ujumbepap

DATED TODAY

BETWEEN

UJUMBEPAP

- AND -

XXXXX

(WHERE XXXXX IS THE ENTITY INTENDING TO USE THIS SERVICE)

**AGREEMENT FOR THE PROVISION OF BULK SMS
SERVICES**

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THIS AGREEMENT is made TODAY **(“Commencement Date”) BETWEEN**:

(1)   **UJUMBEPAP** an business incorporated in the Republic of Kenya of P.O. Box 24249-00100 Nairobi, Kenya (**“UjumbePap”**), and

(2)   <mark>XXXXXX</mark> an entity that has willingly agreed to use this service (hereinafter referred to as “**Client**”);

UjumbePap and the Client are hereinafter individually referred to as the “Party” and collectively as the “Parties”.

WHEREAS:

(A)   UjumbePap is the leading provider of integrated communications solutions in the Republic of Kenya and it is duly licensed to operate telecommunication services in the Republic of Kenya;

(B)   The Client has willingly agreed to use UjumbePap's services;

(C)   In consideration of the rates agreed upon between the Parties, UjumbePap has allowed the Client to use Ujumbepap's platform in accordance with the terms and conditions set out in this Agreement.

THEREFORE, in consideration of mutual promises, representations, covenants and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree to the following terms and conditions and to be bound thereby:

1.   DEFINITIONS AND INTERPRETATION

1.1   In this Agreement:

(a)   **“Agreement”** means this Agreement, its Schedules and the Pricing Booklet;

(b)   **“CA”** means the Communications Authority of Kenya, formerly the Communications Commission of Kenya (its successors and permitted assigns) which is the Government body charged with the regulation of the telecommunications sector within the Republic of Kenya;

(c)   **“Code of Ethics”** means the UjumbePap Code of Conduct as set out in Schedule 4 to this Agreement;

(d)   **"Gaming/Lottery"** means any promotional activity based on chance and or skill and or with a guaranteed win carried out by the Client on the UjumbePap Platform using any of the UjumbePap Services, channels, portals whether for its gain/benefit or for the benefit of a third party and includes games, lotteries, prize competitions and any other categories that may be introduced by any law at any time and whether for commercial purposes or charity or otherwise, with or without permit or licence as may be required any law;

(e)   **"Liquidated Damages"** a sum to be due from the Client when in breach of the Client Agreement and its amendments as more particularly defined in this Agreement

(f)   "**Mobile Originated SMS**" means an SMS that is successfully charged for at the Originating Point;

(g)   "**Mobile Terminated SMS**" means an SMS that is charged for at the Termination Point;

(h)   **"Month"** means a calendar month;

(i)   **"Normal PRS or Client Business"** means any activity or business carried out by the Client which is not a Gaming/Lottery as defined herein;

(j)   "**Platform**" means UjumbePap's mobile cellular platform;

(k)   **"Offending Material"** means any content transmitted by the Client that is:

(i)   in breach of any law, regulation or code of practice invoked by UjumbePap or industry regulator or any policy adopted by UjumbePap with regard to the acceptable use of the Services; or

(ii)   abusive, indecent, defamatory, obscene, offensive or menacing (or that has the effect (as may be contemplated by a reasonable person) of causing the recipient to feel so harassed, abused or offended); or

(iii)   in breach of confidence, intellectual property rights, privacy or any right of a third party.

(l)   "**Originating Point**" means the point at which the Subscriber shall send an SMS from his mobile handset to UjumbePap's SDP and at which point the Subscriber shall be charged for the SMS based on the information requested

by the Subscriber and this payment shall be confirmed by an originating report from UjumbePap's SDP;

(m) **"Parties' Representatives"** means the person or persons who is duly authorized by the Party in writing to act on its behalf;

(n) **"Content Service Charges"** means the tariff, rate or charge prescribed in the Pricing Booklet which charge is over and above the ordinary cost and is to be paid by every Subscriber who accesses the Content Service Provider Services;

(o) **"Pricing Booklet"** means the variable Service pricing and revenue share schedule which includes details of all the applicable charges for the Services and the agreed revenue shares between the Parties and which together with any variations from time to time form part of this Agreement;

(p) **"Revenue"** means the cost charged by UjumbePap to its Subscriber for a Mobile Originated SMS or a Mobile Terminated SMS inclusive of all applicable taxes;

(q) **"SDP"** means UjumbePap's Service Delivery Platform;

(r) **"Services"** means the SMS based content services or other services set out in the Client's proposal, approved by UjumbePap, to be provided by the Client through the Platform;

(s) **"Service Revenue Report"** means the statistics generated from the UjumbePap service delivery Platform reflecting the traffic of Mobile Originated and Mobile Terminated SMS;

(t) **"Short Code"** means a short numeric code issued by UjumbePap and through which the Services will be provided. **"SC"** where used will have a corresponding meaning;

(u) **"SMS"** means Short Message Service;

(v) **"SMSC"** means UjumbePap's Short Message Service Centre;

(w) **"Subscribers"** mean customers who receive the Services;

(x) **"Termination Point"** shall mean the point at which the Subscriber shall receive an SMS from UjumbePap's SMSC based on the information requested by the Subscriber and at which point of receipt the Subscriber shall be charged for the

SMS and this payment shall be confirmed by a delivery report from the UjumbePap's SMSC; and

(y) **"Transmission Link"** means a telecommunication transmission line leased from a licensed data carrier.

1.2 In this Agreement, unless the context otherwise requires, any reference to:

(a) the singular includes the plural and vice versa;

(b) a person includes reference to a body corporate or other legal entity;

(c) any written law includes that law as amended or re-enacted from time to time;

(d) any agreement or other document includes that agreement or other document as varied or replaced by the Parties in writing from time to time;

(e) a clause is to the relevant clause of this Agreement;

(f) any Party includes that Party's successors and assigns.

1.3 Clause headings are inserted for convenience only and shall be ignored in construing this Agreement.

1.4 The identification of certain breaches in this Agreement as being "Material" does not indicate that only those breaches are material.

1.5 Where the Agreement provides for the giving or issue of any notice, consent, approval certificate or determination, it shall be in writing and the words notify, certify or determine shall be construed accordingly.

2. APPLICATION OF TERMS AND Client UNDERSTANDING

(a) Save as may otherwise be provided in this Agreement the terms and conditions set out in this Agreement are the only terms on which UjumbePap is prepared to deal with the Client and they shall govern the relationship between the Parties to the entire exclusion of all other agreements entered into with the Client in relation to the provision of the Services.

(b) Notwithstanding any provisions in this Agreement, the Client shall not introduce or provide any services on the Platform without the prior approval of UjumbePap. Further, the Client shall not deploy on the Platform any services using technologies or software that interferes with or in any way disrupts the provision of other services on the Platform. In this regard, the Client shall under no circumstances whatsoever deploy

services using binary messaging. **A breach of this clause shall constitute material breach of this Agreement entitling UjumbePap to immediately terminate this Agreement without prejudice to its other rights whether under this Agreement, law or equity.**

3.   **COMMENCEMENT AND DURATION**

This Agreement shall come into force on date the Client first uses UjumbePap's service (**"Commencement Date"**) and shall remain in force for a period of **one (1) year** from the Commencement Date (**"Agreement Duration"**) and shall thereafter renew automatically from year to year (subject however to the Client complying with the terms of this Agreement and providing UjumbePap with a valid content service provider licence or certificate) unless earlier terminated in accordance with clause 22 (*Termination*) of this Agreement.

