
**WEB SITE ACCESS AND SERVICE AGREEMENT
ENTERED INTO AND BETWEEN**

EIL

AND

the Territory Licensee, whose details are found on the contact page of the Website

AND

the Customer

WHEREAS the Customer will access the Website;

AND WHEREAS the Customer may purchase the Equipment and subscribe to Services as more fully detailed in this Agreement in which case the Customer will acquire a SIM card as an integrated element of the Equipment, which SIM card is provided by the Mobile Operator by agreement with the Territory Licensee;

AND WHEREAS the Customer acknowledges that the Services are accessed using the Website which is controlled and managed by EIL;

AND WHEREAS the Customer acknowledges that EIL has agreed with the Territory Licensee to provide localised delivery and support of the Services.

NOW THEREFORE the parties agree as follows:

1. INTERPRETATION

1.1. In this Agreement, unless inconsistent with or otherwise indicated by the context -

- 1.1.1. "Agreement" means this entire document containing an application by the Customer for the provision of the Services and the sale of the Equipment, if applicable, to it by EIL and/or the Territory Licensee together with any annexures and/or addenda thereto;
- 1.1.2. "Airtime Contract" means an agreement between the Customer, the Territory Licensee and the Mobile Operator pursuant to which the Customer subscribes for a set term determined by reference to the Tariff Plan to a set monthly subscription fee levied by the Mobile Operator in return for the airtime rates included in that Tariff Plan;
- 1.1.3. "Customer" means where the Registration Details have been completed, the person and or entity as more fully described in the Registration Details, including any successors in title or where the Registration Details have not been completed authorised assignees or the person represented by the IP address presented to EIL;
- 1.1.4. "EIL" means Eezifone International Limited (Reg No: 2087899) registered in Hong Kong or its successor in title Unit 1213, Wing On Plaza, 62 Mody Road, Tsim Sha Tsui East, Kowloon, Hong Kong;
- 1.1.5. "Equipment" means the cellular handset and activated Mobile Operator SIM card specified on the Service Agreement and/any accessories sold on the Website;
- 1.1.6. "Initial Period" means the minimum duration of this Agreement, being, the longer of a period of 12 months (twelve) months from the date of activation of the Services on the Website or the period of time determined by the Tariff Plan commencing on the date of activation of the Airtime Contract;
- 1.1.7. "Interest Rate" means at a rate equal to 2% (two percent) per annum above the prime interest rate as published by the Territory Licensee's bankers from time to time;
- 1.1.8. "Local Legislation" means any legislation, regulation or enactment in the Territory that governs the provision of the Website, the Services and/or the sale of the Equipment;

- 1.1.9. "Mobile Operator" means a provider of GSM Telecommunications services, together with any of its appointed distribution agencies, duly licensed by the government in the Territory and with which the Licensee in the Territory has reached agreement for the supply of SIM cards to be used with the Handsets, the details of which may be found in the Website on the pricing plan page/s;
- 1.1.10. "Monthly Subscription Charge" means the monthly charge for being connected to the Network as set out in the Tariff Plan;
- 1.1.11. "Registration Details" means the personal and commercial information supplied by the Customer to the Territory Licensee and EIL through the Website as part of the process of purchasing any Equipment and/or a Tariff Plan subscription or registering a pre-purchased piece of Equipment;
- 1.1.12. "Regulatory Authority" means the relevant government agency, department or representative vested with the power and authority in terms of the relevant legislation in the Territory to regulate the operation of the Network and any similar Networks in the Territory;
- 1.1.13. "Service Agreement" means the provisions of clause 3 of this Agreement;
- 1.1.14. "Services" means the sale of the Equipment to the Customer by the Territory Licensee together with access to the Network provided by the Mobile Operator and access to the Website provided by the Territory Licensee through the Territory License Agreement it has with EIL;
- 1.1.15. "Network" means the digital cellular mobile telecommunication Network using the GSM standard as defined by the European Technical Standards Institute operated by the Mobile Operator;
- 1.1.16. "SIM card" means the Subscriber Identification Module card, being a user card bearing a Mobile Subscriber Integrated Services Digital Network (MSISDN) number, acquired from the Mobile Operator by the Territory Licensee and sold by the Territory Licensee to the Customer to enable the Customer to access the Network;
- 1.1.17. "Tariff Plan" means the charges as published and amended from time to time by the Mobile Operator and/or the Territory Licensee at their sole discretion pursuant to which the Customer is connected to the Network, and which Tariff Plan are set out in the price list and may vary according to usage charges and other variables but subject to the requirements, conditions and/or approvals of the Regulatory Authority where applicable;
- 1.1.18. "Terms" means the terms and conditions of use of the Website contained in clause 2;
- 1.1.19. "Territory" means the country, state, legislative region, principality or other sovereign state in which the Customer purchases the Services, the details of which are included in the Registration Details;
- 1.1.20. "Territory Licensee" means the entity which has been licensed by EIL to provide the Eezifone Solution in the Territory, the details of which may be found on the Website on the contact page, and which entity assumes all rights and responsibilities assigned to it as per this Agreement;
- 1.1.21. "User Content" means content, including photos, text, numbers, links, and other materials uploaded to the Website by the Customer.
- 1.1.22. "Website" means means, without limiting the generality thereof, the web pages located at www.eezifone.com through which Customers may purchase the Services, manage the configuration of their Equipment and associated activities, which web pages are made available by EIL through the Territory Licensee by agreement *inter se*.
- 1.2. The clause headings in this Agreement have been inserted for convenience only and shall not be taken into account in its interpretation.
- 1.3. This Agreement shall be governed by and construed and interpreted in accordance with the laws of Hong Kong.

