



Terms and Conditions

Version 040111

1. DEFINITIONS

- 1.1 **“Addendum(s)”** means any addendum(s) or supplemental(s) executed by Customer and accepted by MMSSB for value added, supplemental or additional Services.
- 1.2 **“Agreement”** means the agreement for Service(s) made between MMSSB and the Customer in accordance with these terms and conditions, the Registration Form, the Addendums, the terms of services, policies and procedures of the relevant rate plans and all other documents which are expressly agreed to form part of the Agreement.
- 1.3 **“Bank”** means the authorised banks or financial institutions or such other entity, which may be nominated by MMSSB from time to time.
- 1.4 **“Bursa Malaysia”** means Bursa Malaysia Securities Berhad, formerly known as the Kuala Lumpur Stock Exchange.
- 1.5 **“Card”** means the credit or charge card (as applicable) nominated by the Customer as payment for the Services and accepted by MMSSB.
- 1.6 **“Cardholder”** means the lawful and authorised user of the Card whose name is embossed thereon and whose signature appears on the Card.
- 1.7 **“Card Issuer(s)”** refers to any bank or legal entity which is the issuer for the Card.
- 1.8 **“Customer”** means the company or entity named in the Registration Form overleaf whose application for Service(s) or any part thereof has been accepted and approved by MMSSB.
- 1.9 **“Direct Debit”** means the direct debit bill payment service offered by MMSSB whereby a Customer’s periodic official bill statement may be automatically billed into the Customer’s Card account for settlement.
- 1.10 **“MMSSB”** means Malaysian Mobile Services Sdn Bhd (Company No. 73315-V).
- 1.11 **“MMSSB Equipment”** means equipment installed by or on behalf of MMSSB for the Customer for the purpose of provision of any Service(s), including MMSSB Software installed in such equipment.
- 1.12 **“MMSSB Software”** means computer programme or software installed by or on behalf of MMSSB for the Customer for the purpose of provision of any Service(s).

- 1.13 **“Pay-by-Phone”** means the Pay-by-Phone service whereby the Customer’s periodic official bill statement per account may be charged to the Customer’s Card account for settlement as advised by the Customer via telephone for each payment.
- 1.14 **“Personal Information”** means information collected by MMSSB from the Customer including all information and details in relation to the Service(s) provided by MMSSB to the Customer.
- 1.15 **“Registration Form”** means the Customer’s duly completed application form for registration to subscribe to the Service(s), which has been accepted and approved by MMSSB, the form and content of which are set out overleaf.
- 1.16 **“Related Corporations”** means the related corporations as defined under the Companies Act, 1965 and includes their respective employees and directors.
- 1.17 **“Service(s)”** means the telecommunication or other services provided by MMSSB to the Customer pursuant to the Agreement and any value added, supplemental or additional Services as may be stated in the Registration Form, Addendum(s) or Additional/Special Terms and Conditions. The definition of “Service(s)” as aforesaid includes MMSSB Equipment and MMSSB Software.
- 1.18 **“Working Days”** means, save for the states of Kedah, Terengganu and Kelantan, Mondays to Fridays and Saturday (half day) excluding public holidays and Sundays. In relation to the states of Kedah, Terengganu and Kelantan, Saturdays to Wednesdays and Thursday (half day) excluding public holidays and Fridays.

2. DURATION OF AGREEMENT

- 2.1 The Agreement between the Customer and MMSSB shall be in force from the date the Customer’s Registration Form for Services is approved by MMSSB, which is signified by availability of the Services to the Customer. Approval of the Customer’s application for Services shall be at MMSSB’s absolute discretion and shall be in force unless terminated in accordance with the Agreement.
- 2.2 Approval by MMSSB of the Customer’s application for one Service does not necessarily imply approval of nor oblige MMSSB to accept the Customer’s application for registration for other types of Service(s) comprising the Service(s) applied for. Approval by MMSSB of the Customer’s application for registration for the other services comprising the Service(s) is at MMSSB’s absolute discretion.

3. CUSTOMER’S RESPONSIBILITY

- 3.1 The Customer must, throughout the duration of the Agreement, comply with all of the following:
- (a) promptly pay all amounts due to MMSSB as reflected in the official bill statement and all charges whatsoever occasioned by the use of the Service(s), irrespective of whether such charges were authorised by the Customer, had exceeded the Customer’s credit limit or had arisen from any other causes whatsoever;

- (b) cease to utilise the Service(s) or any part thereof for such period as may be required by MMSSB;
- (c) continue to be liable for any applicable charges and fees during the period of interruption, suspension or loss of Service(s) or part thereof from any cause whatsoever;
- (d) ensure that the Service(s) are used solely for the reception and transmission of messages (including without limitation picture and data) and other communications;
- (e) obtain the consent of intended recipients prior to sending any messages or information via the Service(s) or part thereof to such recipients;
- (f) not use or permit to be used any Service(s) to cause embarrassment, distress, annoyance, irritation or nuisance to any person;
- (g) comply with all notices or directions relating to any Service(s) as MMSSB may see fit to issue from time to time or if MMSSB has reason or cause to suspect that the Customer is not complying with its responsibilities and obligations under this Agreement;
- (h) be fully responsible for any data transmitted or broadcasted using any Service(s) (whether authorised by the Customer or not);
- (i) not re-supply any Service(s) to any person;
- (j) use all precautions to prevent, and report immediately to MMSSB upon the discovery of, any fraud, theft, loss, unauthorised usage, copying or any other occurrence of unlawful acts in relation to MMSSB Equipment and/or MMSSB Software and/or its use. In this respect, the Customer agrees to lodge a police report whenever instructed by MMSSB (if one has not already been lodged) and to give MMSSB a certified copy of such report. MMSSB shall not be obliged to replace any lost or stolen MMSSB Equipment;
- (k) not use or permit the use of any Service(s) or install, connect, link or use or permit the installation, connection, linking or use of any equipment in contravention of any law or which generates or is likely to generate traffic or usage which causes or is likely to cause congestion in or disruption to the provision or operation of any service by MMSSB or any other service provider.

