

## AIRTIME TERMS AND CONDITIONS

### 1. DEFINITIONS

- 1.1. In these conditions the following terms shall have the following meanings:
  - "**Agreement**" means the contract between the Company and the Customer incorporating these conditions.
  - "**Airtime**" means the services supplied under an Airtime Contract.
  - "**Airtime Contract**" means the contract between the Customer and the Network
  - "**Commission**" means any commission payable to the Company by the Network triggered by the Company's performance of its obligations under the Agreement.
  - "**Company**" means Packet Media Limited.
  - "**Customer**" means a person, company, or organisation for which the Company agrees to perform the obligations contained in condition 3.
  - "**Network**" means a mobile telephone service network supplying Airtime.
  - "**Working Day**" means a day on which the clearing banks in the City of London are open for business.
  - "**Working Hours**" means the hours between 9.00 am and 5.00 pm on a Working Day
- 1.2. Words denoting the singular shall include the plural and vice versa
- 1.3. Words denoting persons shall include corporations, firms and organisations and vice versa.
- 1.4. A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

### 2. COMMENCEMENT AND DURATION

- 2.1. The Agreement shall commence on the start date specified in the Agreement.
- 2.2. Unless otherwise specified in the Agreement or agreed between the parties in writing the Agreement shall continue for a minimum period of 12 months and shall continue thereafter unless terminated by either party giving to the other party no less than 3 months notice in writing.

### 3. COMPANY OBLIGATIONS

- 3.1. The Company undertakes to arrange an Airtime Contract between the Customer and the Network.
- 3.2. The Company undertakes to pay to the Customer the cashback sum set out in the Agreement.

### 4. CUSTOMER OBLIGATIONS

- 4.1. The Customer undertakes to enter into the Airtime Contract arranged by Packet Media on the terms and conditions contained therein.
- 4.2. The Customer undertakes to pay to the Network the charges set out in the Airtime Contract.
- 4.3. The Customer shall not, during the first 12 months of any Airtime Contract which has been arranged by the Company pursuant to the Agreement, terminate or change any tariff on any mobile connection covered by the Airtime Contract without the Company's express written permission.

### 5. WARRANTIES

- 5.1. The Customer warrants that it is free to enter into and perform the terms of the Agreement and that none of the terms of the Agreement in any way conflict with any other agreement between the Customer and any other party.
- 5.2. The Company warrants that it is free to enter into and perform the terms of the Agreement and that none of the terms of the Agreement in any way conflict with any other agreement between the Company and any other party.

### 6. LIMITATION OF LIABILITY

- 6.1. The Company shall not be liable to the Customer or any other party for any damage, loss or expense arising out of or in connection with the Airtime Contract.
- 6.2. The remaining provisions of this condition 6 sets out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to the Customer in respect of;
  - (a) any breach of the Agreement; and
  - (b) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Agreement.
- 6.3. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Agreement.
- 6.4. Nothing in these conditions limits or excludes the liability of the Company:
  - (a) for death or personal injury resulting from negligence; or
  - (b) for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Company; or
- 6.5. Subject to condition 6.3 and 6.4 the Company shall not be liable to the Customer or any other person for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Agreement.

### 7. INDEMNITY

- 7.1. In consideration for the provision by the Company of its obligations under condition 3 the Customer shall indemnify the Company against:
  - 7.1.1. all Commissions lost or forfeited by the Company as a result of the Customer's failure to fulfill any of its obligations under Condition 4;
  - 7.1.2. all other liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of

reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Company arising out of or in connection with;

- (b) any breach or negligent performance or non performance of the Airtime Contract;
- (b) any breach or negligent performance or non-performance of the Agreement; and
- (c) any claim made against the Company by a third party arising out of or in connection with the Agreement and to the extent that such claim arises out of the breach, negligent performance or failure or delay by the Customer in performing its obligations under the Agreement.

- 7.2. Any liability of the Customer arising under condition 7.1.1 shall become immediately due and payable as from the date the Commission would otherwise have been paid to the Company but for the Customers failure to fulfill the obligations referred to in condition 7.1.1.
- 7.3. The provisions of this condition 7 shall remain in full force and shall be enforceable by the Company following termination of this agreement by the Customer under condition 2.2 or by the Company under any circumstances.

### 8. FORCE MAJEURE

Neither party shall be liable to the other for failure to perform any obligation under the Agreement due to events beyond the control of such party including, but not limited to, acts of God, war, insurrection, riot, civil unrest, act of civil or military authority. Any party affected by such events shall forthwith inform the other party of the same and shall use all reasonable endeavours to comply with the terms of the Agreement.

### 9. WAIVER

- 9.2. Failure of either party to insist upon strict performance of any provision of the Agreement or the failure of either party to exercise any right or remedy to which it is entitled hereunder shall not constitute a waiver thereof and shall not cause a diminution of the obligations under this Agreement.
- 9.2. No waiver of any of the provisions of this Agreement shall be effective unless it is expressly stated to be such and signed by both parties.

### 10. SEVERABILITY

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of this Agreement shall continue in full force and effect as if this Agreement had been executed with the illegal or unenforceable provision eliminated.

### 11. COMMUNICATIONS

- 11.1. Any communications shall be in writing and shall be:
  - (a) delivered by hand or sent by post to the address of the addressee as set out in the Agreement or to such other address (being in Great Britain) as the addressee may from time to time have notified for the purpose of this condition; or
  - (b) sent by fax to the addressee's facsimile number (if any) stated in the Agreement or as notified from time to time for the purpose of this condition.
- 11.2. Communications by fax shall always be confirmed by dispatching a copy of the communication by post the same day and all communications by post shall be sent by registered or recorded delivery post.
- 11.3. Communications sent in accordance with Clause 11.1 shall be deemed to have been received as follows:
  - (a) if sent by post - at the start of the third Working Day after posting;
  - (b) if delivered by hand - upon receipt;
  - (c) if sent by fax - at the time of transmission if received at least two hours before the close of Working Hours and in any other case on the next Working Day.

### 12. SURVIVAL OF CAUSES OF ACTION

The termination of this Agreement howsoever occurring shall not affect the rights and liabilities of the parties already accrued at such time nor affect the continuance in force of such of its provisions as are expressed as or capable of having effect after such termination.

### 13. NO PARTNERSHIP

The Agreement shall not be construed so as to create a partnership or joint venture between any of the parties. Nothing in the Agreement shall be construed so as to constitute any of the parties the agent of another.

### 14. COSTS

The costs and expenses (including professional legal and accountancy expenses) of the preparation negotiation and completion of the Agreement and associated documentation shall be borne by the party incurring them.

### 15. JURISDICTION

The Agreement shall be governed by and construed and interpreted in accordance with English Law and the parties submit to the exclusive jurisdiction of the English Courts.