2. WEBSITE ACCESS TERMS AND CONDITIONS

2.1. General

- 2.1.1. When accessing and/or using the Website the Customer is entering into a legally binding contract with EIL upon the Terms.
- 2.1.2. These Terms apply to the entire contents of the Website and to any correspondence between EIL and the Customer. Using and/or accessing the content displayed on the Website indicates that the Customer accepts these Terms and agree to be bound by them regardless of whether or not the Customer chooses to register on the Website or to purchase any Equipment and/or Services. If the Customer does not accept these Terms, the Customer is strongly advised to refrain from using and/or accessing the Website.
- 2.1.3. The Customer will be able to submit User Content on the Website, which User Content will be protected in line with local and international laws regarding personal information security. The Customer retains all rights in, and is solely responsible for, the User Content it posts to the Website.

2.2. Licence

- 2.2.1. EIL hereby authorises the Customer to view, copy, download to a local drive, print and distribute the content of the Website, or any part thereof, provided that:
 - 2.2.1.1. such content is used for information and/or non-commercial purposes only; and
 - 2.2.1.2. any reproduction of the content available on or through the Website, or any part thereof, must include the following copyright notice: © eezifone International. All Rights Reserved.
- 2.2.2. The caching of the Website shall only be allowed if:
 - 2.2.2.1. the purpose of the caching is to make the onward transmission of the content from the Website more efficient;
 - 2.2.2.2. the cached content is not modified in any manner whatsoever;
 - 2.2.2.3. the cached content is updated at least every 12 (twelve) hours; and
 - 2.2.2.4. the cached content is removed or updated when so required by EIL.
- 2.2.3. If the Customer uses content from the Website in breach of the provisions detailed in the Terms:
 - 2.2.3.1. EIL reserves the right to claim damages from the Customer; and
 - 2.2.3.2. EIL will not be liable, in any manner whatsoever, for any damage, loss or liability that resulted from the use of such content by the Customer or any third party.
- 2.2.4. Hyperlinks to the Website from any other source shall be directed at the home page of the Website. EIL will not be liable, in any manner whatsoever, for any damage, loss or liability that resulted from the use of content from the Website, if such content was accessed through a hyperlink not directed at the home page of the Website. Should the Customer wish to link to content beyond the home page of the Website, the Customer will do so at its own risk and the Customer agrees to indemnify EIL against any loss, liability or damage that may result from content on the Website, if such content was accessed through a hyperlink not directed at the home page of the Website. The exclusion of EIL's liability for deep linking is based on the fact that deep links bypass these Terms.
- 2.2.5. Apart from bona-fide search engine operators, no Customer may use or attempt to use any technology or applications (including web crawlers or web spiders) to search or copy content from the Website for any purposes, without EIL's prior written consent.
- 2.2.6. All licenses and/or permissions granted in terms of this clause 2.2 are provided on a non-exclusive and non-transferable basis and may be terminated or cancelled by EIL at any time without giving reasons therefore.

