

1. DEFINITIONS AND INTERPRETATION

1.1. For purposes of this Agreement, the following terms shall have the following meanings -

1.1.1. **"Affiliate"** means, with respect to any entity, any other entity Controlling, Controlled by or under common Control therewith;

1.1.2. **"AFSA"** means the Arbitration Foundation of Southern Africa, or its successors in title;

1.1.3. **"Agreement"** means the cover sheet attached to these terms and conditions, these terms and conditions and the Schedules attached hereto;

1.1.4. **"Authority"** Any national, municipal, provincial, other local or administrative government, authority or department, or any agency, tribunal, commission, regulator, self-regulatory body or other similar body having jurisdiction by Law over the assets, resources, activities or operations of any of the Parties in any territory that is applicable to this Agreement, including without limitation WASPA and/or ISPA;

1.1.1 **"Business Day"** means any day other than a Saturday, a Sunday or a South African public holiday;

1.1.2 **"Business Hours"** means the hours from 08h00 to 17h00 (Central African Time) on Business Days;

1.1.5. **"Panacea Mobile "** means Panacea Mobile (PTY) Ltd, a company incorporated in South Africa with registration number 2012/158791/07 and current principal place of business at 153 Loop Street, Cape Town South Africa;

1.1.6. **"Panacea Mobile System"** means the platform, interfaces and gateways through which Panacea Mobile facilitate communication with Networks and their subscribers, but shall not include the Client System or any Network Infrastructure;

1.1.7. **"Client"** means the entity indicated on the cover sheet hereto which pursuant to these terms and the Service Schedules concluded hereunder subscribes to VAS Services;

1.1.8. **"Client Requirements"** means the documentation made available to Client by or on behalf of Panacea Mobile or the Networks that specifies the functional, technical and business requirements and specifications, procedures, codes of conduct, standards, rules and protocols applicable to the Client System's interoperation with the Panacea Mobile System and Network Infrastructure, transmission of Communications and use of the VAS Services in general (as may be amended by Panacea Mobile or the Networks from time to time);

1.1.9. **"Client System"** means the computer systems and communications infrastructure used by Client to communicate with the Panacea Mobile System so as to access and use the VAS Services, including all relevant network links and gateways required for interconnection to the Panacea Mobile System;

1.1.10. **"Communication"** means a data message between the Client System and a Network that is transmitted via the Panacea Mobile System;

1.1.11. **"Communication Data"** means all records pertaining to the Communications;

1.1.12. **"Confidential Information"** means any information of whatever nature, which has been, or may be obtained directly or indirectly by one Party (**"Receiving Party"**) hereto from the other Party (**"Disclosing Party"**) hereto, whether in writing or in electronic format, or pursuant to discussions held between the Parties, or which can be obtained by examination, testing, visual inspection or analyses, including, without limitation a Disclosing Party's know-how, system architecture, data file structures, interface and communications protocols, numbering systems and associated material and manuals and the information contained therein, the Communications Data, all information relating to a Disclosing Party's past,

present and future research and development or to a Disclosing Party's business activities, products, services, clients, personal information, client's personal information, security measures or disaster recovery plans, as well as all such Party's trade secrets and these terms and conditions and as may be contained in an Annexure, any information identified as confidential, any information in respect of which a Party is under obligation of confidence and any other material which contain or otherwise reflect, or are generated or derived from any such information as is specified in this definition;

1.1.3 **"Control"** and its derivatives shall mean that an entity holds more than a fifty per cent (50%) equity interest in the other entity in question;

1.1.4 **"Designated Account"** means Panacea Mobile 's bank account that has been duly designated to Client in writing for payment of VAS Fees;

1.1.13. **"Effective Date"** means -

(a) in respect of the Agreement, the date stipulated as such on the cover sheet hereof and failing that the date of signature of this Agreement by the last party signing; and

(b) in respect of each Service Schedule, the effective date stipulated on the cover sheet of such Service Schedule, and failing such stipulation the date of acceptance of such Service Schedule by Panacea Mobile ;

1.1.14. **"Intellectual Property Rights"** All present and future rights relating to trademarks, registered designs, patents, applications for registration of any of the foregoing, copyright, database rights, design rights, know-how, trade and business names, moral rights, publication rights, performance rights, trade get-up, goodwill and any other similar protected rights in any country;

1.1.15. **"ISPA"** means the Internet Service Providers' Association;

1.1.16. **"Law"** means:

(a) any statute, regulation, by law, ordinance or subordinate legislation in force from time to time to which a party is subject;

(b) the common law as applicable to the Parties from time to time;

(c) any binding court order, judgement or decree; and

(d) any applicable industry code, direction, policy, rule or standard enforceable by law, including the criteria stipulated by any Authority, such as, but not limited to, the code of conduct of WASPA (available at: www.waspa.org.za) and/or, in the case of email VAS Services, the code of conduct for ISPA (available at www.ispa.org.za);

1.1.17. **"Minimum Term"** means the subscription period for VAS Services specified in a Service Schedule commencing on the date of activation of the VAS Services under the relevant Service Schedule;

1.1.18. **"Mobile Device"** means a mobile cellular telephone or other device incorporating an active SIM card used by a Subscriber to communicate with a Network;

1.1.19. **"Network"** means a mobile cellular network service provider designated in a Service Schedule for purposes of delivery of the VAS Services;