3.2 The Customer acknowledges and agrees that all materials and content available on the MMSSB sites are protected by copyrights, trademarks, service marks, patents, trade secrets, or other proprietary rights and laws. The Customer agrees not to sell, license, rent, modify, distribute, copy, reproduce, transmit, publicly display, publicly perform, publish, adapt, edit, or create derivative works from materials or content on the MMSSB sites. Notwithstanding the above, the Customer may print or download one copy of the materials or content on the said sites on any single computer for its use, provided the Customer keeps intact all copyright and other proprietary notices.

3.3 The Customer shall be solely responsible for managing the use of the storage capacity for the Customer's data/information to ensure it is within the capacity allocated to the Customer or as may be stipulated by MMSSB. MMSSB shall have no obligation to back up or manage the

data/information on any Service(s) website.

3.4 The Customer acknowledges and agrees that by using the Internet in general, the Customer may be subject to various risks, including amongst others:

- unauthorized invasion of the Customer's privacy during, or as a result of, the Customer's or another party's use of the network;
- unauthorized exposure of information and material the Customer listed or sent, on or through any Service(s), to other users, the general public or any other specific entities for which the information and material was not intended by the Customer.

The Customer acknowledges and agrees that MMSSB shall not be liable for the security of any data/information on any of the Customer's equipment or transmitted via any Service(s) and that MMSSB shall have no obligation to ensure, and makes no representations or warranties concerning, the security of such data/information. The Customer shall be solely responsible for the data retrieved, stored or transmitted through any Service(s). MMSSB is not liable for any unauthorised access to any data/information notwithstanding the cause of such unauthorised access.

3.5 The networks used for the provision of any Service(s) may be used only for lawful purposes. Transmission, distribution or storage of any material in violation of any applicable law or regulation is prohibited, including, without limitation, material protected by copyright, trademark, trade secret or intellectual property right used without proper authorisation, and material, including but not limited to, that is offensive, obscene, indecent, abusive, defamatory, seditious, abusive or hateful, false, constitutes an illegal threat, or may constitute unauthorized advertising or harassment, invades anyone's privacy, or encourages conduct that would constitute a criminal offence, give rise to civil liability, or otherwise violate any local, state, national or international law or regulation.

3.6 The Customer acknowledges and agrees that violations of system or network security are prohibited, and may result in criminal and civil liability. Examples of system or network security violations include, without limitation, the following:

- unauthorised access to or use of data, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without express authorisation of the owner of the system or network;
- unauthorised monitoring of data or traffic on any network or system without express authorisation of the owner of the system or network;
- interference with any Service(s) to any person, host or network including, without limitation, mailbombing, flooding, deliberate attempts to overload a system and broadcast attacks. The MMSSB network and/or its Related Corporations' networks may be used to link into other networks worldwide and the Customer agrees to conform to the acceptable use policies of these other networks;
- forging of any TCP-IP packet header or any part of the header information in an email or a newsgroup posting; and
- circumventing any user authentication or security of any host, network, or account (referred to as "cracking" or "hacking").

- 3.7 The Customer acknowledges and agrees that it is explicitly prohibited to send “spam” of any kind including without limitation, commercial advertising, political tracts, announcements etc. “Spam” means unwanted and unsolicited communication sent to the recipient without explicit consent of the recipient and without the option for the recipient to opt out from receiving such communication in the future. The Customer may not do any of the following:
- (a) forward or propagate chain letters or malicious content or send or deliver harmful, disruptive, or destructive content;
 - (b) solicit content/mail from or for any other person, except with full consent of that person;
 - (c) send any message or material to any person not on the Customer’s database;
 - (d) introduce into MMSSB’s and/or its Related Corporations’ systems or distribute via any Service(s), any system contamination including without limitation viruses, worms and Trojan horses causing unauthorized, damaging or harmful access and/or retrieval of information and data on the Customer’s equipment and/or other forms of activity that may be considered unlawful.
- 3.8 Customers who are content providers or aggregators shall not use the Services to send any message(s) or material(s) to international mobile numbers.
- 3.9 Customers are only permitted to send messages to certain countries/foreign operators as identified and specified by MMSSB from time to time.
- 3.10 Customers acknowledges that Maxis has no influence on the service quality of other local operators and international SMS/MMS once the SMS/MMS message has been submitted to its partner mobile network providers and thus has left its domain of control and shall not be held responsible and/or liable to the Customer whatsoever.
- 3.11 Customers acknowledges that, depending on the recipient’s mobile provider service, it may not be possible to transmit the SMS/MMS message to the recipient successfully, particularly if the recipient’s provider has temporarily or permanently disabled, or does not support SMS/MMS delivery at all, in respect of which, Maxis shall not be held responsible and/or liable to the Customer whatsoever.
- 3.12 The Customer shall be responsible and liable for obtaining and maintaining in the Customer's name and at the Customer's expense all licences, permits, consents, waivers, authorisations and intellectual property or other rights required for the use of the Service(s), including the installation or use of all MMSSB Equipment, MMSSB Software and other equipment and software.
- 3.13 The Customer shall not:
- (a) use any MMSSB or its Related Corporations’ intellectual property subsisting in any Service(s) or system operated by MMSSB or its Related Corporations or permit any person to use such intellectual property; or
 - (b) use, copy, recompile, reverse engineer or disseminate any MMSSB Software, or permit any person to do so, save as expressly prescribed or permitted by MMSSB in the Agreement.