2.3. Availability

- 2.3.1. While EIL endeavours to ensure that the Website is normally available 24 hours a day, EIL shall not be liable if for any reason the Website is unavailable at any time or for any period.

2.3.2. Access to the Website may be suspended temporarily and without notice in the case of system failure, maintenance or repair or for reasons beyond EIL's control.

2.4. Territory Legislation

2.4.1. If these Terms or the content provided and/or made available on the Website are regulated by or subject to any Local Legislation, it is not intended that any provision of these Terms contravene any provision of the Local Legislation. Therefore all provisions of these Terms must be treated as being qualified, to the extent necessary, to ensure that the provisions of the Local Legislation are complied with.

2.4.2. No provision of these Terms:

2.4.2.1. does or purports to limit or exempt EIL from any liability (including, without limitation, for any loss directly or indirectly attributable to our gross negligence or wilful default or that of any other person acting for or controlled by EIL) to the extent that the Local Legislation does not allow such a limitation or exemption;

2.4.2.2. requires the Customer to assume risk or liability for the kind of liability or loss, to the extent that the Local Legislation does not allow such an assumption of risk or liability; or

2.4.2.3. limits or excludes any warranties or obligations which are implied into these Terms by the Local Legislation, to the extent applicable.

2.4.3. Customer Material

2.4.3.1. EIL values hearing from our Customers, and are always interested in learning about ways we can improve the Equipment, the Services and the Website. Any Customer that chooses to submit comments, ideas or feedback, agrees that EIL is free to use them without any restriction or compensation to the Customer. By accepting your submission, EIL does not waive any rights to use similar or related feedback previously known to EIL, or developed by its employees, or obtained from sources other than the Customer.

2.4.3.2. EIL will take all reasonable steps to secure the content of the Website and the information provided by and collected from Customers from unauthorised access and/or disclosure. However, EIL does not make any warranties or representations that content shall be 100% safe and secure.

2.4.3.3. EIL and/or the Territory Licensee collect personal information from the Customer and the Customer may submit personal information to EIL and/or the Territory Licensee. EIL and/or the Territory Licensee will handle the collection, processing and storage of Customers' personal information in accordance with international reasonable best practise related to the type of personal information provided to EIL and/or the Territory Licensee by the Customer.

2.4.4. Customers are prohibited from posting or transmitting to or from the Website any material:

2.4.4.1. that is threatening, defamatory, obscene, indecent, seditious, offensive, pornographic, abusive, liable to incite racial hatred, discriminatory, menacing, scandalous, inflammatory, blasphemous, in breach of confidence, in breach of privacy or which may cause annoyance or inconvenience; or

2.4.4.2. for which the Customer has not obtained all necessary licences and/or approvals; or

2.4.4.3. which constitutes or encourages conduct that would be considered a criminal offence, give rise to civil liability, or otherwise be contrary to the law of or infringe the rights of any third party, in any country in the world; or

2.4.4.4. which is technically harmful (including, without limitation, computer viruses, logic bombs, Trojan horses, worms, harmful components, corrupted data or other malicious software or harmful data).

2.4.5. Customers may not misuse the Website (including, without limitation, by hacking).

2.4.6. EIL shall fully co-operate with any law enforcement authorities or court order requesting or directing it to disclose the identity or locate anyone posting any material in breach of clause 2.4.4 or clause 2.4.5.

2.5. Links to and From Other Websites

2.5.1. Links to third party websites on the Website are provided solely for Customers' convenience. If any Customer uses these links, the Customer leaves the Website. EIL has not reviewed all of these third party websites and does not control and is not responsible for these websites or their content or availability. EIL therefore does not endorse or make any representations about them, or any material found there, or any results that may be obtained from using them.

2.5.2. If the Customer decides to access any of the third party websites linked to the Website, the Customer does so entirely at its own risk and the Customer acknowledges that they may be subject to those third party websites' terms and conditions and other policies.

2.6. Intellectual Property Rights

2.6.1. All content, trademarks and data on the Website, including, but not limited to, software, databases, text, graphics, icons, hyperlinks, personal information, and designs are the property of or licensed to EIL, and as such, are protected from infringement by domestic and international legislation and treaties. Subject to the rights afforded to the Customer herein, all other rights to all intellectual property rights on the Website are expressly reserved.