4.   **REPRESENTATIONS AND WARRANTIES**

The Client warrants to UjumbePap as follows:

(a)   That at all times during the subsistence of this Agreement all the information it shall furnish to UjumbePap in relation to any of the Services will to the best of its knowledge be true and accurate in all material respects and that such information will not omit any material information which might reasonably be expected to affect the decision of UjumbePap to maintain this Agreement.

(b)   There are no proceedings pending or, to its knowledge, threatened, and there is no existing basis for any such proceedings, against or affecting it by or before any court, arbitrator, or other governmental authority which, if adversely determined, individually or in the aggregate might be reasonably expected to materially and adversely affect its properties, business, prospects, profits or condition or adversely affect its ability to perform its obligations under this Agreement.

(c)   It validly exists under the laws of Kenya and has all the necessary power and authority to enter into this Agreement and has in addition obtained all necessary permits, licences and consents from the necessary regulatory authorities including the CA.

(d)   That the particulars regarding its corporate status, directors, shareholders and other corporate information given to UjumbePap are complete and accurate and it shall notify UjumbePap immediately in writing of any change therein. In the event that any information is not complete and accurate then UjumbePap may terminate this Agreement immediately by written notice to the Client without prejudice to any rights or remedies it may be entitled to at law.

(e)   That its execution, delivery and performance of this Agreement will not be in conflict with or breach any other agreement or obligation to which it is a party or is bound.

(f)   That no third party, officer or employee of UjumbePap has received or will receive any material or other benefit for the purpose of influencing the action of a UjumbePap officer or employee in the execution, retention or amendment of this Agreement or securing any determination in respect to the Client's performance. The **Client recognises that a breach of this clause will be deemed to be a material breach of this Agreement and will result in the immediate termination of this Agreement without liability to UjumbePap.**

5   INTERCONNECTION AND TESTING

5.1   Client Obligations

The Client shall:

(a)   obtain all the necessary licences and approvals from any relevant authorities for the provision of the Services and shall ensure that such licenses and approvals are updated and valid throughout the Agreement Duration.

(b)   obtain and maintain at its own cost compatible system being all such equipment, software and communications lines (including any public lines) as notified to the Client by UjumbePap to access and/or make use of the Platform (the "**Client's Equipment**"). UjumbePap is not responsible for nor has any liability in respect of the Client's Equipment.

(c)   obtain and maintain at its own cost the Transmission Link between UjumbePap and Client.

(d)   meet the technical requirements as defined in Schedule 1 to be allowed to connect on UjumbePap's platform.

(e)   at its own cost install the Transmission Link between UjumbePap's Platform and the Client's Equipment.

(f)   maintain its equipment in good working order at all times during the Term of this Agreement.

(g)   at its own cost provide an appropriate back-up system in case of power failure, which shall for the purposes of this Agreement be PV 2400 Inverter with batteries providing power back up for up to eight (8) hours after power failure or conforming to such other specifications as shall be communicated by UjumbePap from time to time.

(h)   implement and maintain appropriate security procedures to prevent damage to the Platform, including any security procedures notified by UjumbePap to the Client from time to time.

5.2   Joint Obligations

(a)   The Parties shall ensure that the interconnection between the UjumbePap Platform and the Client's Equipment is carried out by fully competent and authorised employees properly appointed by the Client.

(b)   Immediately after the installation of the connection is complete the Parties shall carry out a testing phase to establish the suitability of the connection, it's functioning, the availability and efficacy of the Services using the SDP as well as the billing and collection of the applicable charges.

(c)   The testing shall be carried out for a period of at least seven (7) days or such other period as shall be communicated by UjumbePap and shall be carried out in accordance with such parameters as may be prescribed by UjumbePap from time to time provided that the testing period may be extended by mutual agreement between the parties.

(d)   The testing as above described shall only commence once the Transmission Link is up and running and the Short Code is configured on the UjumbePap Platform, and after all contracts are signed.

(e)   Before testing begins UjumbePap shall be supplied with a project plan that it shall at its discretion, amend or vary.

(f)   At the end of the testing period the Parties shall evaluate the results of the tests and the rest of this Agreement shall only become operational after both Parties have signed an acceptance certificate specifying that the interconnection is functioning satisfactorily and that the Content Services can be provided by both Parties effectively as per schedule 1 (*Technical Requirements*).

(g)   After signing of the acceptance certificate, the Client will be liable to pay the relevant short code fee as has been specified by UjumbePap.

6 SHORT CODE ALLOCATION PROCESS AND NEW SERVICES

6.1 Allocation Process

(a) UjumbePap shall allocate the Client Short Codes in accordance with the Short Code allocation procedure as set out in Schedule 5 to this Agreement or as amended from time to time.

(b) UjumbePap reserves the right to refuse a short code allocation request on reasonable grounds including if the name of the service is the same or close to an existing service.

6.2 Ownership of Short Codes

The Client acknowledges that:

(a) it shall have no ownership in the Short Codes allocated to it;

(b) the allocation of Short Codes does not constitute transfer of any goodwill or property in the Short Code whatsoever;

(c) any Subscriber data collected and retained by UjumbePap as a consequence of the provision of the Services shall remain the property of UjumbePap.

6.3 Withdrawal of Short Codes

(a) UjumbePap reserves the right, in the normal course of business, to suspend, withdraw, re-number or re-allocate the Short Codes allocated to the Client including where:

    (i) the allocated Short Code has been inactive or has not been put into effective use for a period of three (3) months or such other period as UjumbePap may communicate;

    (ii) the Client is in breach of this Agreement;

    (iii) this Agreement is terminated for any reason;

    (iv) such action is necessary to comply with any legal requirement or re-numbering plan or as directed by the CA or other competent Governmental body;

(b) UjumbePap shall not be liable to compensate the Client in the event of Short Code withdrawal for any of the reasons set out in clause 6.3 (a) above.

(c) the Client acknowledges and agrees to use the Short Code in an efficient manner. In the event that the Client fails to comply with this obligation, UjumbePap may suspend,

withdraw or re-allocate the Short Codes without incurring any liability whatsoever to the Client.

6.4   New Services

(a)   Any subsequent changes or additions to the Content Services to be offered and/or number accesses shall be notified to UjumbePap by the Client by notice in writing at least forty-eight (48) hours before the effective date of such changes.

(b)   The Client shall submit to UjumbePap for review and appraisal its detailed proposal in respect of such new services and UjumbePap reserves the right at its sole discretion to reject any such proposed services based on *inter alia*, ethics, commercial viability, strategic objectives, Platform capacity/availability.

(c)   Subject to the foregoing, the terms of the any such new services shall be agreed upon by the Parties and annexed to this Agreement at Schedule 7 (*Service Schedules*). Where no further agreement is requisite, the Proposal of such new service shall automatically form part of this Agreement as a service schedule and the terms of this Agreement shall apply to and govern the said service.

6.5   Political Messaging Services

(a)   The Client **shall NOT** under any circumstance launch or engage in any political messaging services on the UjumbePap Platform without the prior written consent of UjumbePap. UjumbePap reserves the right in its sole discretion to reject requests for such services or to accept the same on terms.

(b)   All Political Messaging Services shall adhere to the law applicable and shall in addition be governed by the Political Messaging Guidelines incorporated in Schedule 4 (*Code of Ethics*) as may be published varied by UjumbePap from time to time.

(c)   It shall be the responsibility of the Client to carry out legal due diligence on the Political Parties or any individual sponsoring political messages.

(d)   The Client shall take full responsibility, legal or otherwise, of the Political Messages and shall fully indemnify UjumbePap against any claims that may arise out of the same. In this regard, UjumbePap reserves the right to require the Client to back this indemnity with a suitable security.