1.1.20. **"Network Infrastructure"** means the communications infrastructure and systems used by a Network to provide communications services;

1.1.21. **"Parties"** means Panacea Mobile and the Client and **"Party"** shall mean either one of them;

1.1.5 **"Personnel"** means any director, employee, agent, consultant, contractor, sub-contractor or other authorised representative of an entity;

1.1.22. **"Services"** means any and all services that may be provided by Panacea Mobile to the Client pursuant to the Service Schedules, including the VAS Services;



- 1.1.23. “**Service Schedule**” means a binding schedule for VAS Services in the standard Panacea Mobile form and format;
- 1.1.24. “**Subscriber**” means a subscriber to a Network that receives or sends Communications to Client via the VAS Services;
- 1.1.25. “**Subscriber Charges**” means the charges that may be applied to Subscribers by a Network to transmit Communications pursuant to a VAS Service rendered hereunder;
- 1.1.26. “**Support Services**” means the technical support services offered to Client under the Support Schedule attached hereto;
- 1.1.27. “**Technology**” means the Client Requirements and Panacea Mobile System;
- 1.1.28. “**Territory**” means the geographic area in which VAS Services may be used by Client as may be specified in the relevant Service Schedule, and failing such specification will be the country of establishment of Client;
- 1.1.29. “**UserID**” means the mechanisms used by Panacea Mobile to grant access to the Panacea Mobile System and that are issued to Client by Panacea Mobile that remain valid and have not expired or been deactivated by Panacea Mobile ;
- 1.1.30. “**VAS Fees**” means the fees and charges to be paid to Panacea Mobile in respect of the Services rendered to Client, which will be as stipulated in the relevant Service Schedule, and failing such stipulation will be determined with reference to Panacea Mobile ’s standard prevailing rates;
- 1.1.31. “**VAS Services**” means the Communication related services offered by Panacea Mobile in conjunction with the Networks (currently being as specified on the cover sheet hereto) made available to Client by Panacea Mobile via the Panacea Mobile System pursuant to a Service Schedule;
- 1.1.32. “**WASPA**” The Wireless Application Service Providers Association of South Africa;
- 1.2. Headings and sub-headings are inserted for information purposes only and shall not be used in the interpretation of these terms.
- 1.3. Unless otherwise stated in this Agreement, references in this Agreement to this Agreement or to any other agreement are references to this Agreement or such other agreement as varied, supplemented, substituted or replaced from time to time.
- 1.4. References to any Law shall be deemed to include references to such Law as re-enacted, amended or extended from time to time.
- 1.5. References to persons shall include natural and juristic persons and references to either Party shall include such Party’s successors or permitted assigns.
- 1.6. If any provision in a definition is a substantive provision conferring rights or imposing obligations on either Party, effect shall be given to it as if it were a substantive provision notwithstanding that it is contained in a definition.
- 1.7. Where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in this Agreement and the Service Schedule, notwithstanding that the term has not been defined in this clause.
- 1.8. Unless expressly otherwise stated, when any number of days is prescribed in this Agreement or a Service Schedule, same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a day that is not a Business Day, in which case the last day shall be the next Business Day.
- 1.9. Service Schedules may be executed in any number of counterparts (including faxed counterparts) and all of such

counterparts taken together shall be deemed to constitute one and the same instrument.

- 1.10. No rule of construction that an agreement shall be interpreted against the party responsible for its drafting or preparation shall apply to this Agreement.

2. TERM

- 2.1. This Agreement shall commence on the Effective Date and shall subject to clause 12 below continue until terminated in accordance with clause 2.2 below.
- 2.2. This Agreement may be terminated by either Party by giving the other Party written notice thereto with such termination to be effective from the date specified in such written notice, such date not being less than 30 (thirty) days from the date which the notice is received by the other Party.

3. STATUS AND PRECEDENCE

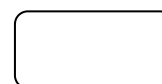
- 3.1. This Agreement is an umbrella agreement between Client and Panacea Mobile under which Client may from time to time request the provision of VAS Services for itself via Panacea Mobile ’s ordering procedures.
- 3.2. The VAS Services to be provided to Client shall be set out in Service Schedules. All Service Schedules will be subject to the terms of this Agreement. However, save where expressly provided to the contrary, the terms and conditions of any one Service Schedule shall not apply to any other Service Schedule.
- 3.3. Insofar as any term and condition in a Service Schedule conflicts with this Agreement, the Service Schedule shall prevail.
- 3.4. Use of VAS Services shall also be subject to the standard rules and conditions of use generally applied to the use of the Network Infrastructure to receive such VAS Services by the particular Network involved and Client agrees to abide by and ensure compliance with such conditions of use as they apply to the VAS Services.

4. SERVICE SCHEDULES

- 4.1. Should Client at any time require VAS Services, it may submit to Panacea Mobile a request in the format prescribed by Panacea Mobile and in accordance with Panacea Mobile ’s ordering procedures.
- 4.2. Details pertaining to the supply of the VAS Services shall be reflected in Service Schedules. No Service Schedule will be binding unless it has been duly signed by both Parties.
- 4.3. Each binding Service Schedule shall commence on its Effective Date and be of force and effect until terminated in accordance with this Agreement.
- 4.4. VAS Services being rendered under a Service Schedule that pertains to any specific Network will automatically terminate if and to the extent that such Network withdraws from or terminates its involvement with such VAS Services for any reason.
- 4.5. VAS Services may be terminated by either Party by giving the other Party at least 90 (ninety) days prior written notice thereto, which termination will take effect as of the date specified in the notice of termination, provided that no such notice will be of any force or effect prior to expiry of the Minimum Term of the relevant Service Schedule.
- 4.6. The termination of any one Service Schedule will not affect the validity of any other Service Schedule. The termination of any one Service component under a Service Schedule will not affect the validity of any other Service component provided under such Service Schedule.