2.6.2. "eeziFone" is a registered trademark and the Customer agrees not to use this trademark as an element of a domain name or sub domain name, notwithstanding the fact that such domain name use or registration may be allowed in terms of the Local Legislation. Upon request to do so, the Customer will immediately cease to use such domain name and transfer it to EIL at the Customer's cost.

2.7. Electronic Communications

By using the Website or communicating with EIL and/or the Territory Licensee by electronic means, the Customer consents and acknowledges that any and all agreements, notices, disclosures, or any other communication satisfies any legal requirement, including but not limited to the requirement that such communications should be "in writing".

2.8. Disclaimer

2.8.1. While EIL endeavours to ensure that the information on the Website is correct, it does not warrant the accuracy and completeness of the material on the Website. EIL may make changes to the material on the Website at any time without notice. The material on the Website may be out of date, and in this regard, EIL makes no commitment to update such material.

2.8.2. The material on the Website is provided "as is", without any conditions, warranties or other terms of any kind. Accordingly, to the maximum extent permitted by law in the Territory, EIL provides the Customer with the Website on the basis that EIL excludes all representations, warranties, conditions and other terms which, but for the legal notice set out in this clause 2.8, might have effect in relation to the Website.

2.8.3. EIL is under no legal duty to encrypt any content or communications from and to the Website and are also under no legal duty to provide digital authentication of any page on the Website.

2.9. Searching Technology

The use of non-malicious search technology, such as "web-crawlers" or "web-spiders", to search and gain information from the Website is not permitted if such technology will result in slowing down the Website server or copyright infringement of any content available on or through the Website.

2.10. Liability

2.10.1. Subject to the provisions of any Local Legislation, and to the extent allowed by law, EIL shall not be liable for any damage, loss or liability of whatsoever nature arising from the use or inability to use the Website. Furthermore, EIL makes no representations or warranties, implied or otherwise, that,

amongst others, the Website is free from errors or omissions or that the service will be 100% uninterrupted and error free.

2.10.2. The Website is supplied on an "as is" basis and has not been compiled or supplied to meet the Customer's individual requirements. It is the Customer's sole responsibility to satisfy itself prior to entering into this agreement with EIL that the content available on or through the Website will meet the Customer's individual requirements and be compatible with the Customer's hardware and/or software.

2.10.3. Neither EIL nor any Territory Licensee shall be liable for any damage, loss or liability of whatsoever nature arising from the use or inability to use any product sold on the Website.

3. SERVICE AGREEMENT

3.1. Provision of the Services and Connection to the Network

3.1.1. The Customer acknowledges that the act of buying or registering any Equipment or Services on the Website constitutes an offer by the Customer, which may be accepted or refused by the Territory Licensee in its sole discretion. Activation of the Services shall be deemed to constitute acceptance of the offer by the Territory Licensee and commencement of the delivery of the Services. This Agreement shall become binding between the Territory Licensee and the Customer whether or not the Customer was notified of the acceptance of the offer.

3.1.2. Subject to acceptance by the Territory Licensee in terms of clause 3.1.1 and subject further to the remaining terms and conditions of this Agreement, the Territory Licensee shall connect and maintain the connection of the Equipment to the Network and the Territory Licensee shall use its reasonable endeavours to make the Services available to the Customer throughout the duration of this Agreement, save and except, for circumstances beyond the control of the Territory Licensee and/or Mobile Operator.

3.2. Duration of Service Agreement

3.2.1. This Service Agreement shall commence on the later of the date of activation of the Services and the date of activation of the Airtime Contract and shall continue for the Initial Period and where after it shall be renewed only upon successful payment by the Customer for the charges for the Services and/or the Airtime Contract.

3.2.2. In the event that the customer chooses a Tariff Plan that includes a Monthly Subscription Charge, the Territory Licensee shall charge the Customer the total of the Monthly Subscription Charges for the Initial Period included in the Tariff Plan before the commencement of the Airtime Contract. In the event of termination of this Service Agreement for whatsoever reason prior to the expiry of the Initial Period, the Territory Licensee shall not be liable to the Customer for any of the Monthly Subscription Charges billed to but not utilised by the Customer.

3.2.3. In the event that this Agreement is extended after the Initial Period or any period thereafter, the terms and conditions of this Service Agreement will apply for such extended period.