- 3.14 The Customer shall not permit any third party to use any Service(s), including MMSSB Equipment and MMSSB Software. Without derogation to the aforesaid provision, use of any Service(s) by any third party shall be deemed to be use of such Service(s) by the Customer. The acts, omissions or defaults of such third party shall be deemed to be the acts, omissions or defaults of the Customer.
- 3.15 The Customer hereby agrees to indemnify and shall keep indemnified MMSSB from all claims, demands, actions, proceedings, costs, expenses (including legal costs and expenses), loss, damage and other liability arising out of or in connection with the Service(s) or part thereof, or arising from any claims for libel, invasion of privacy, infringement of copyright, patent, breach of confidence or privilege or breach of any law or regulation whatsoever arising from, including but not limited to, any material transmitted, received or stored via any Service(s), any act or omission of the Customer and any unauthorized use or exploitation of any Service(s).

4. OTHER PAYMENTS

- 4.1 Upon submission and approval of the Registration Form, the Customer shall pay to MMSSB such payments (which may include without limitation, a refundable deposit) as may be required by MMSSB for the registration of the Service(s) or part thereof.
- 4.2 The Customer shall make payment of installation charges of MMSSB Equipment and/or MMSSB Software directly to third party contractors appointed by MMSSB. The Customer hereby acknowledges and agrees that MMSSB shall not be liable or responsible for any acts or omissions of such third party contractors.
- 4.3 Any refundable deposit shall be held to the Customer's credit and repaid to the Customer without interest after termination of the Agreement, and subject to the deduction of any amount due to MMSSB by the Customer. MMSSB reserves the right to deduct from the refundable deposit any amount due and payable to MMSSB at any time and may request the Customer to make a further refundable deposit payment towards maintaining the refundable deposit at the level determined by MMSSB.
- 4.4 If any personnel or contractor of MMSSB is required to visit any premises (other than the premises occupied by MMSSB) to inspect, test, repair, install, remove or replace MMSSB Equipment and/or MMSSB Software, MMSSB or such contractor (as the case may be) shall be entitled to charge the Customer for the work carried out such amounts as MMSSB may from time to time determine.
- 4.5 The Customer has 14 days from the date of the official bill statement to notify MMSSB in writing of any valid disputes or errors arising from the official bill statement, failing which the Customer will be deemed to have accepted the official bill statement rendered for any period as correct and final.
- 4.6 The Customer hereby acknowledges and agrees that its obligation to pay promptly all charges due and payable as stated in the official bill statement to MMSSB shall not be waived, absolved or diminished by virtue of: -
- (a) the Customer not receiving any official bill statement from MMSSB for any particular billing period; and/or
 - (b) the Customer's failure or neglect to check, enquire, understand and ascertain the nature of the Service(s) subscribed or used by the Customer and the applicable charges associated with such Service(s).

- 4.7 In addition to its obligations under Clause 3.1(a), it shall be the Customer's responsibility to: -
- (a) request from MMSSB for the official bill statement which it has not received for any given billing period; and
 - (b) to check the applicable handbooks or brochures and/or addendums or supplemental thereto made available by MMSSB from time to time and make the necessary enquiries with MMSSB to understand and ascertain the nature of the Service(s) subscribed or used by the Customer and the applicable charges associated with the Service(s).
- 4.8 The Customer shall, immediately upon MMSSB's demand, pay to MMSSB such amounts as MMSSB may at its sole discretion specify where the usage of any Service(s) by the Customer is significantly greater than the Customer's average use thereof.
- 4.9 In the event of any fees or charges remaining unpaid after becoming due, MMSSB may charge interest at the rate of 1.5% per month (such rate to be applicable before and after judgment) on the overdue amount, calculated on a daily basis commencing from the date after the due date for payment up to, and including the date of payment or RM10.00 per month whichever shall be the higher, and the Customer shall be liable to pay such amounts. MMSSB may also, at its sole discretion, waive any late payment charges or interest on any overdue amount.
- 4.10 MMSSB shall be entitled to vary the amount of deposit, fees and any other charges for the Service(s) or part thereof at any time by notice to the Customer.
- 4.11 The Customer agrees to bear all legal costs and expenses incurred by MMSSB in recovering any moneys, charges, costs, and expenses payable by the Customer under the Agreement, and the Customer also agrees to indemnify MMSSB against all costs, expenses and charges or legal fees incurred by MMSSB in enforcing the Agreement or in bringing any action or proceeding to recover all charges, costs and expenses payable by the Customer.
- 4.12 The Customer agrees that a certificate signed by an authorised personnel in MMSSB as to the monies for the time being due and owing to MMSSB from the Customer shall be conclusive evidence or proof that the amount appearing therein is due and owing and payable by the Customer to MMSSB in any legal proceedings. Any admission or acknowledgement in writing by the Customer or any person authorised by the Customer of the amount of indebtedness of the Customer to MMSSB and any judgment recovered by MMSSB against the Customer in respect of such indebtedness shall be binding and conclusive evidence in any courts within or outside Malaysia. For the avoidance of doubt, in the event of a conflict or inconsistency between the official bill statement and the certificate of indebtedness, the certificate of indebtedness shall prevail.

5. EQUIPMENT AND SOFTWARE

- 5.1 The MMSSB Equipment and MMSSB Software shall remain the property of MMSSB or its third party licensors at all times and the property of the MMSSB Equipment and MMSSB Software does not at any time pass to the Customer. MMSSB grants the Customer the right to use the MMSSB Equipment and MMSSB Software for the purposes of the Service(s). The MMSSB Equipment and MMSSB Software must be returned to MMSSB on demand. Risk passes to the Customer immediately upon the execution of this Agreement.