(e)   Any breach of this clause 6.5 shall be considered a material Breach of this Agreement entitling UjumbePap to terminate this Agreement with immediate effect without prejudice to all other remedies it may have under this Agreement, in law and equity.

6.6   Commercial Requirements

UjumbePap may give the Client revenue targets that will be communicated and agreed upon with the Commercial Partnerships Manager or their official designate from time to time. The Client will be required to achieve the revenue targets communicated by UjumbePap.

7   GENERAL OBLIGATIONS AND RESPONSIBILITIES OF UJUMBEPAP AND THE Client

7.1   Exclusion of Liability

UjumbePap shall not incur any liability to the Client or any other person by reason of any failure on the part of the Client to honour any contract entered into with any third party including but not limited to its content providers, employees or other third party nor a failure to ensure compliance with any law including but not limited to any CA regulations.

7.2   Quality of the Platform and Connection

7.2.1 Although UjumbePap will use all reasonable endeavours to ensure consistent provision of the Services through its Platform it cannot due to the nature of telecommunications services guarantee a fault free service.

7.2.2 In the event that UjumbePap sets a limit on the number of messages or the volume of Messages that can be sent via the Platform it shall use its reasonable endeavours to notify the Client of any limitation.

7.3   Appointment of Contact Person for Communication with UjumbePap

(a)   In order to facilitate a smooth flow of information and instructions between UjumbePap and the Client; UjumbePap's **Commercial Partnerships Manager** will serve as a liaison and point of contact for the Client in relation to this Agreement. The Client shall give the Commercial Partnerships Manager or his designate such co-operation as the Commercial Partnerships Manager reasonably requests. The Client shall channel its requirements including requests for assistance through the Commercial Partnerships Manager.

(b)   For the avoidance of doubt, the Commercial Partnerships Manager is appointed to serve only as a liaison and first point of contact for the Client and does not have the power to commit UjumbePap.

(c)   All communication to the Commercial Partnerships Manager will be in writing or reduced to writing as soon as possible thereafter.

7.4   Client'S GENERAL OBLIGATIONS

7.4.1 Client General Undertaking and Understanding

During the subsistence of this Agreement, the Client undertakes that it will comply with all of its obligations under this Agreement and will observe the best business practices. Furthermore, the Client, its officers, employee's, representatives, agents and content providers will at all times promote and uphold the good name of UjumbePap.

7.4.2 Content Ethic

(a)   The Client shall be responsible for ensuring that the content transmitted through the Platform and all associated marketing materials comply with the provisions of this Agreement and all applicable laws and regulations and any Code of Ethics implemented by UjumbePap from time to time.   For the avoidance of doubt the provisions of this Agreement will not in any way limit or qualify the Client's obligations under any applicable laws or regulations.

(b)   The Client shall ensure that the Services and the content therein shall not be used:

(i)   for the transmission of Offending Material;

(ii)   for the transmission of any message or communication which is illegal, unacceptable or calculated to annoy or injure any person or which is in contravention of the license issued to UjumbePap or the Client by the CA or is contrary to the Kenya Communications Act (or any subsequent amendments thereto) or any other law or statutory enactment in force at any time during the currency of this Agreement;

(iii)   to convey to UjumbePap's Subscribers any content, message or any transmission whatsoever that is in the sole and reasonable opinion of UjumbePap considered to be morally repugnant and/or pornographic and/or is prejudicial in any manner to UjumbePap's business interests;

(iv)   for any purpose which is against public interest, public order or national harmony;

(v)   in any manner which may infringe the copyright, patent, trademark, trade secret or other proprietary rights of any third party;

(vi)   to interfere with damage, disrupt or unlawfully gain access to any service, equipment or computer Platform belonging to UjumbePap or any other third party;

(vii)   the Client shall not use the Services to send unsolicited messages whether or not they are of a commercial nature without the prior consent of the Subscribers. The Client shall on request from UjumbePap at any time, and from time to time, produce evidence satisfactory to UjumbePap that each subscriber receiving the content provided by the Client has requested the supply of, and agreed to the payment and other conditions in relation to, the Services provided by the Client.

(viii)   The Client shall not convey any message to any subscriber unless such subscriber has requested the same and has agreed as provided in this clause by:

  (a)   written contract;

  (b)   requesting such service by a telephone call or data message sent by the Subscriber; or

  (c)   such other method as agreed, in advance, by UjumbePap.

  ☐ **For the avoidance of doubt a Subscriber will not be deemed to have given his/her consent to receive the message by reason of his number being registered or "recommended" to receive the content by a third party.**

(ix)   In the event that a Subscriber has given consent to the receipt of marketing messages through text messages then such marketing must be restricted to products and services which for which consent was originally given by the Subscriber. The Client may only send messages which promote products or services dissimilar or unrelated to the original consent only where the additional and specific consent of the Subscriber has been obtained.

(x)   The Client shall in addition co-operate with UjumbePap to ensure that it provides the Subscribers with sufficient information (in a clear and unambiguous manner) regarding the particular Services offered by the Client including the price payable for the same and the methods of subscribing for and unsubscribing for the service.

(xi)   The Client shall not convey messages to any subscriber or encourage the conveyance of messages to any subscriber number, the number and/or frequency of which is in the opinion of UjumbePap, excessive.

The Client will indemnify UjumbePap against any criminal and/or civil actions and/or costs that arise specifically from the breach of the provisions of this clause 7.3.

(c)   The Client shall ensure that the Services are not likely to bring UjumbePap into disrepute and in the light of generally prevailing standards of decency and propriety to cause offence. In this respect suitability may be determined by UjumbePap and such determination shall be binding on the Client.

(d)   In the event that UjumbePap receives complaints that any content transmitted using the Services are in breach of this Agreement then UjumbePap may terminate this Agreement or any particular Client Service if UjumbePap is reasonably satisfied that having investigated the complaint, the Client has breached the prohibitions of this clause 7. This right of termination is not dependent upon the outcome of any proceedings by the police or other authorities.

(e)   The Client shall not transmit through the Platform any content that promotes any products or services from a UjumbePap Competitor. **For the purpose of this Agreement a UjumbePap Competitor means any mobile, fixed or local loop operator, financial services institution or such other organisation or institutions as may be communicated by UjumbePap from time to time**.

8   ADVERTISING, PROMOTION AND COMMUNICATION

8.1   Advertising

(a)   All Advertising, promotions and communications must be in line with UjumbePap's Client Code of Ethics (*Schedule 4*) and the Communication Charter (*Schedule 6*) and will not without the prior written consent of UjumbePap infer UjumbePap's endorsement of the content transmitted via the Services.

(b)   The Client shall be responsible for its own marketing and advertising costs and will not invoke UjumbePap's name in order to obtain any discount, favour or preference from any media house or advertising agency.

(c)   Neither Party shall do, cause or permit to be done anything that may infringe, damage or endanger any intellectual property rights (which shall for purposes of this Agreement include but will not be limited to logos, trademarks, service marks, brand marks,

copyrights) belonging to the other Party PROVIDED THAT in cases where the Client shall utilise any Copyright, Trademarks, Trade Names, Brand Names or any Intellectual Property or Property of UjumbePap in the Client's press statements, promotions, advertisement and/or communications of any type, it shall not utilise the said materials unless it shall first seek and have UjumbePap's written consent to utilise the said materials. The provision of such consent to the Client shall however not operate as an assignment to the Client of any UjumbePap intellectual property.