3.2.4. No migration from one Tariff Plan to another that reduces the Monthly Subscription Charge payable by the Customer will be performed by the Territory Licensee within the Initial Period or any extended period subsequent to the Initial Period.

3.3. Payment for the Airtime Contract and for the Services

3.3.1. The Customer shall pay to the Territory Licensee the aggregate of all charges levied by the Territory Licensee from time to time including, without limitation:

3.3.1.1. Prior commencement of this Service Agreement the value of the Equipment, the cost of delivery to the Customer, if any, all the Monthly Subscription Charges for the Initial Period included in the Tariff Plan and any other Service charges included in the options selected by the Customer on the Website; and

- 3.3.1.2. Prior to any purchase of Equipment or any prepaid airtime top up the full value of the Equipment and/or the prepaid airtime top up together with any surcharges raised by the Territory Licensee as the case may be; and
 - 3.3.1.3. Value added tax or general sales tax at the applicable rate on all taxable charges. All prices and charges, in terms of this Service Agreement, unless otherwise stated, include value added tax and exclude general sales tax.
- 3.3.2. Any amount due by the Customer to the Territory Licensee, not paid on the due date thereof, shall at the discretion of the Territory Licensee, bear a penalty fee at the Interest Rate, calculated from the date payment was due until date of actual payment thereof.
 - 3.3.3. Where payment is effected by withdrawals from the Customer's bank account electronic transfer, debit card or credit card, the Customer acknowledges that all such withdrawals by the Territory Licensee shall be treated as though the Customer has signed and authorised such withdrawals personally. The Customer acknowledges and understands that all payments hereby authorised will be processed electronically and also understands that details of each withdrawal will be printed on the Customer's bank statement.
 - 3.3.4. The Customer agrees to pay any bank charges relating to any transactions concluded with the Territory Licensee.
 - 3.3.5. The Customer agrees that payment shall only have been made to the Territory Licensee when the monies remitted by the Customer have been received into the Territory Licensee's bank account.
 - 3.3.6. Should any electronic transfer, debit card or credit card account of the Customer be rejected for whatsoever reason or should the Territory Licensee exercise its right to suspend the provision of the Services due to non or late payment of any monies due in terms hereof by the Customer, then the Customer shall pay an administrative charge as may be levied by the Territory Licensee from time to time for each such non-payment, suspension or any other breach of the Agreement which amount shall be payable upon demand and recoverable by the Territory Licensee.

3.4. Delivery of Equipment

- 3.4.1. Whilst the Territory Licensee shall make every reasonable effort to meet the agreed delivery date, it is recorded that such date is a provisional date only and the Territory Licensee shall not be responsible for any consequences of delay or liable for any damages (including consequential damages), costs or expenses whatsoever which the Customer may incur or suffer if delivery on such a date is not met.
- 3.4.2. The Customer specifies the premises for the delivery of the Equipment as part of its order and deliveries will be completed during normal business hours. In the event that the Customer is not present at the premises specified at the time of delivery and the Territory Licensee has to incur additional cost to complete the delivery, the Customer shall be liable for such additional costs.
- 3.4.3. The Customer shall allow the Territory Licensee or its approved representative access to the premises to effect delivery of the Equipment and indemnifies the Territory Licensee, its directors, employees, agents or approved representatives against all damages, costs and expenses incurred or suffered by such entities in doing so as well as against any claims of whatsoever nature that the Customer might have against the Territory Licensee as a result thereof.
- 3.4.4. In the event of the Customer not being the owner of the premises and/or Equipment, the Customer undertakes to obtain the appropriate authority from the owner of the premises and/or Equipment prior to delivery. The Customer indemnifies the Territory Licensee against all liability, costs and expenses incurred or suffered by the Territory Licensee as a result of such prior authority not being obtained.
- 3.4.5. All risk of profit and loss in and to the Equipment shall pass to the Customer upon dispatch from the Territory Licensee's facilities.

3.5. Blacklisting

- 3.5.1. Upon the Customer defaulting on any payment due in terms hereof, the Territory Licensee shall be entitled to blacklist the Equipment used in conjunction with the SIM card, to prevent the further use thereof and the Customer indemnifies the Territory Licensee in respect of any claim whatsoever arising from the Territory Licensee exercising such right.
- 3.5.2. Notwithstanding that the ownership of the Equipment may have passed to the Customer at any time, the Customer acknowledges the Territory Licensee's right to blacklist or disconnect the Equipment in the event of the Customer defaulting in payment and the Customer indemnifies the Territory Licensee in respect of any claim whatsoever arising from the Territory Licensee exercising such right.

