
SERVICE AGREEMENT

ENTERED INTO BY AND BETWEEN:

INTEGRAT MOBILE AGGREGATION SERVICES LIMITED

(Company Registration Number: RC 824502)

(Hereinafter referred to as “**INTARGET**”)

of

No. 49 Raymond Njoku Street

South-West Ikoyi

Lagos

Federal Republic of Nigeria

and

_____)
(Company Registration Number: _____)

(Hereinafter referred to as the “**CLIENT**”)

of

(_____)

(Hereinafter jointly referred to as the “**Parties**”)

WHEREAS:

1. The **CLIENT** will make use of the **INTARGET** hosted messaging and scripting platforms to deliver services to its **End-Users** at a cost as set out in this Agreement and its Annexures.
2. **INTARGET** undertakes to provide an aggregation technology platform to enable the **CLIENT** to deliver mobile services to its **End-Users** as per this Agreement.

WHEREAS IT IS AGREED AS FOLLOWS:

1. **DEFINITIONS:** Unless otherwise determined by the context, the following words will bear the meanings set forth against them:
 - 1.1 The/This **"Agreement"** means this Service Agreement together with any and all attachments hereto.
 - 1.2 **"Attachment "A"** provides reference to the **INTARGET** cost structure.
 - 1.3 **"Attachment "B"** provides the obligations of the parties in regard to service level standards.
 - 1.4 A **"Bearer Cost"** is defined as the costs of the bearer used and consists of charges by the Operator and **INTARGET**.
 - 1.5 A **"Bulk Number"** is defined as a number used for bulk messaging. There is no revenue share for bulk numbers for incoming traffic.
 - 1.6 A **"CLIENT"** is the Party set out on the Cover Page hereto.
 - 1.7 A **"Credit"** is defined as the minimum transaction cost. Different credits will apply to different services. Credit value is defined in Attachment A.
 - 1.8 A **"Customer Care Intervention"** is defined as any incoming channel requesting End-User support, including but not limited to, telephone calls, Fax calls, WASPAN unsubscribe requests & support emails.
 - 1.9 The **"Effective Date"** is the date of signature of this Agreement by the Party signing last in time, unless otherwise agreed to in writing, by the parties.
 - 1.10 An **"IVR"** (Interactive Voice Response) number is defined as an interactive voice response number allocated to a **CLIENT** for use of voice services.
 - 1.11 **"LBS"** (Location Based Service) is a service whereby the location of the handset can be determined using **Operator** elements.
 - 1.12 A **"Message"** is defined as a transaction exiting or entering the **INTARGET** Messaging Platforms through one of the API's (Application Protocol Interface).
 - 1.13 **"MMS"** (Multi Media Messaging) is a technology used to send multimedia files and long text messages to mobile phones.
 - 1.14 A **"Mobile Operator"** or **"Operator"** or **"MNO"** is defined as a GSM (Global Systems for Mobile Communication) Operator provider.
 - 1.15 **"MT Billing"** is a service allowing for direct billing to a mobile phone account, for services like SMS, USSD, WAP and the like.

- 1.16 **“NCC”** Nigerian Communications Commission
- 1.17 A **“Premium Revenue Band”** is defined as a predefined charge associated with a specific number allocated by the Operator.
- 1.18 A **“Private number”** is for one **CLIENT’s** exclusive use.
- 1.19 **“SAG”** is defined as a Single Access Gateway.
- 1.20 A **“Shared Number”** is defined as a number shared by multiple **CLIENTS**.
- 1.21 A **“Short Code”** is defined as a 5-digit code allocated by the NCC for across network support. The same short code accessible by all Operators and linked to the same tariff band.
- 1.22 **“SLA”** is defined as a Service Level Agreement.
- 1.23 A **“SMS MO”** (or Mobile Originating) message is defined as an SMS that is originated from the mobile phone.
- 1.24 A **“SMS MT”** (or Mobile Terminating) message is defined as an SMS that is terminated on the mobile phone.
- 1.25 A **“Subscriber”** or **“End User”** is defined as a mobile phone user making use of the CLIENTS products and/or services.
- 1.26 A **“TAG”** is a numeric extension to a SMS number.
- 1.27 A **“Transaction”** is defined as a sequence of events to complete a single action e.g. to receive a SMS (Short Message Service), to send a SMS, to send data, to receive data, to request a location, to send a location, to send a MMS (Multi Media Message), to receive a MMS, to send an e-mail etc.
- 1.28 A **“Transaction Fee”** is defined as a fee charged by **INTARGET** for processing a SMS (Short Message Service), to send a SMS, to send data, to receive data, to request a location, to send a location, to send a MMS (Multi Media Message), to receive a MMS, to send an e-mail etc.
- 1.29 A **“USSD”** (Unstructured Supplementary Service Data) Number is defined as a number allocated for use for USSD services.
- 1.30 **“WAP”** is defined as a Wireless Application Protocol.
- 1.31 A **“WASP”** is defined as a Wireless Application Service Provider.
- 1.32 **“WASPAN CODE OF CONDUCT”** means the code of conduct of the Wireless Application Service Provider Association Nigeria at www.waspgte.com

