligation under this Agreement and fails to remedy the breach within 21 days of being asked to do so by the Subscriber in writing;

8.2.2) the Services are permanently unavailable to the Subscriber.

8.3) The Service Provider may terminate this Agreement if:

8.3.1) the Subscriber breaches an important condition of this Agreement (including, but not limited to, failure to pay any Charges due or any increase in the Deposit under clause 11.2);

8.3.2) the Subscriber breaches a lesser condition of this Agreement and fails to remedy the breach within 14 days of being asked to do so in writing by the Service Provider;

8.3.3) the Subscriber is unable to pay debts or makes (or offers to make) an arrangement with creditors; commits an act of bankruptcy; any person serves a petition for bankruptcy, receiving order or administration order against the Subscriber; the Subscriber is a limited company and a winding up resolution is passed or a receiver or administrator is appointed over all or part of the Subscriber's assets (otherwise than for a solvent reconstruction or amalgamation); or any such similar event involving the Subscriber occurs outside the United Kingdom;

8.3.4) any licence or other permission required (whether by the Service Provider or otherwise) to run the Network is revoked; or

8.3.5) all Services are permanently unavailable.

8.4) Notwithstanding the provisions of clause 1 and clause 8.3, the Service Provider may at any time terminate this Agreement at its own discretion by giving one month's written notification to the Subscriber. The Service Provider is under no obligation to provide the Subscriber with any reason for termination.

9) CONSEQUENCES OF TERMINATION

9.1) Upon termination of this Agreement:

9.1.1) the Subscriber Unit will be disconnected and the Subscriber will no longer be entitled to use the Service;

9.1.2) if requested by the Service Provider, the Subscriber must return the SIM Card to the Service Provider in good condition as soon as is reasonably practicable and in any event within 14 days;

- 9.1.3)** the Subscriber will be required to pay all outstanding Charges immediately;
- 9.1.4)** except where the Subscriber terminates this Agreement in accordance with clause 8.2 or the Service Provider terminates this Agreement in accordance with clause 8.4 the Subscriber will be required to pay the Charges for the amount of the Minimum Term that has left to run or, if the Minimum Term has expired, for a further calendar month.
- 9.2)** The Service Provider will repay the Deposit or a balance of the Deposit to the Subscriber in accordance with clause 11.4.

10)ASSIGNMENT

- 10.1)** The Service Provider reserves the right, at any time, to assign its rights and obligations under this Agreement to any third party.
- 10.2)** This Agreement is personal to the Subscriber. The Subscriber may not assign any or all of its rights and obligations under this Agreement to a third party unless:
- 10.2.1)** the Subscriber has notified the Service Provider of its intention to do so; and
- 10.2.2)** the Service Provide has agreed in writing to the assignment.
- 10.3)** An assignment by the Subscriber to a third party will not be effective until the Registration of the third party. Upon Registration, the third party will be deemed to have excepted the terms of this Agreement.

11)DEPOSIT

- 11.1)** Upon purchase of the Subscriber Unit, the Subscriber must, if required by the Service Provider, pay the Deposit to the Service Provider.
- 11.2)** The Deposit is held by the Service Provider as a guarantee against the non-payment of Charges. A Charge is considered to be unpaid if payment remains outstanding for a period of more than 14 days from the date of the invoice. The Service Provider can request an increase in the Deposit at any time if:
- 11.2.1)** the unpaid Charges exceed the Deposit.
- 11.2.2)** the Service Provider makes additional services available to the Subscriber.
- 11.3)** Refusal to pay any such increase as detailed in clause 11.2 will entitle the Service Provider to terminate the Agreement.
- 11.4)** The Service Provider is entitled to keep the Deposit until this Agreement ends. Following termination the Service Provider will return the Deposit to the Subscriber when the Subscriber pays all outstanding Charges. The Service Provider may, but shall not be obliged to, use the Deposit to pay any Charges outstanding upon termination and any late charges arising or coming to light after termination. No interest is payable on the Deposit.
- 11.5)** Refunds for deposit amounts that may be due to the subscriber, after deduction of charges as above will be processed within 30 days of receipt of the request to refund the amount in writing from the Subscriber.

12)RIGHTS OF SERVICE PROVIDER

- 12.1)** For the purposes of good management and security, the Service Provider reserves the right to:
- 12.1.1)** monitor the contents of any text message the Subscriber sends or receives from time to time;
- 12.1.2)** record any conversations between the Subscriber and the Service Provider's employees or agents.

13)USE OF INFORMATION

- 13.1)** The Service Provider reserves the right to:

13.1.1) disclose information about the Subscriber including, but not limited to, details about the Subscriber's use of the Service and conduct of its account for the purpose of operating the account and providing the Subscriber with the Service;

13.1.2) analyse information about the Subscriber for marketing purposes (unless the Subscriber requests otherwise in accordance with clause 15) and such information may be used to offer the Subscriber products, Services and offers that the Service Provider considers may be of interest to the Subscriber.