8.2   Communication Charter

The Client shall comply with the provisions of the Communication Charter as set out in Schedule 6 to this Agreement and shall not utilise the short code number(s) allocated to it until the associated Services are fully operational for a commercial launch, including the availability of the Client's customer care system.

9   CHARGES AND FEES AND VARIATION THEREOF

9.1   Fees Due

(a)   Fees due from the Client are as set out in the Pricing Booklet.

(b)   Set-up fees will be charged to the Client each time a new interface or material is validated or configured on UjumbePap's platform.

(c)   Short number allocation & operation fees will be charged to the Client, each time: an SC number is allocated, allocation is demanded to operate a service. These fees are described in the Pricing Booklet.

(d)   The Client shall not use the return or free leg of the SMS where the SMS is charged on MO to submit unsolicited messages. If the Client is found to be in breach of this sub clause then the Client will be required to pay such fee as is prescribed in the Pricing Booklet which at the minimum shall be not less than the prevailing base rate or as UjumbePap may in its sole discretion stipulate.

(e)   The Client shall not terminate any SMS or communication from outside Kenya (international) on UjumbePap's Platform unless permitted by UjumbePap in writing. If the Client is found to be in breach of this sub clause then the Client will be required to pay such fee as UjumbePap may in its sole discretion prescribe from time to time. All SMS traffic or communication passing on or through the affected code/channel shall, for this purpose, be deemed to be international traffic.

9.2   Variation of Pricing Booklet

(a)   **NOTWITHSTANDING** any other provisions of this Agreement, UjumbePap shall be entitled to review any of the fees or charges set out in the Pricing Booklet and/or to introduce new charges. The revised Pricing Booklet shall be communicated to the Client using such means as UjumbePap shall consider expedient and convenient including via email. By revising the Pricing Booklet UjumbePap shall be entitled to vary the terms of this Agreement where such change is necessary to give effect to the change in the Pricing Booklet.

(b)   In the event that change to the Revenue Share Matrix are due to the imposition or alteration of taxes or levies, the Client shall immediately effect the adjustments and such adjustments by the Client shall not be dependent on whether or not UjumbePap has publicised the said adjustments to the end user.

10   BILLING AND PAYMENT TERMS

10.1   Billing

(a)   UjumbePap shall collect on behalf of Client all the Content Service Charges accruing out of the use of the Services by the Subscribers, and shall on being invoiced, remit such charges as are due to Client subject to the payment terms herein stipulated.

(b)   Client shall install at its own cost at its business premises equipment fitted with traffic meters for taking count of all incoming SMS and successfully delivered SMS traffic which count shall be used as a comparison to UjumbePap's records.

(c)   The Client meters shall be synchronized with the UjumbePap charging meters during the testing period above mentioned and shall remain so for the duration of the Agreement
PROVIDED THAT the statistics from the Client's charging meters shall be held to be only persuasive.

(d)   Such accounts as indicated by UjumbePap's meter shall, in the absence of manifest error (which for the purposes of this Agreement shall be a difference of not more than

5% of the amounts said to be due in that month between accounts as indicated by UjumbePap's meter and accounts indicated by the Client meter), be prima facie proof of the number of calls recorded and the charges in respect thereto which are due and payable to Client, and such accounts shall be used for the purposes of invoicing.

10.2   Payment Terms

(a)   Client shall raise a detailed invoice for the amounts due in charges in respect of the preceding month and shall ensure that such invoice reaches UjumbePap no later than the 5th day of each month for the term of this Agreement.

(b)   UjumbePap will pay the sum due to the Client within forty-five (45) days of receipt of such invoice from Client.

(c)   Without prejudice to any other right or remedy, UjumbePap reserves the right to set off any amount owing to UjumbePap at any time from the Client or its related company against any amount payable by UjumbePap to the Client or its related company under this or any other agreement.

(d)   In the event that there is a dispute, arrangements shall be made for payment on the undisputed amounts pending settlement of the disputed amounts.

(e)   All payments will be subject to statutory deduction for which UjumbePap will issue the requisite certification.

(f)   All invoices should be addressed to:

Finance Department

UjumbePap

P O Box 24249-00100, NAIROBI

(g)   If applicable UjumbePap shall deduct from and pay to the Kenya Revenue Authority withholding tax payable on the monies due to the Client at such rate as may be prescribed by the Kenya Government from time to time. Upon such deduction UjumbePap shall present the Client with a Withholding Tax Certificate in such form as may be prescribed by the Kenya Revenue Authority from time to time.

(h)   Payments will be made in Kenya Shillings and will be issued by cheque or electronic funds transfer to the Client's Nominated Bank Account.

(i)   No payments made by UjumbePap under this clause or any other clause in this Agreement shall be deemed to signify or imply that the amounts paid are properly due to the Client. UjumbePap shall be permitted to make corrections for factual, mathematical or other manifest errors identified with any payments made or requested to be paid.

(j)   In the event that any regulatory fine is due from the Client to the CA or any other regulatory body, UjumbePap shall be entitled, if called upon by the CA or such regulatory body to withhold or deduct a sum equal to such fine, charge or sum from any sums payable to the Client under this Agreement and to pay the same to the relevant regulatory body or to keep such sum in the event that UjumbePap has already paid the amount due by the Client to the CA or other regulatory body.

11   SECURITY

11.1 Depending on the nature of the Service being provided by the Client UjumbePap may require that the Client's obligations be secured by:

(a)   a bank guarantee issued by banks and financial institutions approved by UjumbePap in such manner and format as UjumbePap may require from time to time. In the event that a guarantee is required by UjumbePap then the Client will not commence the services before the said guarantee is provided.

(b)   UjumbePap may at any time during the currency of this Agreement require the Client to pay a deposit of such amount as UjumbePap may think fit by way of security for the payment of any sums payable by the Client to UjumbePap or which may become payable or liable to be paid by the Client. In addition, UjumbePap may appropriate sums otherwise due to the Client for the purposes of using the same as a deposit. UjumbePap will be entitled to retain the deposit until the discharge of all liability of the Client under this Agreement and may from time to time appropriate the deposit or any part of it in or towards payment of any sums due from the Client to UjumbePap or to the CA or other regulatory body.

11.2 Upon a failure to provide UjumbePap with such guarantee or deposit, or if a demand by UjumbePap thereunder is not satisfied, UjumbePap may terminate this Agreement immediately without prejudice to any rights or remedies it may be entitled to at law.

11.3 Access to UjumbePap Platform

11.3.1 Terms of Access

(a)   The Client will be required to comply with all terms of access issued and directions given by UjumbePap from time to time in relation to the use of the UjumbePap Platform and Portals such as SDP including security and virus checking procedures.

(b)   The access to and use of the Platform and Portals shall be subject to the right by UjumbePap in its absolute discretion to, at any time, withdraw the right of access granted to the Client.

11.3.2 Passwords

(a)   The Client will be required to:

(i)   ensure that all login IDs and passwords issued to it by UjumbePap for access of the Platform and Portals are kept secret and only accessible to such of the Client's personnel as are authorised to access the Platform or Portals;

(ii)   notify UjumbePap immediately if it becomes aware the login IDs or passwords have become or may have become known by any unauthorised person.

(b)   The Client is responsible for any access to the Platform or Portals using any login IDs and passwords issued by UjumbePap, whether or not the access was authorised by the Client.

11.4 UjumbePap owned equipment and software

(a)   In the event that UjumbePap supplies the Client with equipment and software free of cost for use in its operations then such equipment and software will remain the property of UjumbePap and the Client will only use the same for such purposes as may be agreed upon with UjumbePap.