2. **COMMENCEMENT AND TERM OF THIS AGREEMENT**

This Agreement will commence on the Effective Date and shall continue for a fixed period of 2 (two) years, whereafter the Agreement shall automatically renew and then continue indefinitely from month to month on the same terms until cancelled by either Party upon 30 (thirty) day’s prior written notice to cancel the Agreement to the other Party, or as a result of breach. The onus of proof of termination is on the Party wishing to terminate.

3. CONTRIBUTION BY EACH PARTY

- 3.1 **INTARGET** will supply a means to enable the **CLIENT** to deliver mobile services to its Subscribers, using technology developed by **INTARGET** for this purpose.
- 3.2 The **CLIENT** will pay **INTARGET** for services, transactions and use of its infrastructure as set out in Attachment "A".
- 3.3 The **CLIENT** will be responsible for management and all financial costs, including inter alia, all costs related to content royalties to copyright bodies and/or artists, as well as marketing of services.
- 3.4 The **CLIENT** will secure any rights for the use of copyright protected and/or patented products/services relating to content and expressly indemnifies **INTARGET** against any and all claims made by any 3rd Party alleging that the **CLIENT** has breached the terms of this provision.

4. COSTS AND REVENUE SHARE

- 4.1 Each number will attract revenue for the **CLIENT** as indicated in Attachment "A" and **INTARGET** shall make payment thereof as follows:
- 4.2 **INTARGET** shall make payment to the **CLIENT** 30 (Thirty) days after receipt of payment from Operator. The expected payment time from the Operator is between 60 (Sixty) to 90 (Ninety) days after a full revenue month if no dispute arises. Revenue/discounts are payable/calculated on monthly traffic and not for the accumulated traffic over longer periods of time.
- 4.3 If payments owed to **INTARGET** are withheld by the Operator for any reason, these payments will also be withheld from the **CLIENT**, until such time as payments are received from the Operator, which will then be paid over to the **CLIENT** within seven days after receipt of such payment.
- 4.4 The **CLIENT** shall be required to generate a minimum amount of NGN 198,000,000 (One Hundred and Ninety Eight Million Naira) as monthly gross revenue from their account. Notwithstanding, there shall be a 3 (Three) month moratorium period upon commencement of the VAS services by the **CLIENT** and a performance review every 6 (Six) months thereafter.
- 4.5 Where the **CLIENT** does not generate NGN 198,000,000 (One Hundred and Ninety Eight Million Naira) worth of revenue within any given 3 (Three) month period, **INTARGET** reserves the right to decommission the access code(s) - (Short Codes, USSD Codes).
- 4.6 Should the minimum revenue referred to in clause 4.4 hereof not be achieved and the Agreement terminated as a result thereof, or as a result of any other cause whatsoever, the **CLIENT** shall remain liable for any and all amounts due in terms of this Agreement for the full Term of the Agreement.
- 4.7 All amounts indicated in Attachment "A" is listed in Nigerian Naira, however they are subject to change depending on the US Dollar exchange rate fluctuations.
- 4.8 Only revenue claims in excess of NGN 50,000 shall be processed. The right to claim monies due shall expire within 6 (Six) months from the date of statement, and the **CLIENT** shall forfeit such monies payable.