13.2) The Subscriber information set out in clause 13.1 may be disclosed to or analysed by the Service Provider's associate companies, any party who acts on behalf of the Service Provider or its associate companies, agents of the Service Provider, telecommunications companies, debt collection agencies or credit reference agencies, whether in the United Kingdom or abroad.

13.3) Disclosure of Subscriber information may be required by an order of any court of competent jurisdiction or by statutory authority. Subscriber information may be used by the Service Provider or any other party for the purposes of detection of fraud or prevention of crime.

13.4) Information concerning the Subscriber may be used by other parties in assessing an application for credit from the Subscriber or members of the Subscriber's household. Subscriber information may be used for the purpose of debt tracing or credit management.

13.5) The Service Provider may disclose the Subscriber's full name, address and the Subscriber Unit phone number in order to provide a publicly accessible directory service, whether operated by the Service Provider or a third party, unless the Subscriber requests otherwise in accordance with clause 15.

13.6) When the Subscriber uses the Subscriber Unit the identity of phone number may be sent through the Network thereby identifying the Subscriber to the person receiving the call unless the Subscriber requests otherwise in accordance with clause 15.

13.7) By entering into this Agreement the Subscriber consents to the transfer of information about the Subscriber as detailed in this clause.

14) LIABILITY

14.1) The Service Provider will not be liable to the Subscriber in contract or tort or otherwise for any loss of profits, business, revenue, goodwill, anticipated savings or indirect or consequential loss or damage even if it has been advised of the possibility of the same.

14.2) The Service Provider will not be liable for any breach of this Agreement or for nonavailability or sub-standard quality of Services caused by or resulting from any factor outside its control including but not limited to acts of god, fire, flood or storm; strikes, lock-outs or other forms of industrial action; the default or failure of a third party including, but not limited to, satellite providers; war, riot, governmental action, or any act or decision made by a court of competent jurisdiction.

14.3) The Service Provider will not be liable for any accident, damage or injury caused by or to a vehicle, water craft or aircraft owned or operated by the Subscriber or any other person whether or not the accident, damage or injury is related to the operation or failure of the Service or Subscriber Unit or other communications equipment.

14.4) Subject to clause 14.3 above the maximum liability that may be incurred by the Service Provider is limited to the repayment of all Charges arising in the 12 month period prior to the event preceding the event giving rise to the liability and the Deposit up to a maximum amount of US\$ 5,000.00

15) NOTICE

15.1) Any notice given by the Subscriber under this Agreement must be given either in writing by

facsimile to +254 20 3876886 or via the contact us provision on the service providers website – www.indigotelecom.com . A notice is deemed to have been delivered on the next day, following the date of transmission, which is a business day in Kenya.

15.2) Any notice served by the Service Provider will be in writing and will be sent by first class post or by facsimile to the email address given by the Subscriber on Registration unless the Subscriber notifies the Service Provider of a change of address. The Subscriber agrees to notify the Service Provider immediately of any such change of address. A notice given by the Service Provider is deemed to have been delivered 48 hours after posting if posted and on the date of transmission if given by facsimile or Email.

16)THIRD PARTY BENEFITS

16.1) This Agreement does not confer any benefit on any third party under The Contracts (Rights of Third Parties) Act 1999 or by any other means.

17)CREDIT ASSESSMENTS

17.1) The Service Provider reserves the right to utilise information obtained from credit reference agencies to help make credit decisions and for the prevention of fraud.

17.2) The Service Provider cannot accept responsibility for the accuracy of the information supplied by credit reference agencies or accept any liability for the consequences of the Service Provider declining to register any person as a result of such information.

18)WAIVERS

18.1) Any waivers, concessions or extra time granted by the Service Provider to the Subscriber is limited to the specific circumstances in which it is granted and does not otherwise affect the rights of the Service Provider.

19)CHANGES TO THE CONTRACT

19.1) The Service Provider reserves the right to make changes to this Agreement from time to time, effective 1 month after written notification is given to the Subscriber. Unless the Subscriber gives notice within 1 month of being notified of the changes, the Subscriber will be taken to have accepted the changes.

19.2) The Service Provider may substitute any clause or condition of this Agreement which is not legally effective with a clause or condition of similar meaning, which is legally effective. If a clause or condition of this Agreement is not legally effective, the legal effect of the remaining part of this Agreement shall be unaffected

20)GOVERNING LAW

20.1) This Agreement is subject to Kenyan law and any action concerning this Agreement must be brought in the Kenyan courts.