(b)   The Client will use the equipment and software on such other terms as UjumbePap may prescribe and will not give a third-party possession or use of them without the prior written consent of UjumbePap.

(c)   The Client will not remove any identification markings on the equipment indicating that the equipment is owned by UjumbePap and will not make attempts to encumber charge or transfer the equipment.

(d)   Without prejudice to the obligations of the Client under Clause 19 (*Indemnity*), the Client will make good any damage caused to the equipment or software by the Client.

(e)   The Client will insure such equipment (naming UjumbePap as an insured party) for the full replacement value of the equipment and licensed software and the Client shall

upon request from UjumbePap at any time produce to UjumbePap copies of every such policy of insurance and the receipt for the current year's premium.

12 REPAIRS, MAINTENANCE, VIRUS, PLATFORM UPGRADE AND SERVICE LEVEL

12.1 Operation, Repair and Maintenance

(a) During the continuance of this Agreement the Client shall at its own expense maintain its equipment so as to ensure that it functions properly and does not damage or interfere with or cause any deterioration to the normal operation of UjumbePap's Platform.

(b) The Client is to provide suitable monitoring tools by which alarms will be set off at the UjumbePap's Platform Monitoring Centre.

(c) The Client shall not use the interconnection service being offered to it by UjumbePap for purposes of operating an SMS routing facility on behalf of other operators (fixed line or mobile). In the event that this is found to be the case then UjumbePap reserves the right to disconnect the Client from its Platform with immediate effect and without prior notice.

(d) In the event that the Client discovers a discrepancy or impairment in the operation of the UjumbePap system, equipment, Platform and/or services, the Client shall notwithstanding any other provision of this Agreement, notify UjumbePap with immediate effect on the nature and location of the discrepancy or impairment and both Parties shall work together to resolve such discrepancies or impairments promptly.

(e) Similarly, where UjumbePap discovers that the Client's system has caused impairment to UjumbePap's system, equipment, Platform and/or services, UjumbePap shall promptly notify the Client of the nature and location of the impairment and the Parties shall work together to resolve such impairment promptly failure to which UjumbePap shall be entitled to terminate this Agreement.

(f) Where the Client's equipment fails and it is unable to provide the requested Services to the Subscribers, UjumbePap shall not be obliged to collect and pay to the Client any of the Revenue Share applicable.

(g) In all the cases described above, UjumbePap reserves the discretional right to disconnect or put the Client service offline, in order to protect its Platform and equipment from the effects of the failure. The lifting of such temporary discontinuance shall be by notice.

12.2   Viruses

It shall be the responsibility of both parties to check and ensure that their respective local area platforms are kept free of any viruses, trojan horses and any malicious embedded programs at all times. The provisions of this clause shall however not release the Client of any of its obligations under this Agreement with regard to the content transmitted through the Services.

12.3   Platform Upgrade

12.3.1 In the event of UjumbePap upgrading its Platform and equipment or part thereof ("**Upgraded System**") which as a result may require an upgrade of equipment on the Client's part, UjumbePap shall provide the Client with fourteen (14) calendar days prior written notice and the Client shall upgrade its equipment, servers and all other equipment, Platform and/or system (collectively "**the Client Service System**") correspondingly to enable the Client Service System to continue to integrate with the Upgraded System.

12.3.2 In the event that the Client elects not to upgrade the Client Service System then the Client shall within five (5) working days from receipt of the UjumbePap notice, notify UjumbePap of its election and UjumbePap shall thereupon be entitled to terminate this Agreement in the event the provisioning of Services become interrupted by providing the Client with thirty (30) days' notice whereupon the Parties shall cooperate to ensure that the Subscribers are notified that the Services will no longer be provided. For the avoidance of doubt UjumbePap will not be liable to the Client should the Services be interrupted or affected in any manner whatsoever as a consequence of the Client electing not to upgrade the Client Service System or UjumbePap delaying in communicating its planned Platform upgrade to the Client.

12.3.3 For the purpose of this Clause, 'upgrading its platform' includes, but shall not be limited to, any change of servers, software and/or application protocol interphase.

12.4   Service Level

12.4.1 Initial Service Level Agreement (SLA)

(a)   Upon execution of this Agreement, the parties herein shall be deemed to have accepted the provisions of the Service Level Agreement as set out in Schedule 3 to this Agreement and as may be amended by UjumbePap from time to time.

(b) In particular, the Client shall ensure that it maintains a certain minimum level of service for the duration of this Agreement which shall include but not be limited to:

(i) Ensuring that all SMS's routed by UjumbePap to the Clients SMS Platform attended to within five (5) seconds or less of receiving the SMS message;

(ii) Ensuring that the information given to the Subscribers maintains the integrity of content set out in this Agreement;

(iii) Further that the Subscribers are treated in a courteous manner and their queries are responded to accurately and appropriately with a minimum base of commitment as defined in the Service Level Agreement in Schedule Three.

12.4.2 Setting of Service levels

The Parties shall from time to time review the service levels. Following such review, the parties shall negotiate in good faith for the purpose of setting Service Levels covering various aspects of the Services and the same shall be appended to this Agreement.

12.4.3 Observance of Service levels

Where a Service Level has been set then the Client shall ensure that the Client Services are offered and performed in accordance with the applicable Service Level.

12.4.4 UjumbePap's right to terminate

If the failure to perform the Services in accordance with the Service Levels is:

(a) not remediable; or

(b) remediable but is not remedied within any time periods stipulated in the Service Level Agreement or as otherwise agreed upon with UjumbePap; UjumbePap shall be entitled to terminate this Agreement.

13. Customer service

13.1 The Client is responsible for procuring adequately trained personnel to provide efficient, courteous and correct customer support to the Subscribers. For the avoidance of doubt, UjumbePap shall not be required to provide any customer support to the Subscribers with regard to the Services. The Client shall co-operate with UjumbePap to resolve any complaints received from the Subscribers.

13.2 The Client shall advertise in every communication made by the Client about its services the customer care telephone numbers (which **MUST NOT** be charged at a premium) through which the Client's customer service team can be reached. The Client must provide a UjumbePap number as one of the designated customer care numbers through which the Subscribers can contact the Client. For the avoidance of doubt any monies paid by the Subscriber in calling the designated UjumbePap number shall not be the subject of revenue share with the Client.

13.3 The Client shall upon request from UjumbePap provide information relating to the complaints and questions received from the Subscribers with regard to the Services. Notwithstanding anything to the contrary in this Agreement, UjumbePap shall be entitled to pass such information (or any part thereof) to the CA or any other competent regulatory authority who may require the same.

14   DATA PROTECTION

14.1   The Client shall comply with any statutory requirements, regulator issued rules and regulations, or any guidelines set out in the Code of Ethics relating to the collection, processing, storage and use of personal Subscriber data collected in the course of the provision of the Services.

14.2   The Client shall not use the personal data collected from the Subscribers to send the Subscribers any unsolicited messages.

14.3 The Client shall not transmit, copy, relay, communicate and/or sell in whole or in part any personal data to third parties.

14.4 UjumbePap shall be entitled to collect any personal data about Subscribers through or in connection with the provision or availability of the Services. The Client shall make the Subscribers aware that UjumbePap may collect such personal data and may use such personal data for data analysis and similar purposes and in order to improve its services.

14.5 The Client shall indemnify UjumbePap against all claims and or liabilities arising as a result of the Client's breach of this clause 14.