5.2 The Customer shall comply with all of the following: -

- (a) bear full responsibility for the usage of the MMSSB Equipment and MMSSB Software and charges incurred through the usage of the MMSSB Equipment and MMSSB Software;
- (b) at its own expense, carry out such additions, improvements, adjustments, modifications, alterations or replacements to any equipment and software (other than MMSSB Equipment and MMSSB Software) used in relation to the provision of any Service(s), or to any MMSSB Equipment, as and when required by MMSSB for the purpose of maintaining the quality or increasing the efficiency of any Service(s) or for any other purpose whatsoever;
- (c) use and keep all MMSSB Equipment and MMSSB Software in good working condition (fair wear and tear excepted) in accordance with the specifications, guidelines and recommendations of the manufacturer, distributor or licensor thereof and of MMSSB, and shall immediately disconnect or cease to use any MMSSB Equipment and MMSSB Software at the request of MMSSB;
- (d) retain all MMSSB Equipment and MMSSB Software at all times in the custody and control of the Customer at the premises occupied by the Customer or at such other premises as MMSSB may have approved in writing;
- (e) provide at its own expense, when so required by MMSSB, all facilities and resources whatsoever necessary for the proper provision of any Service(s) and the proper installation, operation and maintenance of all MMSSB Equipment and MMSSB Software, including power points, electricity, conduits, pipes and appropriate access and access rights;
- (f) ensure that all equipment (other than MMSSB Equipment) and all MMSSB Software used are compatible and may properly function and operate with all other equipment and software used in connection with the Service(s) or part thereof.

5.3 The Customer shall not carry out or permit to be carried out any additions, improvements, adjustments, modifications, alterations or replacements to any MMSSB Equipment or MMSSB Software without the prior written consent of MMSSB.

5.4 MMSSB may, but is not obliged to, at any time change or upgrade any equipment, system or network maintained or operated by MMSSB or any MMSSB Equipment or MMSSB Software and in such event, the Customer shall, at its expense, change, upgrade, acquire and/or install all such equipment or software as may be necessary in order to continue to enjoy or utilise any Service(s). The Customer shall permit MMSSB to upgrade or replace any MMSSB Equipment or MMSSB Software at any time and shall, at the request of MMSSB, promptly return any MMSSB Equipment or MMSSB Software in exchange for any replacement or upgrade.

5.5 Notwithstanding any provision herein to the contrary, MMSSB assumes no responsibility or obligation to upgrade or replace any MMSSB Equipment or MMSSB Software (whether or not consequent to any change or upgrade of any system or network maintained or operated by MMSSB) to ensure the continuity of any Service(s).

- 5.6 MMSSB may, but is under no obligation to, provide any assistance, including any technical or customer support, in the use of any MMSSB Software, and use of the MMSSB Software is entirely at the Customer's own risk. MMSSB reserves the right, in its sole discretion and at any time with or without notice, to modify or discontinue any MMSSB Software and/or limit, terminate or suspend the Customer's use of any MMSSB Software.

6. SUSPENSION AND TERMINATION

- 6.1 The Customer may at any time terminate the Agreement by giving MMSSB prior notice in writing. The Service(s) shall be deemed terminated within four (4) Working Days from receipt of the termination notice by MMSSB.
- 6.2 MMSSB shall be entitled at its absolute discretion to immediately suspend/terminate the Service(s) or Agreement, without liability, at any time, with or without any notice and may not be required to give any reason whatsoever.
- 6.3 Upon termination of the Agreement by either party, the Customer shall be liable to MMSSB for: -
- (a) the monthly subscription, access or other monthly fee for Service(s) for the entire month in which the termination was effective,
 - (b) any usage charges incurred by the Customer up to and including the effective date of termination; and
 - (c) any other outstanding amounts.
- 6.4 Upon the termination of the Agreement, all monies owing to MMSSB by the Customer in accordance with the Customer's account shall become immediately due and payable and the Customer shall upon the demand of MMSSB settle its account promptly. The Customer shall immediately return to MMSSB all MMSSB Equipment and MMSSB Software used in relation to the terminated Service(s) in good working condition, with the exception of fair wear and tear only. MMSSB shall be entitled to charge the Customer the cost incurred by MMSSB in repossessing or acquiring a replacement of any MMSSB Equipment and/or MMSSB Software which the Customer has failed to return to MMSSB and of acquiring a replacement of any damaged or defective MMSSB Equipment and/or MMSSB Software returned to MMSSB.
- 6.5 Upon suspension, MMSSB may at its absolute discretion reconnect the Service(s), subject to the Customer paying a reconnection fee, all outstanding amounts due to MMSSB and a refundable deposit as may be required by MMSSB for the reconnection of the Service(s).

7. MMSSB'S RIGHT

- 7.1 MMSSB and/or its Related Corporations reserve the right to make any alteration to the Service(s), or any part thereof, or suspend the Service(s) or any part thereof (including suspension due to maintenance) with or without prior notice and MMSSB and/or its Related Corporations shall not be liable for any loss or inconvenience to the Customer resulting therefrom.
- 7.2 MMSSB reserves the right at its absolute discretion, from time to time, to vary, add to or otherwise amend the terms and conditions of the Agreement or any part thereof. The Customer will be given written notice of such amendments. The Customer's continued use of the Service(s) after the effective date of any variation, addition or amendments to the terms and conditions of the

Agreement shall constitute unconditional acceptance of such variations, additions or amendments by the Customer. If the Customer does not accept such variation, addition or amendments, the Customer shall be entitled to terminate the Agreement by giving prior written notice to MMSSB.