- 4.9 **INTARGET** service fees shall be invoiced monthly in advance. Any outstanding amounts owed to **INTARGET** by the **CLIENT** will be debited from their earnings, if payment conditions were not met. A pro-rata monthly fee shall be calculated for **CLIENTS** signing up during the month as follows, and is applicable only to the monthly fees. Pro-Rata Fee = (Total fee/30)*days left in month.
- 4.10 The bearer transaction costs will be invoiced at the applicable rates monthly in arrears and the **CLIENT** shall bear the costs thereof.
- 4.11 A **CLIENT** account needs to have a deposit value equal to no less than 90 (Ninety) days or 3 (Three) months average usage. An account always needs to have a positive balance to transact. No negative credit limits are allowed. Credit purchases are always made at 1 credit = 1 Kobo but 'discounts' are applied at the rate of consumption per bearer. No discounts for advance purchases will be allowed.
- 4.12 **INTARGET** expressly prohibits the sending and receiving of MO and/or MT messages through **NON-INTARGET** gateways and no revenue payments will be made for services which include MO and /or MT messages that were not sent through **INTARGETS'** gateways. No revenue payments will be made for services where corresponding MT messages were not sent through **INTARGETS'** gateways, for example the delivery of marketing messages enticing users to a service. The **CLIENT** furthermore expressly agrees that it will not send any messages through **NON-INTARGET** gateways that refers to any valid **INTARGET** gateway service and takes full responsibility for and indemnifies **INTARGET** against any fines or actions with regards to messages which were not sent through **INTARGETS'** gateways.

5. VARIATION OF COSTS

Fixed costs may escalate annually. Transaction costs are subject to change at **INTARGET's** discretion in which event such an increase or decrease shall be reflected in the cost structure between the parties. **INTARGET** hereby reserves the right to vary any previously quoted price if factors beyond the reasonable control of **INTARGET** so necessitate. The **CLIENT** will be notified of cost changes per e-mail 1 (one) month in advance where reasonably possible. These changes in costs shall be available at www.ng.higate.co.za through the provided account administration login.

6. PAYMENT

The **CLIENT** shall pay for services, numbers, development and messages and any other applicable charges within 7 (seven) days of receipt of a valid **INTARGET** presented invoice. No offsetting of costs against revenue is permitted at invoicing level but can be negotiated with your account manager at payment level in special circumstances.

7. MESSAGE DISPUTES

In the event of any differences between **INTARGET's** records for the number and value of transactions concluded and those of the **CLIENT**, **INTARGET's** billing records shall apply, unless the **CLIENT** can prove otherwise, to the reasonable satisfaction of **INTARGET**, within 7 (seven) days of receipt of statement. In the event of any differences between **INTARGET's** records for the number and value of transactions concluded and those records of the Operator, the Mobile Operator's records shall apply, should **INTARGET** not be able to prove otherwise. The difference in pay-out shall then be carried over to the **CLIENT**.

8. TERMS, CONDITIONS AND CODE

- 8.1 The **CLIENT** shall only use the Services for lawful purposes and warrants that it shall strictly adhere to all applicable Nigerian Laws and regulations, as well as the Operator Rules and Regulations as well as the **WASPAN Code of Conduct**, at www.waspgte.com. The **CLIENT** shall take specific note of compliance relative to advertising and content. **INTARGET** shall, upon request of the **CLIENT**, act in an advisory capacity in this regard but does not warrant that any information provided by it is accurate. The onus to keep informed of and review the content of the above however remains on the **CLIENT**.
- 8.2 The **CLIENT** shall refrain from utilizing the Services for the provision of any “adult” content including, inter alia, “glamour” content. The **CLIENT** shall approach **INTARGET** for clarification should it be in any doubt as to whether the Service provides any content of an adult nature, which clarification shall be determined in the sole and unfettered discretion, whether any content violates **INTARGET**’s determination of “socially and acceptable” and **INTARGET** expressly reserves its rights to suspend any content found by **INTARGET** to be in violation of this clause with or without notice to **CLIENT**.