5. IMPLEMENTATION

- 5.1. Client shall be responsible for complying with the Client Requirements and the minimum requirements of the relevant Networks so as to enable its interoperation with the Panacea Mobile System and Network Infrastructure and the proper functioning of the VAS Services and, accordingly, will procure, install and maintain all components of the Client System required to ensure such compliance.



5.2. The Parties will work together to implement the VAS Services specified in each Service Schedule so as to commence therewith at the planned commencement date. In this regard, the Client will be responsible for the timely implementation and configuration of the Client System to interoperate with the Panacea Mobile System and receive the relevant VAS Services all in compliance with the Client Requirements and the minimum requirements of the relevant Network, including with respect to the format and content of the Communications. Panacea Mobile may provide reasonable assistance in performing such implementation and configuration work.

5.3. Client will be responsible for and undertakes to -

5.3.1. establish the necessary network links to enable communication between the Client System and the Panacea Mobile System;

5.3.2. implement and configure in compliance with the Client Requirements the components of the Client Systems so as to enable the transmission of Communications, including with respect to the process, format and content of the Communications Data to be provided; and

5.3.3. test new VAS Service implementations prior to using it for operational purposes to ensure that it operates properly, notify Panacea Mobile of problems detected and work with Panacea Mobile to resolve such problems.

6. TECHNOLOGY

6.1. During the term of a Service Schedule and in return for payment of the relevant VAS Fees, Client may use the Technology as made available to it by Panacea Mobile on a non-exclusive, non-transferable basis to enable it to access and use the VAS Services to be provided to Client under such Service Schedule for its own internal business purposes via the Client System in the Territory.

6.2. Client shall not, and shall not permit, whether directly or indirectly, any third party, except as expressly permitted hereunder or under a Service Schedule to-

6.2.1. access, use or share the VAS Services made available to it, or sell, assign, sub-license or otherwise transfer any of its rights with respect to the VAS Services made available to it;

6.2.2. access, use, modify, adapt, translate, reproduce, distribute, rent, lease, share, sell, assign, sub-license or otherwise transfer its rights of use with respect to any part of the Technology made available to it;

6.2.3. remove, alter or conceal any proprietary notices or labels on Technology made available to it; or

6.2.4. reverse assemble, decompile or reverse engineer any software forming part of the Technology, whether in whole or in part.

6.3. Client shall ensure that the Technology is used by it and its Personnel in strict compliance with the terms of this clause 6 and agrees to notify Panacea Mobile promptly in writing of any transgressing uses of, or any act of infringement involving the Technology of which it acquires knowledge and Panacea Mobile shall have the right, at its own option, to proceed against anyone infringing its rights in the Technology.

6.4. Panacea Mobile reserves all rights not expressly granted to Client. Client acknowledges that the rights in the Technology granted to it are limited to the licences granted to it hereunder and that Panacea Mobile and its licensors shall remain solely entitled to all Intellectual Property Rights and other proprietary rights in the Technology (notwithstanding that it may have been delivered to Client), including all Intellectual Property Rights represented by or incorporated in the Technology.

6.5. Client undertakes that it shall not in any manner whatsoever represent that it is the owner or has any interest, other than as licensee in terms hereof, in the Technology and shall not take any action to impute any other right, title or interest in and to the Technology.

6.6. The risk of loss or damage in respect of all components of the Technology delivered to the Client shall transfer to the Client upon such delivery.

7. SERVICES

7.1. In consideration for payment of the VAS Fees Panacea Mobile shall provide the Client with access to the Panacea Mobile System for purposes of making use of the VAS Services for its own business purposes. Client shall not use or permit use of the VAS Services for the benefit of any third party unless expressly authorised thereto in a Service Schedule.

7.2. Upon conclusion of the Service Schedule, Client appoints Panacea Mobile for all purposes under applicable Law to render the VAS Services specified therein during the term of such Service Schedule and authorises Panacea Mobile to make use of the relevant Networks designated in such Service Schedule to render such VAS Services for all purposes under applicable Law and Panacea Mobile accepts such appointment on the terms of this Agreement and the relevant Service Schedule. The aforesaid appointment shall include, without limitation, the right, where applicable, to invoice and receive payments from Subscribers for Communications, including standard bearer fees and Premium Rated Charges where applicable.

7.3. Client will at all times comply with and ensure that the Client System complies with the relevant Client Requirements and the minimum requirements of the relevant Networks so as to enable its interoperation with the Panacea Mobile System and Network Infrastructure and the proper functioning of the VAS Services, and Client shall maintain the components of the Client System so as to ensure same.

7.4. Panacea Mobile will endeavour to provide Client with reasonable advance written notice of any adjustments to the Client Requirements or the VAS Services, which notice will specify the date on which such adjustments are to take effect, it being acknowledged that such notice may not be possible in emergency situations.