- 7.3 MMSSB reserves the right at any time to require the Customer to pay any outstanding amount within seven (7) days from such notice to the Customer.
- 7.4 Use of the Service(s) is subject to the Customer's credit limit. Upon the Customer's request and/or when MMSSB deems fit in its absolute discretion, the credit limit may be restricted, limited, reduced or increased subject to further terms and conditions as MMSSB deems fit to impose. MMSSB may in its absolute discretion bar or suspend the Service(s) or part thereof with or without any notice if the credit limit is exceeded but MMSSB is not obliged to ensure and makes no representation whatsoever that automatic suspension or barring of the Service(s) or part thereof will occur upon the usage charges reaching the Customer's credit limit. It is the Customer's responsibility to ensure that its usage charges do not exceed the credit limit. For the avoidance of doubt, the Customer shall be obliged to promptly pay all usage charges notwithstanding that the credit limit has been exceeded.
- 7.5 MMSSB reserves the right, but is under no obligation, to manage and control access to the MMSSB websites, Customer's equipment or any other equipment used in connection with any Service(s) and any content/data/information stored therein as MMSSB may deem appropriate. MMSSB further reserves the right, but is under no obligation, to scan or review and delete any such content/data/information and to delete or inactivate the Customer's use of the MMSSB websites notwithstanding that such access and the storage of such content/data/information is a requirement or constitutes a part of the Service(s).
- 7.6 MMSSB will fully co-operate with investigations of suspected criminal violations, violation of systems or network security under the leadership of law enforcement or relevant authorities. Violation of any provisions of the Agreement may result, among other things, in the suspension or cancellation of the Customer's access to the Service(s), MMSSB's network, system, servers, various directories, listings, information and databases. MMSSB has no practical ability to restrict all conduct, communications or content which might violate any provisions of the Agreement prior to its transmission on or through the Service(s) or part thereof, nor can MMSSB ensure prompt removal of any such communications or content after transmission or posting. Accordingly, MMSSB does not assume liability to the Customer or any other person for any failure to enforce any of the terms of the Agreement.

8. PERSONAL INFORMATION

- 8.1 The Customer hereby acknowledges that it is aware its Personal Information will be used and/or disclosed for the purposes set out in Clauses 8.2 and 8.3 below.
- 8.2 The Customer hereby expressly consents that MMSSB may use its Personal Information for any purpose which is necessary or related to MMSSB's provision of the Service(s) to the Customer. In this respect, the Customer also expressly consents that MMSSB may disclose its Personal Information to MMSSB's agents, contractors, business partners, associates or such other parties as are necessary to facilitate the provision of the Service(s) by MMSSB to the Customer.
- 8.3 In addition and without derogation to Clause 8.2 above, the Customer further expressly consents that MMSSB may use and/or disclose its Personal Information as follows: -

- (a) to MMSSB's shareholders, Related Corporations and affiliated companies for purposes of providing any goods or services to the Customer;
- (b) to MMSSB's agents or contractors for the purposes of recovering any amount due to MMSSB;
- (c) to payment channels including without limitation, financial institutions for purposes of maintaining financial records, assessing or verifying credit and facilitating payments of any amount due to MMSSB pursuant to the Agreement;
- (d) to regulatory bodies or other authorities in compliance with requirements under law or towards the detection or prevention of crime and/or fraud;
- (e) to any party involved in or related to a legal proceeding, for purposes of the legal proceedings;
- (f) to other service providers or to parties nominated by MMSSB either solely or jointly with other service providers, for purposes of establishing and maintaining a common database of customers;
- (g) to MMSSB's professional advisors on a need to know basis; and/or
- (h) to offer the Customer the opportunity to receive notices regarding other MMSSB or its Related Corporations' products or services or to personalise the Customer's experience of the Service(s) or part thereof, unless the Customer opts-out of this service by written notice to MMSSB.

8.4 Save in accordance with Clauses 8.2 and 8.3 above and except as permitted or required under any enactment, law, statute or code, MMSSB will not use or disclose the Customer's Personal Information.

8.5 The Customer hereby acknowledges its awareness that failure to provide complete and correct information to MMSSB as required in the Agreement including the Registration Form, Addendum or any Additional/Special Terms and Conditions may result in its application for Service(s) being rejected, the Service(s) or Agreement being terminated and/or correspondence from MMSSB including, without limitation, bill statements failing to reach the Customer.

9. DISCLAIMER

THE SERVICE(S) AND ALL MATERIALS, DATA, INFORMATION, EQUIPMENT AND SOFTWARE INCLUDED IN OR AVAILABLE THROUGH THE SERVICE(S) (COLLECTIVELY "SERVICE(S) CONTENT") ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. MMSSB, ITS RELATED CORPORATIONS AND/OR THIRD PARTIES WHO CONTRIBUTE TO THE SERVICE(S) SHALL NOT BE LIABLE FOR AND MAKES NO EXPRESS OR IMPLIED REPRESENTATION OR WARRANTIES OF ANY KIND IN RELATION TO THE SERVICE(S), SERVICE(S) CONTENT INCLUDING BUT NOT LIMITED TO: -

- (A) AVAILABILITY, ACCESSIBILITY, TIMELINESS AND UNINTERRUPTED USE OF THE SERVICE(S);
- (B) SEQUENCE, ACCURACY, RELIABILITY, COMPLETENESS, TIMELINESS OR THE SECURITY OF ANY DATA OR INFORMATION TRANSMITTED USING ANY SERVICE(S), INCLUDING FINAL DELIVERY OF THE MESSAGE BY THE CUSTOMER'S OPERATOR TO THE CUSTOMER'S MOBILE PHONE;
- (C) SEQUENCE, ACCURACY, RELIABILITY, COMPLETENESS, TIMELINESS OR THE SECURITY OF ANY DATA OR INFORMATION PROVIDED TO CUSTOMER AS

- PART OF ANY SERVICE(S);
- (D) THE QUALITY OF THE SERVICE(S) OR OF THE SIGNALS OR DATA TRANSMITTED AS PART OF ANY SERVICE(S);
 - (E) MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT;
 - (F) THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED; OR THAT THE SERVICE(S) CONTENT IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS;
 - (G) THAT MATERIALS ON THE MMSSB SITES OR THE SERVICE(S) ARE APPROPRIATE OR AVAILABLE FOR USE IN LOCATIONS OUTSIDE MALAYSIA. ACCESSING SUCH MATERIALS OR SERVICE(S) FROM TERRITORIES WHERE SUCH ACCESS OR THEIR CONTENTS IS/ARE ILLEGAL IS PROHIBITED. IF THE CUSTOMER CHOOSES TO ACCESS THE MMSSB SITES OR ANY SERVICE(S) FROM LOCATIONS OUTSIDE MALAYSIA, THE CUSTOMER DOES SO ON ITS OWN INITIATIVE AND IS RESPONSIBLE FOR COMPLIANCE WITH LOCAL LAWS;
 - (H) THAT THE CUSTOMER'S MOBILE PHONE WILL SUPPORT ANY SERVICE(S) OR PART THEREOF.

