# Kingdom of Cambodia

# Nation Religion King

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**SMS BRAND NAME SERVICE AGREEMENT**

**NO:** **…./VTC–…../…../2020**

This SMS Brand Name Service Agreement (the “**Agreement**”) is made and entered on / /2020 (the “**Effective Date**”) by and between:

**VIETTEL (CAMBODIA) PTE. LTD.**

|  |  |  |
| --- | --- | --- |
| Address  Tel/Fax | :  : | Building 199, Mao Tse Toung Blvd (Street 245), Sangkat Toul Svay Prey 2, Khan Boeng Keng Kang, Phnom Penh, Cambodia  (855) 23 6200095 |
| Representative | : | Mr. Bui Minh Binh |
| Position  Tax Code  Business Registration | :  : | Vice General Director  L001-100121845  Inv.1206E/2007 issued by ministry of commerce dated 25/05/2007 |
| Bank Name | : | ACLEDA BANK PLC |
| Bank Account | : | 0001-20-979798-68 |

(Hereinafter referred to as “**The Provider**” or **“Party A”**)

**And**

**ABC LIMITED,**

|  |  |  |
| --- | --- | --- |
| Address | : | ……………………… |
| Tel/Fax | : | (+855)………………. |
| Representative | : | ……………………… |
| Position | : | …………………….... |
| Tax code  Business Registration | : | ………………………  ……………………… |
| Bank name | : | ……………………… |
| Bank Account | : | ‎……………………… |

(Hereinafter called “**The Customer**” or **“Party B”**)

Party A and Party B hereby individually called “**Party**” and collectively called “**Parties**”.

Both Parties have agreed to sign this Agreement covering the terms and conditions set forth hereunder:

**ARTICLE 1. THE SERVICE AND CONDITION OF USE**

* 1. The Provider shall provide the SMS Brand Name Service (hereinafter referred as the “**Service**” or “**Services**”) and the Customer shall receive the Services.
  2. SMS Brand Name Service (hereinafter referred as the “**Service**” or “**Services**”): is a promotional tool through customer-oriented messages. With SMS Brand Name, brand name of companies/brands/products of the Customer will be displayed at the “Sender of messages” section. Subjects receiving messages are customers using the services of Customer.
  3. Details of Services are as follows:

|  |  |  |
| --- | --- | --- |
| **No.** | **Service** | **Description** |
| 1 | On-net BulkSMS | Sending the message without advertising contents to customer’s database who are using Metfone number |
| 2 | On-net Advertising Message (AMS) | Sending the message with advertising contents to customer’s database who are using Metfone number |
| 3 | On-net Targeting AMS | Sending the message with advertising contenst to Metfone subscribers, filter by some special criteria below:   * Average revenue per user (ARPU), * Location, * Model of phone, * Average data usage, * Average international call. * ... |
| 4 | Off-net BulkSMS | Sending the message without advertising contents to customer’s database of other providers. |
| 5 | Off-net AMS | Sending the message with advertising contents to customer’s database of other providers. |

* 1. Brand-name: is the name of the company/enterprise/organization/product being properly registered.
  2. Working day: days from Monday to Friday, not including days off, public holidays following laws of the Kingdom of Cambodia and any day on which banks in Cambodia are close.
  3. A month: the duration from 00:00:00 of the first day to 23:59:59 of the last day of a calendar month.

**ARTICLE 2. TERM AND RENEWAL**

* 1. This Agreement comes into effect from the day the Parties signed and shall be for the term of one (01) year.
  2. The Term of the Agreement is subject to renewal based on the Parties’ agreement, provided that a 15-day notice shall be given by the requested Party to the other Party prior to the expiry date of the Agreement. If there is no prior notice from the Party, the Agreement will be automatically extended for the duration of one (01) year with the same terms and conditions (the “**Extended Term**”).

**ARTICLE 3. CHARGES AND PAYMENT**

1. 1. Except as otherwise provided in the Agreement, all charges and other sums due from Party B in respect of the Services shall be set out in the Service Order Form and/or the invoice relating to such Services.
   2. For prepaid customer: Customer shall pay in advance before sending message or activating brand name.
   3. For postpaid customer: All payments shall be made before the last working day of every month. Monthly Service Charge invoice shall be sent to Party B on or before the 10th day of the succeeding month. In case that Party B does not receive such invoice on that day, Party B shall notify Party A correspondingly.
   4. Mode of payment: All payment paid to Party A shall be made by Cheque, cash, or direct transfer to the bank account as following:

* Account Name:
* Account Number:
* Bank Name:

Any incurred bank fee shall be borne by Party B.