14.6 In respect of confidential information supplied by UjumbePap to the Client under this Agreement, the Client shall:

a)   keep confidential Information physically and logically separate and distinct from any other data compiled, maintained or used by the Client;

b)   retain the confidential information only for as long as is reasonably required to achieve the permitted purposes;

c)   take all appropriate technical and organisational measures against unauthorised or unlawful processing of confidential information and against accidental loss or destruction of, or damage to, confidential information, including by:

     i.   taking reasonable steps to ensure the reliability of any Personnel of the Client who have access to the Customer Information; ii. ensuring a level of security appropriate to the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage and appropriate to the nature of the Customer Information;

     iii. maintaining E2EE (end to end encryption) through Supplier Systems on matters concerning the receipt and transfer of any data concerning any confidential information under this Agreement.

d)   Implement all such further technical and organisational security measures in relation to the processing of confidential information as UjumbePap may reasonably consider necessary (and in any case, in accordance with Best Industry Practice) in order to comply with the laws and regulations on data protection;

e)   Periodically monitor its internal processes and the organisational measures to ensure compliance with applicable data protection laws;

f)   Provide UjumbePap with reasonable assistance in connection with its compliance with the Data Protection Rules;

g)   Not disclose or transfer confidential information to any third party (including its Affiliates or third-party providers of data hosting solutions), without UjumbePap's prior written consent;

h)   Not publish, transfer, distribute, sell, sub-license or otherwise part with the confidential information, or permit any third party, including its Affiliates, to use or exploit the confidential information without the express written consent of UjumbePap;

i)   Not create copies or duplicates of any such data or information without the knowledge of UjumbePap;

j)   Where sub-contracting is permitted, the transfer of confidential information from the Client to the subcontractor and the processing of such information shall only take place upon receipt of written consent from UjumbePap and where UjumbePap is satisfied that the subcontractor will comply with all the applicable regulations.

        i.   Commencement of the processing of confidential information shall only be undertaken after such consent has been received.

        ii.   Further outsourcing by the subcontractor requires the consent from UjumbePap.

k) Not transfer any confidential information outside Kenya, including to Supplier's systems located outside the Kenya, without UjumbePap's prior written consent;

l) Promptly inform UjumbePap of any complaints from any third party (including but not limited to its Customers) concerning the processing of confidential information;

m) Immediately inform UjumbePap of any inspections and measures conducted by a supervisory authority, where they relate to this Agreement. This also applies where the Client is under investigation or is party to an investigation by a competent authority in connection with infringements to any Civil or Criminal Law, or Administrative Rule or Regulation regarding the processing of personal data in connection with the processing of this Contract;

n) Respond to queries, complaints and other correspondence with any Regulatory Body in relation to the processing of confidential information only after consultation with, and in accordance with the instructions of, UjumbePap;

o) Without undue delay, assist UjumbePap, where requested, in investigating queries or complaints about the confidential information and the processing of the confidential information or where UjumbePap needs the Client's cooperation in complying with any of the obligations under the applicable rules and regulations;

p) Permit UjumbePap access on reasonable notice to its premises, systems, books and records and all information in relation to the processing of confidential information as UjumbePap may reasonably require to:

        i.   ensure compliance with data protection regulation

        ii.   ensure compliance with the data storage, retention and other security measures referred to in this clause;

        iii.   allow UjumbePap to investigate, determine the cause of, and ensure that an appropriate response was taken by the Client to, any unauthorised access to confidential information;

q) Promptly amend, update, delete or supplement any confidential information if UjumbePap so requests;

r) If any confidential information is accessed by an unauthorised person or lost, corrupted, degraded or otherwise altered, due to an act or omission of the Client

or its Personnel, immediately notify UjumbePap and take all steps to mitigate or avoid such breach;

s) Promptly notify UjumbePap of any breach of this clause on Data Protection and provide UjumbePap without undue delay with such details as UjumbePap reasonably requires regarding:

 i. the nature of the Personal Data Breach;

 ii. any investigations into such Personal Data Breach; and

 iii. any measures taken, or that the Client recommends, to address the Personal Data Breach.

For purposes of this Agreement, confidential information shall be construed to include **Customer Information**, which means information that can identify a UjumbePap Customer either directly or indirectly such as name, identification number, date of birth, gender, transaction data, location data, an online identifier or to one or more factors specific to the physical, psychological, genetic, mental, economic, cultural or social identity of that Customer

14.7 Upon termination or expiry of this Agreement for any reason or when requested in writing by UjumbePap, the Client shall irretrievably delete all confidential information, including all copies or backups thereof, from the Client Systems.

14.8 This clause on Data Protection shall survive termination and/or expiry of this Agreement.

15 SUSPENSION OF THE SERVICES & LIQUIDATED DAMAGES

15.1 Suspension for non-compliance

15.1.1 If the Client does not comply with the terms in this Agreement, UjumbePap reserves the right to suspend the provision of the non-compliant or all of the Client Services immediately by providing written notice to the Client wherein such notice shall state the nature of the Client's default and the period within which the default is to be rectified.

15.1.2 If the Client shall rectify such default to the satisfaction of UjumbePap within the period prescribed, then the suspended Client Service(s) shall be restored.

15.2 Suspension for operational reasons

In addition to UjumbePap's rights under clause 15.1 above, UjumbePap reserves the right to suspend the Client Services upon giving the Client forty-eight (48) hour prior notice for operational reasons save in the case of an emergency where suspension of the Client Services may be effected immediately and without prior written notice.

15.3   Liquidated Damages

a)   Should the Client contravene the Code of Ethics, SLAs and any other terms of this Agreement, the following liquidated damages shall be applicable without prejudice to other remedies in the Agreement and UjumbePap reserves the right to immediately terminate the Agreement and notify CA accordingly:

No of Complaints	Time Frame	Liquidated Damages
1- 10	1 month	Kshs. 100,000 + taxes
11-30	1 month	Kshs. 500,000 + taxes
31-50	1 month	Kshs. 1,000,000 + taxes
51 and above	1 month	Kshs. 1,500,000 + taxes and suspension of all Client short codes for a month

b)   UjumbePap shall be entitled to claim and receive compensation from the Client in the form of Liquidated Damages as indicated above which includes the cost of receiving, processing and managing subscriber complaints arising from Client services.

c)   Following the complaint resolution process, the liquidated damages shall be payable to UjumbePap as a set off from any amounts due to the Client.

d)   The payment of the aforesaid liquidated damages are considered to be fair and reasonable by both parties and as a reasonable compensation for the loss and costs incurred by UjumbePap in resolving subscriber complaints arising from use of the Client services.

e)   Complaints received by UjumbePap and arising from Client services will be handled through the Client Complaint Resolution Process defined below. This Process may change from time to time and UjumbePap will notify the Client of such changes in writing.

f)   Should the Parties disagree on the treatment of a complaint, the parties will use best efforts to settle the dispute amicably through the following levels: -

   i) **First Level**: UjumbePap's Commercial Partnerships Administrator- PRSP support. If dispute is not resolved within 10 working days, the parties will proceed to the next level ii) **Second level**: UjumbePap's Commercial Partnerships Manager and a manager from the Client. If dispute is not resolved within 10 working days, the parties will proceed to the next level

iii) **Third Level**: UjumbePap's Head of Department (Internet & Content) and a Manager from the Client. If dispute is not resolved within 5 working days, either Party is at liberty to commence dispute resolution mechanism under the Agreement.

g) Should a dispute be referred to resolution under the Agreement, the liquidated damages will be applied and, in the event, that the dispute is resolved in favour of the Client, UjumbePap shall refund such liquidated damages within thirty (30) days of notification of the Award.