9. DISCLAIMER

- 9.1 **INTARGET** shall not be held liable for the service delivery failure or failure of performance, or performance degradation due to the Mobile Operator’s non-performance. **INTARGET** shall also not be held liable by the **CLIENT**, if some or all services are suspended or terminated by the Mobile Operator’s or **WASPAN** or any other regulatory body for any reason whatsoever, or if the Agreement is cancelled due to any illegal activity or activity contravening the laws of Nigeria and/or the **WASPAN** rules and guidelines, by the **CLIENT**.
- 9.2 **INTARGET** shall further not be held liable for the service delivery failure or failure of performance, or performance degradation due to the Software Programme provided and/or corresponding hardware failure or non-performance. Whilst every effort is made by **INTARGET** to ensure the optimum functionality of **INTARGET**’s Software Code, and/or hardware servers, **INTARGET** accepts no liability for any losses incurred, whether direct, indirect, loss of profits or consequential loss, harm or damage as a result of access, installation or integration by the **CLIENT**, and use of the Code to the recipients business or service functionality or giving rise to non-compliance of or contravention of any rule, regulation or legislative provision arising as a result of intrinsic errors, human error or subsequent modifications to the Software Code.
- 9.3 **INTARGET** cannot guarantee the continuance of any service and will not be held liable for any loss occasioned by **INTARGET**’S decision to discontinue offering a service at any time in the future. The **CLIENT** agrees and accepts that the services offered by **INTARGET** are offered in **INTARGET**’S sole and unfettered discretion. **INTARGET** shall endeavour where possible to provide the **CLIENT** with reasonable notice should a decision be taken to discontinue offering a service at any time.

10. INDEMNIFICATION

- 10.1 The **CLIENT**, accordingly indemnifies and holds **INTARGET** harmless against all and any loss, liability, actions, and damages, (including direct, indirect, special or consequential damages), and whether in an action based on contract, negligence or any other action related to this contract and/ or the services rendered in terms thereof, arising out of or in connection with the failure or delay in the performance of the Services offered by **INTARGET**, as result of Mobile Operator malfunction or suspension or human error unless proven to be attributed to gross negligence or wilful intent on the part of **INTARGET**.

11. DISPUTES, FINES AND SUSPENSIONS

- 11.1 **INTARGET** shall have the right to retain any funds payable to the **CLIENT** in the case of breach of the terms of this Agreement, by the **CLIENT**, or in case of a pending litigation between the parties in this Agreement, or in case of pending **WASPAN** or Operator fines, or unresolved **WASPAN** or Operator complaints directed to the **CLIENT** due to misconduct in the market.
The **CLIENT** shall take full responsibility for any formal responses to any regulating body. **INTARGET** shall however be kept fully informed of the progress of any such proceedings. Any assistance given by **INTARGET** in this regard shall be at a prescribed fee and at the **CLIENTS** own risk. **INTARGET** is herewith absolved of any liability in this regard. The **CLIENT** shall at all times be responsible for payment upon demand of any fines or penalties imposed by any regulating or other authority.
- 11.2 **INTARGET** reserves the right to, in its discretion, summarily suspend the services of a **CLIENT** that does not comply with the Operator rules and regulations as well as the **WASPAN** Code of Conduct or other applicable law or regulation. Such services shall only be reinstated when the **CLIENT** has taken appropriate corrective action.
- 11.3 **INTARGET** undertakes to provide full reasons to the **CLIENT** for any suspension of services within a reasonable period in the circumstances, shall re-instate such services as speedily as possible if appropriate corrective action has been taken and if the Agreement had not been terminated as a result of the failure to comply, and shall not suspend any services in an arbitrary manner.

12. PRIVACY

- 12.1 Whilst the name, cellular phone number(s), and other contact information of the **CLIENT** and its Subscribers which is supplied to **INTARGET** when registering for the Services, shall not be made available to any third party without the consent of the **CLIENT** and/or Subscribers, **INTARGET** nevertheless is able to trace the Source of a message, and such information shall be made available to the authorities if required by law.
- 12.2 **INTARGET** or its staff shall not sell or rent any personally identifiable information about the **CLIENT's** or its Subscribers to any third party. However monitoring or recording of messages, subject to the **CLIENTS** security requirements, may take place for business purposes to the extent permitted by law, such as for example quality control and training for the purposes of marketing and improving the Services. However, in these situations, **INTARGET** shall not disclose information that could be used to personally identify the **CLIENT** or its Subscribers.
- 12.3 The **CLIENT** must notify **INTARGET** immediately should any information of the **CLIENT** change.