7.5. Other than in the event of an emergency, Client shall not make changes to the Client System that may affect the VAS Services without notifying Panacea Mobile well in advance, providing Panacea Mobile with sufficient opportunity to assess and mitigate against the potential impact of such change on the VAS Services, and agreeing the scheduling and process of implementation of such changes with Panacea Mobile.

7.6. Panacea Mobile will render Support Services for the VAS Services and Panacea Mobile System on the basis as set out in the Schedule attached hereto.

7.7. Client will also provide helpdesk support at any time for problems and queries relating to its use of the VAS Services and with access to technical Personnel which will be able to deal with such issues raised by Subscribers, Panacea Mobile or the Networks. Client will ensure that the helpdesk is manned by suitably trained and skilled staff that will be responsible for performing the following functions in a timely manner:

7.7.1. deal with all Subscriber queries pertaining to Client's use of the VAS Services;

7.7.2. assist Panacea Mobile and the Networks with Communication related problems including by escalating to appropriate technical Personnel;

7.7.3. identify and notify Panacea Mobile of any problems affecting the VAS Services including Client System downtime;

7.7.4. resolve all such problems that are not caused by the Panacea Mobile System or Network Infrastructure, including all problems caused by the Client System or the interoperation thereof with the Panacea Mobile System and/or Network Infrastructure;

7.7.5. escalating all problems to Panacea Mobile that it reasonably believes to be caused by the Panacea Mobile System or Network Infrastructure and liaising with Panacea Mobile until such issues are resolved.



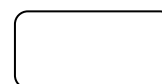
- 7.8. Client will ensure that any UserID issued to it or its Personnel to enable access to the VAS Services is kept confidential and is not made known to or used by unauthorised persons. Client shall be responsible for all Communications submitted using the UserIDs issued to Client and/or its Personnel and may not permit the access and/or use of a VAS Service by any third party save with the express authorisation of Panacea Mobile in writing.
- 7.9. Client will be responsible for complying with applicable Law and the Client Requirements insofar as it may pertain to its collection, processing and storage of the Communications Data, and will take reasonable precautions and implement reasonable security measures to prevent any unauthorised access, use, alteration or loss of the Communications Data held by it.
- 7.10. Client will not use or permit the use of the VAS Services in infringing, unlawful, abusive or harmful manner and will use and ensure the use of the VAS Services in compliance with applicable Law and the Client Requirements, including the relevant codes of conduct of Panacea Mobile, WASPA and/or ISPA and the Networks. Client hereby specifically consents to the interception, blocking, filtering, monitoring, deletion and/or disclosure of Communications by Panacea Mobile and the Networks to enforce compliance herewith and Client indemnifies and holds Panacea Mobile and the Networks harmless against any and all claims, losses, fines, costs and expenses incurred by Panacea Mobile as a result of any non-compliance with the terms of this clause.
- 7.11. Client shall ensure that it obtains and maintains all licences, authorisations, permissions and consents (including from Personnel and Subscribers) as may be required in Law for the Communications Data to be submitted to and processed by the Panacea Mobile System and to enable Panacea Mobile and the Networks to render the VAS Services for Client, and will immediately notify Panacea Mobile in writing of the expiry or termination of any such licence, authorisation, permission or consent.
- 7.12. Panacea Mobile may upon notice withdraw, limit, alter or suspend the access of the Client to VAS Services and may withdraw VAS Services from its offering, and may in particular do so if -
- 7.12.1. such VAS Services are abused or used in an infringing, unlawful, abusive or harmful manner;
- 7.12.2. such VAS Services are not available via the relevant Network;
- 7.12.3. if Panacea Mobile invoices are not paid when due;
- 7.12.4. if contract terms applicable to the use of such VAS Services are breached; or
- 7.12.5. if use of or interoperation with the Client System detrimentally impacts on the integrity or functioning of the Panacea Mobile System,
- in each case at least until such time as the issue is resolved or the impact can be avoided.
- 7.13. Notwithstanding anything to the contrary contained herein and in the event that penalties are imposed on Panacea Mobile by any Authority due to any breach of Law by Client, Client shall reimburse Panacea Mobile in full, without set-off or deduction, the total amount of such a penalty within 7 (seven) days of such penalty being paid by Panacea Mobile to the relevant Authority.

8. PAYMENT

- 8.1. In consideration for the Services, Client shall be liable for and Panacea Mobile shall be entitled to the VAS Fees specified in the Service Schedule to be applicable to such Services and failing such stipulation at Panacea Mobile's standard prevailing rates applicable to such Services and the standard bearer fees charged by the applicable Network for Client's Communications over the particular Services. In addition, Subscriber Charges may be charged to Subscribers by the Networks for participating in VAS Services at applicable rates.