10. LIABILITY

- 10.1 MMSSB, ITS RELATED CORPORATIONS AND/OR THIRD PARTIES WHO CONTRIBUTE TO THE SERVICE(S) SHALL NOT BE LIABLE TO THE CUSTOMER OR ANY OTHER PARTY FOR ANY LOSS OR DAMAGE, WHETHER DIRECT, INDIRECT, SPECIAL OR CONSEQUENTIAL, OR FOR LOSS OF BUSINESS, REVENUE OR PROFITS OR OF ANY NATURE SUFFERED BY THE CUSTOMER OR ANY PERSON AUTHORISED BY ANY CUSTOMER OR OTHER PARTY, OR ANY INJURY CAUSED TO OR SUFFERED BY A PERSON OR DAMAGE TO PROPERTY ARISING FROM OR OCCASIONED BY: -
- (A) THE CUSTOMER'S USE OR INABILITY TO USE THE SERVICE(S) OR ANY PART THEREOF;
 - (B) ANY MALFUNCTION, UNAUTHORISED USE, COPYING OF OR DEFECT IN ANY EQUIPMENT OR SOFTWARE USED IN CONNECTION WITH THE SERVICE(S) OR ANY PART THEREOF OR THE LOSS OF SUCH EQUIPMENT OR SOFTWARE FOR WHATEVER REASONS; AND/OR
 - (C) ANY ACT, OMISSION, ERROR, DEFAULT OR DELAY BY MMSSB, ITS RELATED CORPORATIONS AND/OR THIRD PARTIES WHO CONTRIBUTE TO THE SERVICE(S), ITS OFFICERS, EMPLOYEES AND AGENTS IN RELATION TO THE SERVICE(S) OR ANY PART THEREOF.
- 10.2 WITHOUT LIMITING THE GENERALITY OF CLAUSE 10.1, MMSSB, ITS RELATED CORPORATIONS AND/OR THIRD PARTIES WHO CONTRIBUTE TO THE SERVICE(S) SHALL NOT BE LIABLE FOR ALL OF THE FOLLOWING: -
- (A) ANY CLAIM FOR LIBEL, SLANDER, INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS ARISING FROM THE TRANSMISSION AND/OR RECEIPT OF MATERIAL IN CONNECTION WITH THE SERVICE(S) AND ANY CLAIMS ARISING OUT OF ANY ACT OR OMISSION OF THE CUSTOMER IN RELATION TO THE SERVICE(S) OR ANY PART THEREOF;
 - (B) ANY LOSS OR DAMAGE CAUSED TO THE CUSTOMER AS A RESULT OF THE SUSPENSION/TERMINATION OF THE AGREEMENT AND THE INTERRUPTION/LOSS OF THE SERVICE(S) OR ANY PART THEREOF FROM ANY

CAUSE;

- (C) ANY LOSS, DISTORTION OR CORRUPTION OF SIGNALS OR DATA ARISING FROM THE USE OF ANY SERVICE(S) AT ANY STAGE OF THE TRANSMISSION INCLUDING ANY DISCLOSURE OF OR UNLAWFUL OR UNAUTHORISED ACCESS TO THE CUSTOMER'S TRANSMISSION OR DATA;
- (D) INTERRUPTION OR UNAVAILABILITY OF ANY SERVICE(S) AS A RESULT OF INCLUDING BUT NOT LIMITED TO ADVERSE WEATHER CONDITIONS, ELECTROMAGNETIC INTERFERENCE, EQUIPMENT FAILURE OR CONGESTION IN MMSSB'S AND/OR ITS RELATED CORPORATIONS' NETWORK OR SYSTEMS OR ANY OTHER NETWORK OR SYSTEMS;
- (E) ANY DEFECT, DEFICIENCY, BREAKDOWN OR FAILURE OF ANY MMSSB EQUIPMENT OR MMSSB SOFTWARE, OR THE INCOMPATIBILITY OR UNSUITABILITY OF ANY MMSSB SOFTWARE IN RELATION TO ANY OTHER SYSTEM OR EQUIPMENT;
- (F) ANY PICTURE, MATERIAL OR STATEMENTS HOWSOEVER PUBLISHED OR CIRCULATED BY THE CUSTOMER OR ANY PERSON IN THE COURSE OF THE USE OF ANY SERVICE(S);

10.3 MMSSB, its Related Corporations and/or third parties who contribute to the Service(s) shall not be liable for, and the Customer agrees to indemnify MMSSB, its Related Corporations and/or such third parties against all claims, demands, actions, proceedings, costs, expenses (including legal costs and expenses), loss, damage and other liability which may result or which MMSSB, its Related Corporations and/or such third parties may sustain in connection with or arising from the provision of the Service(s) to the Customer, including (without limitation): -

- (a) any loss of or damage to or any modification or alteration of any MMSSB Equipment or MMSSB Software occurring at any time after the same have been delivered or provided by MMSSB to the Customer and before the same is returned to MMSSB;
- (b) the use of the Service(s) by a person using the logon details with or without the Customer's authority; and
- (c) the loss, theft, copying and/or unauthorised use of the MMSSB Equipment and/or MMSSB Software.