15.4 Client Complaint Resolution Process

a) Customer complaints received by UjumbePap through Customer Care lines, UjumbePap Retail Shops, E-care channels, letters or e-mails to UjumbePap and any other means will be sent to the Client with a request for information or action.

b) The Client should revert to UjumbePap within six (6) hours with the relevant response failing which the issue will be escalated to PRSP Support who will follow up with the Client contact and feedback or action within two (2) hours of the escalation

c) Once a response is received from the Client, the information will be reviewed by the Partnerships and Manager and where the Client is at fault, the complaint will be logged in the Liquidated Damages Report and communicated to the Client

d) Where no fault on the part of the Client is established, the complaint will not be logged in the Liquidated Damages Report. However, should the complaint generate a need for improvement in process, the same shall be communicated to the Client.

e) In cases of spamming proof of request of subscription by the subscriber will be required from the Client.

f) In the case of service termination (Stop) interaction logs will be required and an explanation why the service was not stopped. Note that the logs will be compared to the customers profile on the UjumbePap Platform for any discrepancies.

g) Codes will be tested randomly on a monthly basis for compliance with message guidelines and in cases where the message does not comply this test will be recorded as a complaint and forwarded to the Client for action following the above procedure.

h) In cases where a Client is found to be selling databases, an investigation will be done through the UjumbePap Fraud department and if found to be correct then UjumbePap shall write to the Client and CA and notify the Client of UjumbePap's intention to suspend the Clients services within 14 days. This is without prejudice to UjumbePap's right to immediately terminate the Agreement and also levy Liquidated Damages. Nothing in this clause, prevents UjumbePap from immediately suspending Short Codes prior to investigations.

i) In the cases of spamming a first warning and second warning will be given to the Client in writing and copied to the CA and if repeated UjumbePap will suspend all the Client's services with a copy to the CA. This is without prejudice to UjumbePap's right to terminate the Agreement and levy Liquidated damages.

j) Should a dispute be referred to resolution under the Agreement, the liquidated damages will be applied and, in the event, that the dispute is resolved in favour of the Client, UjumbePap shall refund such liquidated damages within thirty (30) days of notification of the Award.

k) This process may change from time to time. Such changes will be notified to the Client in writing

16   REFUND PROCESS

Upon the occurrence of an event or series of events resulting in a refund by UjumbePap to affected Subscribers, the Client will:

(i)   Comply and cooperate in the investigation of the circumstances resulting in the claim for a refund;

(ii)   Fully indemnify UjumbePap without set off or deduction in accordance with the following formula:

Total Invoice Amount□ = No. of Refunded SMS x (UjumbePap Revenue Share + Client Revenue Share)

*invoice will be raised and issued by UjumbePap to the Client

17   ASSIGNMENT AND CHANGE IN SHAREHOLDING

17.1 The Client may not assign or transfer or purport to assign or transfer its rights or obligations under this Agreement without having first sought and obtained the written consent of UjumbePap.

17.2 For the purposes of this Agreement the Client must notify UjumbePap of any change affecting over forty nine (49%) per cent of its shareholding existing on the date of execution of this Agreement within ten (10) days of such changes taking effect and UjumbePap may at its sole discretion repudiate this Agreement without consequence if such changes are not in its opinion beneficial to its business **PROVIDED** that such discretion is exercised within thirty (30) days of receipt of official notification of the said changes from the Client.

18   COMPLIANCE WITH OTHER LAWS AND CODE OF CONDUCT

18.1 The Client will, at its expense, obtain and renew, in accordance with any law or regulations for the time being in force, all permits, licences and authorisations required for the performance of its obligations under this Agreement. The Client shall produce to UjumbePap on request certified copies of such permits, licences and authorisations and a failure to provide such proof will amount to a breach of this Agreement entitling UjumbePap to terminate the Agreement. The Client shall keep UjumbePap indemnified against any claim that may be made by any relevant authority or person against UjumbePap for a failure to maintain such permits, licences and authorisations.

18.2 The Client will comply with the provisions of UjumbePap's Code of Ethics as set out in Schedule 4 to this Agreement and as may be amended and communicated to the Client from time to time. In addition, the Client shall comply with any code of conduct communicated to it by UjumbePap with regard to the content and other ethical guidelines with regard to the provision of the Services.

19   INDEMNITY

19.1 Subject to clause 19.2 below the Client hereby agrees to indemnify and hold harmless UjumbePap, from and against all claims, liabilities, losses, damages, and expenses incurred (including any legal costs or penalties and liabilities awarded or imposed by a court or expenses properly incurred) by UjumbePap pursuant to any breach or nonobservance by the Client, its agents or servants of any of its obligations or representations under this Agreement. UjumbePap reserves the right at its sole discretion, to require the Client to back up this indemnity at any time with appropriate security such as bank guarantee.

19.2 The Client shall not, however, be liable under the foregoing indemnity to the extent that any such losses are determined to have resulted directly from the proven negligence or wilful misconduct of UjumbePap.

19.3 The Client acknowledges and agrees that its obligations hereunder shall be in addition to any rights that UjumbePap may have at law or otherwise.

19.4 Where UjumbePap is entitled to claim any indemnity under this Agreement, UjumbePap shall have the right to offset the value of such indemnity against any amounts owing to the Client from UjumbePap under this Agreement.

21 INDEPENDENT CONTRACTOR AND AUTHORITY

21.1 Nothing contained in this Agreement shall constitute or be deemed to constitute the Client the agent or partner of UjumbePap for any purpose whatsoever.

21.2 The Client shall not, and shall ensure that its employees, agents and/or representatives shall not, carry on Agreement negotiations or enter into correspondence on behalf of UjumbePap, or use the name of UjumbePap in any media or printed matter (without the prior written consent of UjumbePap), nor shall the Client or the Client's employees, agents and/or representatives have, or purport to have, authority to execute legal documents, enter into legal agreements or otherwise in any way bind UjumbePap or create or incur any legally binding commitments or liabilities or any kind or nature on behalf of UjumbePap.

22 TERMINATION

22.1 Termination for Convenience

Either party shall be entitled to terminate this Agreement at any time by giving to the other party not less than thirty (30) calendar days prior written notice.

22.2 Termination by UjumbePap

UjumbePap shall be entitled to terminate this Agreement immediately without prejudice to any other remedy at its disposal by giving written notice to the Client, such termination immediately effective upon the giving of such notice of termination, if:

(a) The Client fails to comply with its obligations under this Agreement, and, if the failure can be cured, the Client fails to cure such a failure within fourteen (14) days written notice from UjumbePap or such other period as may be indicated by UjumbePap in the notice or declares that it will not be able to remedy the default within such time.

(b) The Client abandons or (except where required or agreed upon with UjumbePap) suspends the provision of the Client Services.

(c) Any pre-contractual statements made by the Client and on which UjumbePap has relied upon are found to have been false or misleading. For the avoidance of doubt such pre-contractual statements include but are not limited to any proposal submitted by the Client with regard to the provision of a particular Client Service.

(d) The Client is found to have been fraudulent in the course of fulfilling its obligations under this Agreement. For the purpose of this clause acts of fraud include but are not

limited to all those activities that are so defined in any statute or regulation and such other acts involving dishonesty and deception that can drain value from UjumbePap's business and accrued goodwill, directly or indirectly, whether or not there is personal benefit.

(e)   the Kenya Government, the Communications Authority of Kenya or any Kenyan court should take any decision or perform any act which suspends and/or revokes UjumbePap's License or makes UjumbePap unable to perform its commitments under this Agreement;

(f)   The Client is found not to have been compliant with the provisions of the Client Code of Conduct and failing to remedy such breach (where breach is remediable) within fourteen (14) days after written notice to that effect from UjumbePap.