3.6. After Sale Care And Guarantee

- 3.6.1. Notwithstanding that the Customer purchased the Equipment from the Territory Licensee, should the Equipment be damaged, lost, stolen, un-operational or undergoing repair, the Customer agrees that this Service Agreement is not conditional upon such availability or operation and shall continue to be in full force and effect and the Customer shall continue to pay all amounts due in terms hereof.
- 3.6.2. In the event that the Equipment was purchased from the Territory Licensee or any of its appointed agents and resellers, then the manufacturer's warranty will apply to such Equipment. Such warranty is for 12 (twelve) months from the date of purchase and covers defective Equipment as result of faulty design, manufacture or workmanship provided that such Equipment has not been misused, overloaded, modified or repaired by an unauthorised party. In addition, batteries are excluded from any warranty. The Territory Licensee may require the Customer to make available the Equipment to the Territory Licensee or its nominees for inspection of the Equipment at a time and place to be arranged by the Territory Licensee and/or its nominees.
- 3.6.3. Should the Territory Licensee accept the Equipment for repairs and maintenance it shall be deemed to do so as an agent on behalf of the manufacturer of the Equipment and the Territory Licensee shall not be liable for any loss, damage, destruction, theft or negligent workmanship however caused.

3.7. The Customer acknowledges and agrees that:

- 3.7.1. Network quality and coverage available to the Customer shall be limited to that provided by the Mobile Operator and the Services may from time to time be adversely affected by physical features such as buildings and underpass as well as atmospheric conditions and other causes of interference; and
- 3.7.2. It shall not hold the Territory Licensee, any of its directors, employees, agents or approved representatives liable for any non-availability of the Network and/or the Services or for any other reason whatsoever including damages.
- 3.7.3. The Customer acknowledges and agrees that it is aware and will stay aware of and shall at all times comply with all statutory or other regulatory provisions relating to wireless telegraphy and telecommunication services applying to the provision and use of the Services via the Equipment from time to time. In addition the Customer shall:
 - 3.7.3.1. Comply with any instructions issued by the Territory Licensee which concern the Customer's use of the Services, Equipment or connected matters; and
 - 3.7.3.2. Provide the Territory Licensee with all such necessary information that the Territory Licensee may reasonably require; and
 - 3.7.3.3. Only use Equipment that is supplied by and/or approved for any use with the Network by the Territory Licensee in writing.

3.8. Liability and Indemnity

- 3.8.1. This clause 3.8 specifies the entire liability for EIL and the Territory Licensee, any of their directors, employees, agents or approved representatives, including for negligence and in particular, but without limitation, all other statutory, express, implied or collateral terms, conditions or warranties are excluded.

- 3.8.2. EIL and the Territory Licensee shall not be under any liability (including liability for negligence) for any loss or damage or injury to the Customer whatsoever no matter when or how arising out of the provision of the Services or otherwise, whether direct or indirect, consequential or contingent and whether foreseeable or not and in particular the Territory Licensee shall not be liable for any financial loss or loss of profits, loss of contracts, loss of business or goodwill.
- 3.8.3. The Customer indemnifies the Territory Licensee against any damage, cost or liability (including liability for the Territory Licensee's negligence) arising from the provisions of the Services to the Customer, its employees, directors and/or agents together with all legal costs relating to any claim arising there from.
- 3.8.4. The Customer indemnifies the Territory Licensee against any damage, cost or liability (including for the Territory Licensee's negligence) arising from any illness or personal injury or death suffered by the Customer as a result of the use of the Equipment, irrespective of when or how, and whether foreseeable or not, together with all legal costs relating to any claim arising there from.