10.4 THE LIMITATIONS OF MMSSB'S, ITS RELATED CORPORATIONS' AND/OR THIRD PARTIES WHO CONTRIBUTE TO THE SERVICE(S') RESPECTIVE LIABILITY SET OUT IN THIS AGREEMENT APPLY WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER BASIS, EVEN IF MMSSB, ITS RELATED CORPORATIONS AND/OR SUCH THIRD PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

10.5 Without prejudice to the foregoing, to the extent permitted by law, in the event a court or an arbitrator holds or finds MMSSB and/or its Related Corporations liable to the Customer for any breach or default by MMSSB and/or its Related Corporations, the Customer agrees that the amount of damages payable by MMSSB and/or its Related Corporations to the Customer shall not at any time exceed the sum of RM500.00 notwithstanding any order, decree or judgment to the contrary.

11. FORCE MAJEURE

- 11.1 Without limiting the generality of any provision in the Agreement, MMSSB, its Related Corporations and/or third parties who contribute to the Service(s) shall not be liable for any failure to perform its obligations herein caused by an Act of God, insurrection or civil disorder, military operations or act of terrorism, all emergency, acts or omission of Government, or any competent authority, labour trouble or industrial disputes of any kind, fire, lightning, subsidence, explosion, floods, acts or omission of persons or bodies for whom MMSSB, its Related Corporations and/or third parties who contribute to the Service(s) has no control over or any cause outside MMSSB's, its Related Corporations' and/or third parties who contribute to the Service(s') reasonable control.
- 11.2 Notwithstanding the event of force majeure, the Customer shall remain obliged to pay all fees and charges which are outstanding and/or due and payable to MMSSB in accordance with the Agreement.

12. SEVERABILITY AND EFFECT OF TERMS AND CONDITIONS

- 12.1 If any of the provision herein contained should be invalid, illegal or unenforceable under any applicable law, the legality and enforceability of the remaining provisions shall not be affected or impaired in any way and such invalid, illegal or unenforceable provision shall be deemed deleted.
- 12.2 The terms and conditions contained in the Agreement shall have effect only to the extent not forbidden by law. For the avoidance of doubt, it is hereby agreed and declared in particular, but without limitation, that nothing herein shall be construed as an attempt to contract out of any provisions of the Consumer Protection Act 1999, if and where the said Act is applicable.

13. GOVERNING LAW

- 13.1 The Agreement shall be governed by and construed in accordance with the laws of Malaysia, excluding its conflict of law rules. Parties agree to submit to the exclusive jurisdiction of the Malaysian courts.
- 13.2 Where any claims, proceedings, actions, suits or disputes arising or in connection with this Agreement is to be commenced or adjudicated in the High Court of Malaya, the parties agree that it shall be adjudicated in the High Court in Kuala Lumpur or Putrajaya, Malaysia, as the case may be.

14. NOTICES

- 14.1 All official bill statements, notices, requests, notice of demands, writ of summons, all other legal process and/or other communications/documents to be given by MMSSB to the Customer under the Agreement will be in writing and sent to the Customer's last known address and/or published in national newspapers in the main languages, published daily and circulating generally throughout Malaysia, as the case may be.
- 14.2 All notices, requests, notice of demands, writ of summons, all other legal process and/or other communications/documents to be given by the Customer to MMSSB under the Agreement must be in writing and sent to the following address: Malaysian Mobile Services Sdn Bhd, Level 13,

Menara Maxis, Kuala Lumpur City Centre 50088 Kuala Lumpur. Fax 03-2330 0568.

- 14.3 All official bill statements, notices, requests, notice of demands, writ of summons, all other legal process and/or other communications/documents given by MMSSB to the Customer pursuant to this clause shall be deemed to have been served if: -
- (a) sent by registered post, on the second Working Day after the date of posting irrespective of whether it is returned undelivered;
 - (b) sent by ordinary post, on the fifth Working Day after the date of posting irrespective of whether it is returned undelivered;
 - (c) hand delivered, upon delivery;
 - (d) sent by facsimile, upon successful completion of transmission as evidence by a transmission report and provided that notice shall in addition thereon be sent by post to the other party; or
 - (e) published in national newspapers in the main languages, published daily and circulating generally throughout Malaysia in respect of any change in the Services, terms of the Agreement, charges and/or tariffs.

15. ASSIGNMENT

- 15.1 The Customer shall not be permitted to assign or novate any or part of their rights or obligations under the Agreement to any party, without the prior written consent of MMSSB.
- 15.2 MMSSB may assign or novate all or part of the Agreement to any third party by notice to the Customer without the Customer's prior consent and the Customer agrees to make all subsequent payments as instructed in such or further notice.

16. INDULGENCE

- 16.1 No delay or indulgence by MMSSB in enforcing any term or condition of the Agreement nor the granting of time by MMSSB to a Customer shall prejudice the rights or powers of MMSSB nor shall any waiver by MMSSB of any breach constitute a continuing waiver in respect of any subsequent or continuing breach.

17. MISCELLANEOUS

- 17.1 No rule of construction or interpretation shall apply to prejudice the interest of the party preparing the Agreement.
- 17.2 In the event of a conflict or inconsistency between the Registration Form, these terms and conditions and the Addendums or Additional/Special Terms and Conditions, such inconsistency shall be resolved by giving precedence in the following order: Addendums or Additional/Special Terms and Conditions, these terms and conditions and the Registration Form.
- 17.3 The Agreement constitutes the entire agreement between the parties concerning the subject matter herein and supersedes all previous agreements, understanding, proposals, representations and warranties relating to that subject matter.
- 17.4 Those clauses which by their nature would survive the termination of the Agreement shall so survive, including without limitation Clauses 3.1(a), 3.1(b), 3.1(c), 3.1(h), 3.2, 3.5, 3.6, 3.7, 3.9, 3.10, 3.11, 4.5, 4.7, 4.9, 4.11, 4.12, 5.1, 6.3, 6.4, 9, 10, 13 and 14.