13. CONFIDENTIALITY

Both parties undertake to maintain the confidentiality of all information imparted to it pursuant to this Agreement including the “**KNOW – HOW**” and expertise of each of the respective parties. Neither party shall divulge or permit to be divulged any aspect of such information otherwise than for the purposes of this Agreement. Confidential information will not include information which is at the time of disclosure already in the public domain or thereafter becomes part of the public domain otherwise than by breach of this Agreement; and such information as the recipient is able to show was within its knowledge prior to the disclosure thereof and such information as the recipient is able to show subsequently lawfully came into its knowledge from a third party lawfully possessing such information. Confidentiality Agreements will remain in place for 2 (two) years after date of termination of this Agreement, unless otherwise agreed to in writing, this Agreement shall supersede all prior non-discloser Agreements.

14. **PASSWORD**

The **CLIENT** shall keep its password secure and warrant that no other person shall use the Services utilising its password, and acknowledges further that it is responsible for ensuring that no unauthorised access to the Services is obtained using its password, and that it shall be liable for all such activities conducted pursuant to such use, whether authorised or not.

15. **INTELLECTUAL PROPERTY RIGHTS**

The **CLIENT** acknowledges that **INTARGET** owns the intellectual property rights in and to its interfaces, and the unauthorised use thereof is expressly prohibited and shall cause **INTARGET** serious and irreparable harm.

16. **SERVICE LEVEL AGREEMENT**

The **CLIENT** shall adhere to the Service Levels as set out in Attachment "B".

17. **ADMISSION OF OTHER PARTIES TO THE AGREEMENT**

The parties may by written Agreement admit other parties to the Agreement upon such terms and conditions as may be agreed upon. It shall be a term of such Agreement that the party being admitted to this Agreement shall be bound to the terms and conditions of this Agreement as varied by the Agreement admitting the new party to this Agreement.

18. **BREACH.**

18.1 Should any Party ("**Defaulting Party**") commit a breach of any of the provisions of this Agreement, then any other Party ("**Aggrieved Party**") shall be obliged to give the Defaulting Party 14 (fourteen) days' written notice to remedy the breach. If the Defaulting Party fails to comply with such notice, the Aggrieved Party shall be entitled to cancel this Agreement against the Defaulting Party or to claim immediate payment and/or specific performance by the Defaulting Party of all the Defaulting Party's obligations whether or not the due date for payment and/or performance shall have arrived, in either event without prejudice to the Aggrieved Party's rights to claim damages. The foregoing is without prejudice to such other rights as the Aggrieved Party may have in law. The content of this clause 19 is to be read in conjunction with clause 12 regarding disputes, fines and/or summary suspension.

18.2 **INTARGET** reserves the right to, should the Agreement be cancelled as a result of breach by the **CLIENT**, after notification to the **CLIENT** in writing / telefax or by e-mail, utilize and/or reallocate any/all recourses assigned to the **CLIENT'S** account as from no earlier than 15 days subsequent to such notification, including but not limited to numbers and keywords whether allocated by direct connection method or web tools in any manner whatsoever.

18.3 Should this Agreement be terminated before the contract term has lapsed and as a result of a breach of any of the terms and conditions of this Agreement by the **CLIENT**, the **CLIENT** shall be liable for all fixed costs and transaction costs for the remainder of the period, at the applicable rate for a standard Main Account at the time. The **CLIENT** shall in addition be liable for all historical transaction charges incurred up to date of cancellation or termination.

- 18.4 In the event of the non- payment of a valid **INTARGET** invoice, a **CLIENT**'s services may further be suspended pending payment failing which **INTARGET** shall be entitled to cancel the Agreement in terms of this clause 18.
- 18.5 Notwithstanding the provisions of this clause 18 **INTARGET** shall, in the event of a severe and /or continuous breach of compliance with the governing regulatory and/or legislative provisions by the **CLIENT**, be entitled to summarily, without notification to rectify, cancel this Agreement.