- 8.2. Panacea Mobile may increase the VAS Fee rates, at any time after providing 30 (thirty) days written notice to the Client, and in accordance with any additional and/or unexpected price increases and/ or increases in the Consumer Price Index and/or additional costs and/or charges Panacea Mobile may incur from either Regulators and/or Mobile Operators and/or other third parties and/or under Law during its performance in terms of this agreement, from time to time, provided that the VAS Fee rates will not be increased by a higher percentage than the percentage increase made by Panacea Mobile to its published standard rates generally offered to its clients similar to Client. Panacea Mobile will provide Client with written notice of increases to VAS Fee rates, which notice will specify the date on which adjustments are to take effect.
- 8.3. The VAS Fees shall exclude all taxes, duties, tariffs, rates, levies and other governmental charges payable in respect of the rendering of the Services, which shall be payable by the Client in addition, whether directly to the appropriate taxing authority or by reimbursing Panacea Mobile.
- 8.4. Client shall reimburse all reasonable expenses incurred by Panacea Mobile to render Services onsite at Client premises, including for travelling, accommodation and subsistence which may be charged in accordance with Panacea Mobile's standard policies in respect of such matters from time to time.
- 8.5. If so agreed for a particular VAS Service in a Service Schedule, Client will be entitled to share in the Subscriber Charges collected from Subscribers pursuant to such VAS Service on the basis as described in the relevant Service Schedule and failing such stipulation on the standard sharing arrangements applied by Panacea Mobile to the relevant Subscriber Charges. Panacea Mobile will pay over Client's share in such Subscriber Charges on a monthly basis in arrears following receipt thereof from the relevant Network net of any amounts as may be owing to Panacea Mobile at the time. Client will provide Panacea Mobile with written confirmation of its bank account details for such payments and will notify Panacea Mobile immediately and in writing of any changes thereto, provided that such bank account will be held at a registered bank in Client's country of establishment.
- 8.6. Panacea Mobile will provide Client with a consolidated report, tax invoice and statement reflecting the Subscriber Charges received and VAS Fees and expenses due in respect of the VAS Services on a monthly basis in arrears. The total amount due under an invoice shall take into account any agreed discounts to which the Client may become entitled, which discounts shall be indicated on the invoice. Amounts invoiced to Client that are not deducted from payments to Client by Panacea Mobile shall be payable within 30 (thirty) days by way of debit order, direct deposit or electronic transfer into Panacea Mobile's Designated Account. Client may not withhold or defer payment of any amount owing to Panacea Mobile and Client payments which are not received when payable shall bear interest at the prime rate of interest charged by Panacea Mobile's bankers at which the Designated Account is held.
- 8.7. If there is any dispute about the amounts due to any Party, the Parties shall appoint an independent registered public accountant to act as an expert. If the Parties are unable to reach agreement as to the appointment of such independent registered public accountant, an independent registered public accountant shall be appointed at the request of either Party by the President for the time being of the Society of Chartered Accountants of South Africa (or the successor body thereto). The independent registered public accountant shall act as an expert and not as an arbitrator and the Parties shall provide each other and any such expert with any and all information that it may reasonably require in order to determine the correct amount payable. Such expert's decision shall be final and binding on the Parties. The cost of the aforesaid determination shall be borne by the Parties in equal shares unless a Party is found to be materially in default, whereupon the defaulting Party shall bear the costs of such expert. A correcting payment in the amount as determined by the expert shall be paid to the non-defaulting Party within 14 (fourteen) days of the determination.

9. CONFIDENTIAL INFORMATION



- 9.1. Subject to the provisions of this clause 9 the Parties undertake to treat and hold as confidential all Confidential Information which they may receive from the other Party or which becomes known to them.
- 9.2. The Receiving Party may disclose the Confidential Information only to its duly authorised Personnel, associated entities or Affiliates and then only such Personnel, associated entities or Affiliates to whom such disclosure is reasonably necessary, and who have a similar confidentiality agreement with the Receiving Party.
- 9.3. The Receiving Party agrees:
- 9.3.1 not to disclose the Confidential Information to any third party for any reason or purpose whatsoever;
- 9.3.2 not to utilise, employ, exploit or any other manner whatsoever use the Confidential Information disclosed pursuant to the provisions of this agreement for any purpose whatsoever other than strictly in relation to the purpose of this Agreement;
- 9.3.3 that the unauthorised or unlawful use or disclosure of the Confidential Information may cause irreparable loss, harm and damage to the Disclosing Party.
- 9.4 Accordingly, the Receiving Party shall be liable to the Disclosing Party to make payment to it of any loss, action, expense, claim, harm or damage, of whatsoever nature, suffered or sustained by the Disclosing Party pursuant to a breach by the Receiving Party or any of its Personnel, associated entities or Affiliates to whom disclosure is made in terms of this Agreement or of the provisions of this agreement.
- 9.5 The Receiving Party shall be responsible for any breach of the terms of this clause 9 by any persons (including its Personnel, associated entities or Affiliates) to whom it discloses the Confidential Information of the Disclosing Party. Accordingly, the Receiving Party shall, at its sole expense, take all reasonable measures to restrain such persons from prohibited or unauthorised use or disclosure of the Disclosing Party's Confidential Information.
- 9.6 The Disclosing Party may, at any time by way of written notice to the Receiving Party, require the Receiving Party to return any material containing, pertaining to or relating to the Confidential Information of the Disclosing Party and to expunge such confidential information from any word processor, computer or other similar device into which it was entered or programmed, and may, in addition, require the Receiving Party to furnish a written statement (certified as correct by a director/member of the Receiving Party) to the effect that, upon such return, the Receiving Party has not retained in its possession, or under its control, either directly or indirectly, any such material.
- 9.7 As an alternative to the return of the material contemplated in clause 9.6 above, the Receiving Party shall, at the instance of the Disclosing Party, destroy such material and furnish the Disclosing Party with a written statement (certified as correct by a director/member of the Receiving Party) to the effect that such material has been destroyed.
- 9.8 The obligations of the Receiving Party pursuant to the provisions of this clause 9 shall not apply to any information that:
- 9.8.1 is known to or lawfully in the possession of the Receiving Party prior to disclosure thereof by the Disclosing Party;
- 9.8.2 is or becomes publicly known, otherwise than pursuant to a breach of this clause 9 by the Receiving Party;
- 9.8.3 is developed independently by the Receiving Party in circumstances that do not amount to a breach of the provisions of this clause 9 and without reference to the Confidential Information of the Disclosing Party;
- 9.8.4 was received by the Receiving Party from a third party who is entitled to disclose same free of restriction and without obligation (whether contractual, legal, fiduciary or otherwise) to the Disclosing Party;