- 17.5 Time wherever referred to in this Agreement shall be of the essence.
- 17.6 The Agreement shall be binding on and shall inure for the benefit of each party's permitted assigns, and successors in title, personal representatives, executors and administrators.
- 17.7 The Customer shall bear all stamp duty, service tax charges, and any other cost or charge imposed by law in connection with the preparation of the Agreement and/or the provision of the Service(s).
- 17.8 The Customer shall immediately inform MMSSB in writing of any change of address and/or employment or business.
- 17.9 Words importing the singular number include the plural number and vice versa.
- 17.10 Words importing the masculine gender, if any, include feminine and vice versa.
- 17.11 An expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body and any governmental agency.

18. DIRECT DEBIT AND PAY-BY-PHONE

- 18.1 In addition to the foregoing terms and conditions, the provisions set out in this Clause 18 shall at any time during the term of the Agreement apply to Customer whose application for Direct Debit and/or Pay-By-Phone has been accepted by MMSSB.
- 18.2 The Customer declares and undertakes that: -
- (a) the information supplied overleaf by the Customer is true and correct;
 - (b) the Card nominated overleaf for Direct Debit and/or Pay-By-Phone is in the name of the Customer. Where the Card so nominated is in the name of a third party, the Customer declares and undertakes that the Cardholder has authorised the Customer to use the Card for purposes of Direct Debit and/or Pay-By-Phone hereunder;
 - (c) the Customer is the lawful and authorised holder of the Card or where the Card belongs to a third party, that the Cardholder is the lawful and authorized holder of the Card;
 - (d) the Card is valid and has not expired and shall remain valid and unexpired throughout the duration of the Customer's use of Direct Debit and/or Pay-By-Phone;
 - (e) the Card has not been suspended nor terminated;
 - (f) to promptly pay all amounts due to MMSSB as reflected in the official bill statement and for all charges whatsoever occasioned by the use of the Services irrespective of whether such charges were authorized by the Customer, had exceeded by the Customer's credit limit or had arisen from any other causes whatsoever;
 - (g) the Customer's primary obligation under the Agreement to settle its Service bills and to settle the same in a timely manner shall continue and shall not be waived, extended nor suspended in any manner whatsoever by the mere approval or agreement of MMSSB to provide the Service(s) to the Customer; and
 - (h) save and except where the fault or delay is clearly attributable to circumstances within MMSSB's reasonable control, all overdue payments shall be subject to interest for late payment and/or such other consequences as provided under the Agreement.

- 18.3 The Customer shall allow an interval of at least fourteen (14) days from receipt by MMSSB of the completed registration form for the processing of the application and activation of Direct Debit and/or Pay-By-Phone.
- 18.4 MMSSB reserves the right at its absolute discretion to approve or reject the Customer's application for Direct Debit and/or Pay-By-Phone without assigning any reason whatsoever. The Customer will be notified in the event that his/her application has been rejected.
- 18.5 The Customer hereby expressly authorises MMSSB to: -
- (a) verify that information supplied overleaf with the Card Issuer or any third party as may be necessary;
 - (b) forward the Customer's transactions, billings and other details to the Bank, the Card Issuer and other relevant parties for and in connection with the Direct Debit and/or Pay-By-Phone;
 - (c) share its database on the Customer with MMSSB's Related Corporations, corporate shareholders, affiliated companies and/or relevant authorities for the provision of integrated or related services and/or towards the detection and prevention of crime.
- 18.6 MMSSB shall not be liable to the Customer: -
- (a) if the Card is not honoured by the Bank or the Card Issuer;
 - (b) if provision of or authorisation to the Cardholder for Direct Debit and/or Pay-By-Phone is denied/refused or suspended at any time by any party for any reason whatsoever; or
 - (c) if MMSSB is unable to or delays in providing Direct Debit and/or Pay-By-Phone as a result of a power failure, failure of any computer or telecommunication or other system used in connection with Direct Debit and/or Pay-By-Phone or any other circumstances beyond MMSSB's reasonable control.
- 18.7 The Customer hereby acknowledges that it understands that Direct Debit and/or Pay-By-Phone is only applicable for settlement of periodic MMSSB bills. All and any other payments outside of the periodic bill cycle shall be promptly settled in the ordinary manner by the Customer.
- 18.8 Notwithstanding that a transaction may have been duly completed via Direct Debit and/or Pay-By-Phone, the Customer's particular MMSSB bill has been credited as paid, MMSSB reserves the right and shall be entitled without prior notice to the Customer to reverse any payment entry in the Customer's statement of account or charge back the transaction sum to the Customer's account with MMSSB in the event of any one or more of the following circumstances: -
- (a) the transaction is cancelled by the Bank or the Card Issuer for any reason whatsoever;
 - (b) the transaction is found to be incomplete, illegal or carried out by fraudulent means;
 - (c) the transaction is found to be one with a "Declined Authorisation" or a non-corresponding authorisation code;
 - (d) the transaction sum or part thereof was found to have exceeded the Cardholder's authorised credit limit;
 - (e) the Card concerned is found to have expired, terminated or is invalid for any reason whatsoever;
 - (f) the transaction was entered into without the authorisation of the Cardholder or the Cardholder disputes the transaction or denies liability for whatever reason;
 - (g) the transaction was carried out or credit was given to the Customer in circumstances constituting a breach of any express or implied term, condition, representation or duty of the Customer;
 - (h) the performance of the Direct Debit and/or Pay-By-Phone transaction or the use of the Card

involves a violation of the law, rules or regulations of any governmental body, notwithstanding that MMSSB may have received notice of the same at the time when the transaction was carried out; or

- (i) at the absolute discretion of MMSSB, the Bank or the Card Issuer, without assigning any reason whatsoever.

18.9 Notwithstanding Clause 18.1, the Service(s) shall be automatically terminated with immediate effect and with or without notice to the Customer in the event that the Card is cancelled by the Bank or the Card Issuer.