3.9. Suspension/Disconnection Of Services

- 3.9.1. The Territory Licensee may from time to time without notice suspend the Services and at the Territory Licensee and/or the Mobile Operator's discretion disconnect the Equipment from the Network in any of the following circumstances:
 - 3.9.1.1. During any technical failure, modification or maintenance of the Website and/or the Network provided that the Territory Licensee will use its reasonable endeavours to procure the resumption of the Services as soon as reasonably practicable; or
 - 3.9.1.2. If the Customer fails to comply with any of the terms and conditions of this Service Agreement until the breach (if capable of remedy) is remedied, or does, or allows to be done, anything which in the Territory Licensee's opinion may negatively affect the operation of the Services.
- 3.9.2. Notwithstanding any suspension of the Services under this clause 3.9, the Customer shall remain liable for all changes due hereunder throughout the period of suspension unless the Territory Licensee at its sole discretion determines otherwise in writing.

3.10. Termination

- 3.10.1. In the event that the Customer breaches any of the terms of this Service Agreement or any warranty given by it hereunder or fails to fulfil any obligation resting upon it, then without prejudice to the Territory Licensee's other rights in terms of this Service Agreement or the common law, the Territory Licensee may either terminate this Service Agreement or call for specific performance of all the Customer's obligations and immediate payment of all sums owing by the Customer, whether or not then due, in either event without prejudice to the Territory Licensee's right to recover such damages as it may have suffered by reason of such breach or failure.
- 3.10.2. Notwithstanding the foregoing and pending the Territory Licensee's election in terms of this clause, the Territory Licensee shall not be obliged to perform any of its obligations under this Service Agreement and the Customer shall remain liable for the payment of all amounts owing by the Customer in terms of this Service Agreement whether or not such amounts are then due.
- 3.10.3. the Territory Licensee may, without notice, terminate this Service Agreement immediately in any of the following circumstances:
 - 3.10.3.1. If the Customer fails to pay any amount owing to the Territory Licensee on due date; or
 - 3.10.3.2. If the Customer makes or offers any arrangement or compromises with its creditors or commits any act of insolvency or if any petition or application for sequestration, liquidation, winding-up or judicial management is presented by or made against the Customer, or if any resolution to wind-up the Customer is passed or if a receiver, trustee or curator is appointed over the whole or any part of the Customer's assets or estate or if the Territory Licensee anticipates that any of the events as set out in this clause 3.10.3.2 are imminent; or

- 3.10.3.3. If the Customer does or allows anything to be done, which in the Territory Licensee's opinion will or may have the effect of negatively affecting the operation of the Services; or
 - 3.10.3.4. If any license to operate or use the Network is revoked, terminated or modified for any reason either in whole or in part; or
 - 3.10.3.5. If, for any reason, the Mobile Operator ceases to make the Network available to the Territory Licensee or the Services are substantially reduced for a continuous period exceeding 60 (sixty) days.
- 3.10.4. Upon termination of this Agreement the Territory Licensee shall disconnect the Equipment and SIM card from the Network.
- 3.10.5. After disconnection of the Equipment from the Network consequent upon termination of this Service Agreement, the Customer shall pay on demand all charges outstanding at the time of disconnection.
- 3.10.6. Notwithstanding any termination of this Agreement and notwithstanding the provisions of clause 3.10.7, the Territory Licensee may refuse to re-register its registration of the Mobile Subscriber Integrated Services Digital Network (MSISDN) number allocated to the Customer.
- 3.10.7. The Territory Licensee, having regard to the circumstances at the time of disconnection or reconnection, may elect to charge a reasonable fee for disconnection or reconnection of the Equipment to the Network.

4. GENERAL PROVISIONS

4.1. Assignment

- 4.1.1. The Customer shall not cede, assign, transfer, encumber or delegate any of its rights or obligations in terms of this Agreement to any third party without the Territory Licensee's prior written consent.
- 4.1.2. EIL and/or the Territory Licensee shall be entitled, at any time, to cede, assign, transfer, encumber or delegate any of its rights, title, interest or obligations in terms of this Agreement to any third party without the Customer's consent and if, for any reason whatsoever, the consent of the Customer may be required, the Customer shall be deemed to have consented thereto in terms of this Agreement.

4.2. Excusable Events

The Territory Licensee shall not be liable to the Customer for any breach of these terms and conditions or failure on the Territory Licensee's part to perform any obligation as a result of the technical problems relating to the Network, termination of any license to operate or use the Network, acts of God, Government control, restrictions or prohibitions or any other Government act or omission, whether local or national, act or default of any supplier, agent or sub-contractor, industrial disputes of any kind or any other similar cause beyond the Territory Licensee's control.