- 9.8.5 is disclosed by the Receiving Party to satisfy the order of a court of competent jurisdiction or to comply with provisions of any Law or regulations in force from time to time, provided that in these circumstances, the Receiving Party shall advise the Disclosing Party in writing prior to such disclosure to enable the Disclosing Party to take whatever steps it deems necessary to protect its interest in this regard: Provided further that the Receiving Party will disclose only that portion of the information which it is legally required to disclose and the Receiving Party will use its reasonable endeavours to protect the confidentiality of such information to the widest extent possible in the circumstances;
- 9.8.6 is disclosed to a third party pursuant to the prior written authorisation from the Disclosing Party.
- 9.9 The Receiving Party acknowledges and agrees that the unauthorised disclosure or use of the Confidential Information by the Receiving Party or a third party may cause irreparable loss, harm and damages to the Disclosing Party.
- 9.10 Should the Receiving Party breach any of the provisions or undertakings set out in this clause 9, the Disclosing Party shall be entitled to proceed to recover such loss, damages or expense suffered by it and shall notwithstanding any claim for damages, in addition without notice to the Receiving Party bring an application in any court of competent jurisdiction, whether on an urgent basis or not, for the granting of an interdict against the Receiving Party to prevent any further breach of the terms of this clause 9.
- 9.11 Notwithstanding anything to the contrary contained in this clause 9, the Parties undertake not to use or disclose and ensure that its Personnel does not use or disclose such Confidential Information save as may be necessary to comply with its obligations or to enforce its rights under an Annexure or to comply with applicable Law, unless the proprietor thereof expressly consents to such use or disclosure in writing.
- 9.12 The provisions of this clause 9 are severable from the remainder of the provisions of this Agreement and the provisions of this clause 9 shall be binding on the Parties for such time as the Confidential Information remains proprietary and confidential to the Disclosing Party and does not become excluded information as contemplated in clause 9.8
- 9.13 Notwithstanding anything to the contrary contained herein the Parties undertake not to use or disclose and ensure that its Personnel does not use or disclose such Confidential Information save as may be necessary to comply with its obligations or to enforce its rights under the Service Schedules or to comply with applicable Law, unless the proprietor thereof expressly consents to such use or disclosure in writing.

10 DISCLAIMER

- 10.1 Use of the Services is at the sole risk of Client. The Services are made available to the Client on an "as is" basis and are not warranted to be free from defects. Panacea Mobile makes no express, implied or tacit warranties with respect to the Services or the Technology to the maximum extent permitted by applicable Law. In particular, and notwithstanding the generality of the foregoing, Panacea Mobile does not warrant that the Technology or Services will always be available, accurate or free from errors.

11 LIABILITY

- 11.1 Save to the extent that such limitation is not permitted by applicable Law, Panacea Mobile's maximum aggregate liability to Client for all damages, expenses, costs and losses claimed in connection with any Service Schedule shall be the total VAS Fees paid or due to Panacea Mobile under such Service Schedule during the latest 12 (twelve) months of its term, irrespective of the form (whether in contract, delict (including negligence), statute or otherwise) of such legal action.
- 11.2 In no event shall Panacea Mobile or its Personnel be liable for any indirect, incidental, extrinsic, special or consequential damages or losses (whether foreseeable or unforeseeable) of any kind (including, without limitation, loss of profits, loss of



income, loss of goodwill, loss or corruption of data, loss of use, business interruption, third party claims or any other pecuniary loss arising out of a delay in delivery or reliance on the Technology or Services) arising in connection with this Agreement or any Service Schedule, whether based on contract, delict, statute or otherwise, except to the extent that the limitation of liability contained herein is not permitted by applicable Law.

12 BREACH

12.1 Should either Party (“Defaulting Party”) –

- 12.1.1 commit a material breach of the Service Schedule or of these terms as they apply to such Service Schedule, and fail to remedy such breach within 30 (thirty) calendar days of having been called upon in writing by the other Party to do so; or
- 12.1.2 fail to pay any amount due that is more than 60 (sixty) calendar days outstanding; or
- 12.1.3 commence with business rescue proceedings; or
- 12.1.4 defer or suspend payment of all or substantially all of its debts or is unable to pay its debts as and when they fall due; or
- 12.1.5 effect or attempt to effect a compromise or composition with the Defaulting Party’s creditors; or
- 12.1.6 take steps for its voluntary winding up or be provisionally or finally liquidated or be placed in judicial management, whether provisionally or final or ceases to conduct business;

then, without prejudice to any other rights or remedies it may have in Law, the other Party (“Innocent Party”) may, in its discretion, terminate the Services and Service Schedules in whole or in part on written notice to the Defaulting Party, such termination to take effect on the date specified in the notice.