19. **DOMICILIUM CITANDI ET EXECUTANDI**

- 19.1 The parties choose as their domicilium address for all purposes including the service of court process the address set out in this Agreement.
- 19.2 A party may change its domicilium address on 30 (thirty) days written notice to the other party.

20. **NOTICES**

Every notice, consent or other communication required or permitted hereunder from either party shall be in writing. It shall be sufficiently given or transmitted if and when:

- 20.1 Hand delivered to the other party at its domicilium address, or at such address as the receiving party may have designated in writing;
- 20.2 transmitted by means of a telex or telefax to the addressee's telex or telefax number and in respect of which telex or telefax an acknowledgment has been received;
- 20.3 deposited in the mail, duly registered with postage pre-paid for prompt delivery and addressed to the other party at its domicilium address. A notice deposited in the mail in terms of this sub-clause shall be deemed to have been delivered on the seventh business day after the date of posting.
- 20.4 sent by e-mail which shall have presumed to have been received on the same day that it was sent unless proven to the contrary.

21. **GENERAL**

- 21.1 No waiver by a party of any breach, failure or default in performance by the other party, and no failure, refusal or neglect by a party to exercise any right hereunder or to insist upon strict compliance with or performance of the other party's obligations under this Agreement, shall constitute a waiver of the provisions of this Agreement and a party may at any time require strict compliance with the provisions of this Agreement.
- 21.2 This Agreement constitutes the entire Agreement between the parties who acknowledge that there are no oral or written understandings or Agreements between them relating to the subject matter of this Agreement. No amendment, consensual cancellation or other modification of this Agreement and specifically this clause shall be valid or binding on a party hereto unless reduced to writing and executed by both parties hereto.
- 21.3 This Agreement shall be subject to the jurisdiction of the Courts of Nigeria and governed in accordance with the laws of Nigeria.

- 21.4 All the provisions of this Agreement shall be severable and no provision shall be affected by the invalidity of any other provision of this Agreement.
- 21.5 Whenever a personal pronoun is used in this Agreement, it is understood that such usage shall include singular and plural, masculine, feminine and neuter and refer in appropriate cases to juristic persons as well as natural persons.
- 21.6 The parties acknowledge that they have entered into this Agreement, duly authorized, after making independent investigations and that neither party has made any representations or given any warranties other than as may be set out in this Agreement.
- 21.7 Attachments "A" and "B" hereto are deemed to form part of this Agreement and are incorporated herein. Upon the signing of this Agreement and attachments and making use of the services provided by **INTARGET** the **CLIENT** declares and acknowledges that it has taken note of and has informed of itself of all information referred to herein.
- 21.8 The **CLIENT** undertakes that it shall not during the continuance in force of this Agreement and for a period of 2 (Two) years following its termination for whatsoever reason, either directly or indirectly, whether alone or through any other party, attempt to circumvent or compete with **INTARGET**.

DATED at _____ this ____ day of _____ 20__

AS WITNESSES:

1. _____

2. _____

INTARGET (Duly Authorized)

DATED at _____ this ____ day of _____ 20__

AS WITNESSES:

1. _____

2. _____

The CLIENT (Duly Authorized)

Authorized Representative Name: _____

ID nr of Representative: _____

Residential Address of signatory: _____

Designation: _____

Cell Number: _____

Company information:

Registered & trading company name: _____

Company registration number: _____

Company Telephone: _____

Company Fax: _____

VAT number: _____

Physical address: _____

Postal address: _____

Bank Details: Account name: _____

Bank name: _____

Branch name: _____

Branch code: _____

Account number: _____

Account type: _____

Business contact: Name & Surname: _____

Landline number: _____

Cellphone number: _____

E-mail address: _____

Financial contact: Name & Surname: _____

Landline number: _____

Cellphone number: _____

E-mail address: _____

Technical contact: Name & Surname: _____

Landline number: _____

Cellphone number: _____

E-mail address: _____