4.3. Variation of Charges and Terms

- 4.3.1. EIL and/or the Territory Licensee may vary all or any of its charges including but not limited to the charges described in clause the Tariff Plan by publishing an amended Tariff Plan, such variation to have immediate effect unless otherwise stipulated therein.
- 4.3.2. EIL and/or the Territory Licensee reserve the right to vary the terms and conditions of this Agreement at its sole discretion, whether as a result of amendments to the Services, new legislation, statutory instruments, Government regulations or licenses, amendments to the standard terms and conditions of the Mobile Operator, any similar event, or not. The Territory Licensee, at its sole discretion, may elect to notify the Customer of any such variation in writing or to publish such variation at its principal place of business.
- 4.3.3. EIL and/or the Territory Licensee reserve the right, without cost or penalty to itself, to alter any name, code or number allocated by EIL and/or the Territory Licensee from time to time for use in connection with the Services and the Customer indemnifies EIL and/or the Territory Licensee and/or the Mobile Operator against any liability arising from such alteration.

4.4. Relaxation

No latitude, extension of time or other indulgence which may be given or allowed by either party to the other party in respect of the performance of any obligations hereunder, and no delay or forbearance in the enforcement of any right of either party arising from this Agreement, and no single or partial exercise of any right by either party under this Agreement, shall in any circumstances be construed to be an implied consent or election by such party or operate as a waiver or a novation or otherwise affect any of the party's rights in terms of or arising from this Agreement or stop or preclude any such party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term of this Agreement.

4.5. Notices And Domicilia

4.5.1. The Customer chooses, as its *domicilium citandi et executandi*, the address set out in the Registration Details and EIL and the Territory Licensee choose, as their *domicilium citandi et executandi*, the address set out in the details set out in the contact page on the Website.

4.5.2. All notices given in terms of this Agreement shall be in writing.

4.6. Costs

The Customer shall repay to the Territory Licensee on demand all costs the Territory Licensee actually incurs as a result of the Customer's failure to comply with the terms and conditions of this Agreement or the cancellation hereof, which include:

4.6.1. Costs in connection with the tracing of the Customer and/or Equipment and obtaining possession of the Equipment of whatsoever nature.

4.6.2. All legal costs.

4.6.3. Collection commission that may legally be recovered from the Customer by the Territory Licensee's attorneys or collection agents on amounts collected.

4.7. Set-Off

The Customer shall not be entitled to set off any amount/s that may be owing to the Customer by the Territory Licensee against any amount the Customer owes or may owe the Territory Licensee in terms of this Agreement.

4.8. Consent To Jurisdiction

The Customer hereby consents to the jurisdiction of the Magistrate's Court having jurisdiction over its person in respect of any action by the Territory Licensee arising from this Agreement or the cancellation thereof. This consent does not oust the jurisdiction of any other competent court and the Territory Licensee shall be entitled, in its discretion, to institute action against the Customer in any court of competent jurisdiction. The parties agree that this consent is severable and shall apply even in the cancellation of this Agreement.

4.9. Severability

In the event of any one or more of these terms and conditions being unenforceable, same will be deemed to be severable from the remainder of this Agreement, which will nevertheless be binding and enforceable.

4.10. Whole Agreement

This Agreement constitutes the whole agreement between the parties as to the subject matter hereof and no agreements, representations or warranties between the parties regarding the subject matter hereof other than those set out herein are binding on the parties save and accept for the provisions of clause 17 above.

4.11. General

- 4.11.1. The Customer agrees to the disclosure by the Territory Licensee to any third party, of any information pertaining to the Customer or this Agreement, to the extent that such disclosure is necessary for the conduct of the Territory Licensee's business, or is required by any relevant law, statute, regulation or license.
- 4.11.2. Where the Territory Licensee is represented by any duly authorised representative, his/her authority need not be proved.
- 4.11.3. The Customer agrees not to use the airtime allocation for least cost routing, OBS or content Services. Should the Customer wish to subscribe to such Services, this must be done from recharged airtime amounts only.
- 4.11.4. If the Customer as identified on the face hereof is a company, close corporation, trust or a division or entity thereof or any other entity with juristic personality, then the signatory hereto who signs on behalf of the Customer warrants that he/she is duly authorised to enter into this Agreement on behalf of the Customer and, if applicable, to sign the debit order authorisation on the Customer's bank account.