13 EFFECT OF TERMINATION

13.1 Upon termination, cancellation or expiry of any Service Schedule or any Service -

- 13.1.1 All amounts already due in respect of the terminated Services shall become payable immediately; and
 - 13.1.2 Client shall cease using and ensure that its Personnel cease using all the affected Services and Panacea Mobile will be entitled to take any steps required to prevent any further access or use by Client of such Services; and
 - 13.1.3 each Party shall deliver, or at the other Party’s option destroy, and procure the delivery of or destruction by its Personnel, of all originals and copies of the other Party’s Confidential Information and proprietary materials in its or their possession or under its or their control that is relevant to the affected Services (including for Panacea Mobile the relevant System Requirements) and will certify its compliance herewith promptly upon request by the other Party; and
 - 13.1.4 Client shall immediately discontinue all promotion of the affected Services (including to Subscribers) and refrain from doing anything that would indicate that it is still entitled to use such Services.
- 13.2 The expiry or termination of a Service Schedule or Service shall be without prejudice to any rights of the Parties accrued thereunder as at the date of such expiry or termination.
- 13.3 Termination of this Agreement or of a Service or a Service Schedule shall not affect the enforceability of the provisions herein which have been specified or are by their nature required to operate after such expiry or termination, including without limitation, the following provisions: clause 1 (Definitions and Interpretation), clause 9 (Confidential Information), clause 10 (Disclaimer), clause 11 (Liability), clause 13 (Effect of Termination), clause 15 (Dispute Resolution), clause 16 (Assignment), clause 17 (Notices and Domicilia), clause 18 (Relationship) and clause 19 (General).

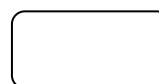
14 FORCE MAJEURE

14.1 Neither Party shall be liable for any failure to fulfil its obligations under a Service Schedule if and to the extent such failure is caused by any circumstances beyond its reasonable control, including but not limited to acts of God, natural disasters, earthquakes, fire, explosions, floods, hurricanes, extreme weather, riots, wars, (whether declared or not), hostilities, revolutions, civil disturbance or usurped authority, accidents, embargo or requisition, unforeseeable acts (including failure to act) of any governmental authority (de jure or de facto), sabotage, nuclear incidents, epidemics, general power failures, general communications failures, strikes over which the affected Party have no control, or the failure of any institution whose consent is required for the performance of any obligation hereunder to provide such consent, or delays in the performance of its sub-contractor caused by any such circumstances as referred to in this clause. The right of relief shall apply irrespective of whether the cause of prevention or delay occurs before or after the agreed due time for such obligations.

15 DISPUTE RESOLUTION

15.1 Should any dispute arise between the Parties in relation to a Service Schedule or these terms or any issue arising therefrom:

- 15.1.1 The authorised representatives, as appointed by each Party, shall meet as soon as reasonably practicable (but no less than 5 days of such meeting being requested in writing by either Party) to try to resolve the dispute and shall, if required by either Party, continue to negotiate for at least five (5) consecutive days (or such other period as may be agreed by the Parties in writing);
 - 15.1.2 If the dispute had not been resolved at the meeting pursuant to Clause 15.1.1, the dispute shall be referred to an urgent meeting of the Chief Executive Officers of the Parties or such representatives as may be appointed by their Chief Executive Officers. This meeting is to take place within five (5) days of the matter being referred to them or such other period as may be agreed by the Parties in writing;
 - 15.1.3 If the dispute has not been resolved within 5 days of the meeting contemplated in Clause 15.1.2 (or such other period as may be agreed by the Parties in writing), either Party may refer the dispute to arbitration in accordance with the terms of Clause 15.2.
- 15.2 In the event of there being a dispute relating to or arising out of a Service Schedule, including regarding the scope, effect, validity, implementation, execution, interpretation, rectification, termination or cancellation thereof or of these terms, which is not resolved in accordance with Clause 15.1 then, save where otherwise provided in these terms (including in clause 8.7), such dispute shall be finally resolved on the terms as provided for below:
- 15.2.1 In the event of any such dispute or difference arising between the Parties the said dispute or difference shall on written demand by any Party to the dispute be submitted to arbitration in Cape Town in the English language in accordance with the rules of AFSA.
 - 15.2.2 The arbitrator shall be, if the matter in dispute is principally:
 - (a) a technical matter, an independent technical expert of not less than 10 years experience in the relevant technical area;
 - (b) an accounting matter, an impartial chartered accountant of not less than ten (10) years standing;
 - (c) a legal matter, an impartial practising advocate of not less than ten (10) years standing;
 - 15.2.3 If the parties fail to agree whether the matter in dispute is of a legal, accounting or technical nature within seven (7) days after the arbitration has been demanded, it shall be considered to be a legal matter referred to in Clause (c) above.



15.2.4 Each of the Parties hereby irrevocably agrees that the decision of the arbitrator in the arbitration proceedings:

- (a) shall be final and binding on each of them; and
- (b) will be carried into effect; and
- (c) can be made an order of any competent Court to whose jurisdiction the parties are subject.