(g)   The Client fails to meet the targets communicated by UjumbePap in the provision of the Services by the Client.

22.3   Termination by Either Party

Each Party shall be entitled to terminate this Agreement by giving written notice to the other Party such termination immediately effective upon the giving of such notice of termination: -

(a)   if one Party ceases or threatens to cease to carry on its business;

(b)   if a receiver, administrator or similar officer is appointed over all or any part of the assets or undertaking of the other Party;

(c)   if one Party makes any arrangement for the benefit of its creditors;

(d)   if one Party goes into liquidation save for the purposes of a genuine amalgamation or reconstruction;

(e)   in the event of either party being prohibited by any law or official requirement from complying with the terms of this Agreement;

(f)   Where a Material Breach that is so described in this Agreement is occasioned by either Party.

22.4   Consequence of Termination

(a)   Upon termination of this Agreement, UjumbePap shall promptly return to the Client (or otherwise dispose of as the Client may instruct) all confidential information and any

documentation containing confidential information and the Client shall promptly return all or any confidential information relating to UjumbePap.

(b)   The termination of this Agreement shall not discharge the liabilities of the defaulting Party.

(c)   Any Clauses intended by the Parties or this Agreement to survive the termination of this Agreement shall survive the termination of this Agreement by whatever cause.

(d)   The Client shall immediately cease to provide the Services through the Platform and to issue any communication purporting to provide the Services through the Platform.

23   VARIATION TO THE AGREEMENT

Unless otherwise provided for in this Agreement, this Agreement shall not be varied or cancelled, unless both Parties shall expressly agree to such variation or cancellation in writing.

24   FORCE MAJEURE

24.1   Definition of Force Majeure

For the purposes of this Agreement, **"Force Majeure"** means an event which could not reasonably have been avoided by a diligent party in the circumstances, which is beyond the reasonable control of a party and which makes a party's performance of its responsibilities hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances and includes, but is not limited to, war, riots, civil disorder, earthquake, storm, flood or adverse weather conditions, strikes, lockouts or other industrial action, terrorist acts, confiscation or any other action by government agencies.

24.2   Negligence and intentional acts

Force Majeure shall not include any event which is caused by the negligence or intentional action of a Party or such Party's or agents or employees, or by a failure to observe good professional practice.

24.3   Financial constraints

Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

24.4 Performance excused

The failure of a Party to fulfil any of its obligations hereunder shall not be considered to be a breach of, or default under, this Agreement insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms of this Agreement.

24.5 Duty to mitigate

A Party affected by an event of Force Majeure shall take all reasonable measures to remove such Party's inability to fulfil its obligations hereunder with a minimum of delay. The Parties shall take all reasonable measures to minimise the consequence of any event of Force Majeure.

24.6 Notification

A Party affected by an event of Force Majeure shall notify in writing the other Party of such event as soon as possible, and in any event not later than five (5) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.

24.7 Consultation

Not later than fourteen (14) days after Contractor, as a result of an event of Force Majeure, has become unable to discharge a material portion of its obligations, the Parties shall consult with each other with a view to agreeing on appropriate measures to be taken in the circumstances.

25 GENERAL

25.1 Confidentiality

The Client shall not at any time disclose, directly or indirectly to any other person whatsoever (including to the public or any section of the public) any information concerning this Agreement or any other information of any nature whatsoever concerning UjumbePap or any other matter regarding the internal affairs of UjumbePap, whether such information or matter is stated to be confidential or not, without the express written permission of UjumbePap. This covenant is given by the Client on its own behalf and the Client also undertakes to ensure that it will take all reasonable steps to enforce obligations in like form against its directors and personnel.

25.2 Copy right

Nothing in the Agreement shall grant, suggest, or imply any authority for the Client to use the name, trademarks, service marks, or trade names of UjumbePap for any purpose whatsoever unless such use is done with the prior written consent of UjumbePap.

25.3 Entire Agreement

Subject to Clause 22.2(d) (*pre-contractual statements*) this Agreement contains the whole agreement between the Parties relating to the subject matter of this Agreement and no variation, extension or cancellation of the expressed terms of this Agreement shall be binding upon the Client or UjumbePap unless varied in accordance with the terms of this Agreement.

25.4 No Waiver

Except where this Agreement provides otherwise, the rights and remedies contained in it are cumulative and not exclusive to rights or remedies provided by law. The failure by either Party to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement.

25.5 Severability

If any provision of this Agreement is declared by any judicial or other competent authority or an arbitrator appointed hereunder to be void, voidable, illegal or otherwise unenforceable, the Parties shall amend that provision in such reasonable manner as achieves the intention of the Parties without illegality or at the discretion of UjumbePap it may be severed from this Agreement and the remaining provisions of this Agreement shall remain in full force and effect.

26   DISPUTE RESOLUTION

26.1 Amicable Settlement

The parties shall use their best efforts to settle amicably any dispute arising from or in connection with this Agreement or the interpretation thereof.

26.2 Arbitration

26.2.1 If the dispute has not been settled pursuant to clause 26.1 above within ten (10) days from when the mediation was instituted, any party may elect to commence arbitration.

Such arbitration shall be referred to arbitration by a single arbitrator to be appointed by agreement between the Parties or in default of such agreement within fourteen (14) days of the notification of a dispute, upon the application of either Party, by the Chairman for the time being of the Kenya Branch of the Chartered Institute of Arbitration of the United Kingdom.

26.2.2 Such arbitration shall be conducted in Nairobi in accordance with the Rules of Arbitration of the said Institute and subject to and in accordance with the provisions of the Arbitration Act 1995.

26.2.3 To the extent permissible by Law, the determination of the Arbitrator shall be final, conclusive and binding upon the Parties hereto.

26.2.4 Pending final settlement or determination of a dispute, the Parties shall continue to perform their subsisting obligations hereunder.

26.2.5 Nothing in this Agreement shall prevent or delay a Party seeking urgent injunctive or interlocutory relief in a court having jurisdiction.

27 NOTICES

27.1 Notices other than communication with Commercial Partnership Manager

The Parties select as their respective addresses, the addresses set out below for all purposes arising out of or in connection with this Agreement at which addresses only all processes and notices arising out of or in connection with this Agreement may validly be served upon or delivered by the Parties.

    Client: The Directors

                                   UjumbePap

                                   P.O. Box 24249-00100, Nairobi

27.2 Time of Delivery

Any notice shall be in writing and shall either be delivered by hand or sent by registered post:

(a)   if delivered by hand it shall be deemed to have been duly received by the addressee on the date of delivery; or

(b)   if posted by prepaid registered post it shall be deemed to have been received by the addressee on the eighth business day following the date of such posting. **27.3 Change of Address**

Either Party may provide changes in the above addressees by notice in writing given to the other Party as aforesaid.

27.4 Client Bulletin

UjumbePap may issue from time to time Client Bulletins relating to the conduct of the Client business which the Client will be required to comply with. The Client Bulletins will automatically form part of the Agreement.

28 COSTS

Each party shall bear its own costs incurred in the negotiation, preparation and execution of this Agreement.

29 EXECUTION BY UJUMBEPAP

This Agreement may be executed on behalf of UjumbePap by its authorised representative using any form of electronic or digital execution including using a scanned signature and such execution shall have the full force and effect of a physical signature.

30 GOVERNING LAW

The construction, validity and performance of this Agreement shall be governed in all respects by the Laws of Kenya.