15.2.5 Each Party expressly consents to any arbitration in terms hereof being conducted as a matter of urgency; and irrevocably authorises the other Party to the dispute to apply, on behalf of all Parties to the dispute, in writing, to the secretariat of AFSA, in terms of the AFSA rules, for the arbitration to be conducted on an urgent basis.

15.2.6 Any arbitration in terms of this clause 15.2 shall be conducted in camera and the Parties shall treat as confidential and not disclose to any third party details of the dispute submitted to arbitration, the conduct of the arbitration proceedings or the outcome of the arbitration, without the written consent of the other Party.

15.2.7 This clause 15.2 shall constitute each Party's irrevocable consent to the arbitration proceedings described herein, and no Party shall be entitled to withdraw from such proceedings or to claim at such proceedings that it is not bound by this clause.

15.3 Nothing herein contained shall be deemed to prevent or prohibit a Party from applying to any appropriate Court for an interdict, urgent relief, enforcement of Intellectual Property Rights or for judgment in relation to a liquidated claim.

15.4 The provisions of this clause 15 are severable and will continue to be binding on the Parties notwithstanding any termination or cancellation of the Service Schedule or any part thereof.

16 ASSIGNMENT

16.1 Neither Party shall be entitled to cede, assign, delegate or otherwise transfer any of its rights or obligations under this Agreement or any order without the prior written consent of the other Party.

16.2 Notwithstanding the provisions of clause 16.1 it is expressly recorded that Panacea Mobile shall be entitled to cede and assign all rights and obligations in terms of this Agreement to any of its affiliates or to any successor of all or substantially all of the business or assets of Panacea Mobile without the prior written consent of Client, provided that Panacea Mobile shall notify Client of such event within a reasonable time of such event occurring.

17 NOTICES AND DOMICILA

17.1 The Parties hereby choose domicilium citandi et executandi ("Domicilium") for all purposes under this Agreement the physical addresses set out on the cover sheet of this Agreement.

17.2 Either Party may give written notice to the other, change its Domicilium to any other physical address in the Republic of South Africa and its telefax number to any other South African number, provided that such change shall take effect 14 (fourteen) calendar days after delivery of such written notice.

17.3 Notice will be deemed given –

17.3.1 if delivered by hand to a responsible person during normal business hours to the designated physical address, on the date of delivery;

17.3.2 if sent by fax to the designated fax number, on the 1st (first) business day following the date of despatch;

17.4 Notwithstanding anything to the contrary stated above, if a notice or communication is actually received by a Party, adequate notice or communication shall have been given, even though it was not delivered in a manner described above.

18 RELATIONSHIP

18.1 This Agreement and/or a Service Schedule does not create a fiduciary relationship between the Parties. The Parties act as independent contractors and, save for clause 7.2, nothing is intended to make either Party a general or special agent, joint venture, partner, or employee of the other for any purpose and neither Party shall have any authority to bind, make any express or implied agreements, warranties, guarantees or representations or incur any debt or liability in the name of or on behalf of the other.

18.2 Client shall not circumvent or attempt to circumvent Panacea Mobile in respect of the VAS Services and, accordingly, shall not and shall not permit any of its Affiliates, prior to or during the term of a Service Schedule, to enter or attempt to enter into any arrangement with a Network to whom it is introduced by Panacea Mobile or with any of its Affiliates for the rendering of services that involves services similar to the VAS Services and Client shall notify Panacea Mobile immediately if it is approached for the purposes of making such an arrangement.

18.3 For the duration of a Service Schedule and for a period of 12 (twelve) months after its termination (for whatsoever reason) and save to the extent otherwise agreed in writing, neither Party shall, directly or indirectly, solicit for employment any employee of the other Party involved in the supply of the Services, nor shall it solicit, entice, encourage or persuade any such employee to terminate his/her employment with the other Party. General advertisements by a Party will not be considered direct or indirect solicitation and the appointment of a person pursuant to an unsolicited response to such advertisement will not be prohibited hereunder.

19 GENERAL

19.1 This Agreement shall be governed and construed according to the laws of the Republic of South Africa and subject to clauses 8.7 and 15, the Parties agree to submit to the non-exclusive jurisdiction of the South Gauteng High Court, South Africa.

19.2 If a provision in these terms is reasonably capable of an interpretation which would make that provision valid and enforceable and an alternative interpretation that would make it void, illegal, invalid or otherwise unenforceable, then that provision shall be interpreted, so far as is possible, to be limited and read down to the extent necessary to make it valid and enforceable.

19.3 If any part of this Agreement is held unlawful or unenforceable the offending section or part shall be struck out and the remainder of this Agreement shall remain in effect.

19.4 No delay, neglect or forbearance by either Party in enforcing its rights under this Agreement shall be a waiver of, or prejudice, those rights. No waiver shall be effective unless it is expressly stated in writing and signed by the Party giving it.

19.5 The Service Schedule, this Agreement and any documents expressly incorporated into either by reference constitute the entire agreement between the Parties in respect of its subject matter and supersede and replace all other agreements, representations or warranties between the Parties pertaining to the subject matter contained in the Service Schedule, which will no longer be binding on the Parties as from the Effective Date thereof.

19.6 No change, alteration or modification to this Agreement or a Service Schedule shall be valid unless in writing and signed on behalf of both Parties.

19.7 No Party shall be bound by any express or implied term, representation, warranty, promise or the like, not recorded herein.