**ARTICLE 4. PARTIES’ RIGHTS AND OBLIGATIONS:**

* 1. **Rights and Obligations of Party A:**
* Party A provide the service to Party B in proper quality and time progress.
* In case of any failure, Party A shall restore the Service and repair faults in the shortest possible time without any undue delay.
  1. **Rights and Obligations of Party B:**
* Warrant that all information provided in Party B’s request and any other information provided to Party A in the course of using Party’s A systems is complete and accurate;
* Must keep their Primary Account information (including their password and account name) current, accurate, confidential and secure.
* Fully cooperate, facilitate and ensure the safeguards for Party A during the course of service provision, maintenance and service quality checking at the places of Party B.
* Compensate to Party A all the losses or damages incurred to Party A in case of: (i) making any broken-down or loss to Party A’s services and/or system caused by Party B’s fault or negligence (if any); (ii) violating the terms and conditions of this Agreement.
* Pay ten percent (10%) as interest rate on any outstanding amount to Party A by the end of the applicable payment period to Party A.
* Implement all necessary measures to secure the system, prevent unauthorized access to the network of Party A through the system of Party B.
* Be the focal point to receive, resolve and coordinate with Party A to resolve complaints of customers.
* Warrant NOT to use the Services to transmit any Content or Messages which are tortious, defamatory, obscene, libelous, harmful to minors, “spam”, containing software viruses or otherwise designed to disrupt the functionality of any computer software or hardware or telecommunications equipment, infringing of another’s rights in intellectual property, facilitates any illegal activity, is sexually explicit, is false, misleading, or likely to mislead or deceive (including without limitation to information relating to the source or the author), invasive of another’s right to privacy, or in violation of any laws.
* Be solely responsible for the brand-name, use of brand-name and any third party’s complaint (if any) on such use as specified in the contract between Party A and Party B.
* Perform advertising message as defined in the attached annex.
* Strictly comply with all applicable laws and regulations by Cambodian authorities and be responsible for obtaining any permits and/or licenses which are necessary for connecting to and accessing the Services.
* Strictly comply with all terms and conditions under the “Announcement about SMS Brand-Name service” which may be subject to be revised from time to time, at Party A’s sole discretion.

**ARTICLE 5. TERMINATION OF THE AGREEMENT**

* 1. If Party B (in case of being a postpaid customer) does not pay the monthly Service Charge for two (02) consecutive months, Party A shall have the right to freeze and disconnect the connection of all the services and unilaterally terminate the Agreement without any compensation to Party B.
  2. The Agreement shall be unilaterally terminated if Party A figures out that Party B or equipment of Party B impacts the system of Party A illegally or without prior consent of Party A. In this case, Party B must be fully responsible for any harm, lost and/or damages cause to Party A.
  3. This Agreement shall be terminated by mutual agreement of both Parties. In this case, both Parties shall discuss to reach agreement on specific conditions relating to the termination of this Agreement.
  4. One Party may unilaterally terminate this Agreement in the following cases:
     1. Either Party goes into insolvent liquidation, disband or bankruptcy, then in this case, the Agreement shall be terminated by the way agreed by both Parties and/or in compliance with current laws and regulations.
     2. Notwithstanding the foregoing, if the other Party commits a material breach of this Agreement and after the receipt of the written notice that specifies such breach or default, fails to remedy the breach within thirty (30) days since the date of receiving the written notice.
  5. If Party B, by reason of any situation whatsoever other than Party A’s fault, unilaterally terminates the Agreement prior to the expiration thereof, Party B shall give Party A a three-month prior written notice, and pay an additional three (3) months’ services fees on the actual termination date plus incidental and consequential damages incurred by Party A.

**ARTICLE 6. NOTICES**

Any notice, request or consent required or permitted to be given or made pursuant to this agreement and its documents shall be in written and shall be deemed to have been given or made when delivered in person to any authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, telephone to such Party at the following addresses:

|  |  |
| --- | --- |
| **For the Provider:**  Name: ……………………………  Tel: + (…..) ……………………..  Email: ……………………………  Address: …………………………  ……………………………………  …………………………………… | **For the Customer**:  Name: ……………………………  Tel: + (…..) ……………………..  Email: ……………………………  Address: …………………………  ……………………………………  …………………………………… |

A Party may change its address or telephone number by giving the other Party a written notice pursuant to this Clause.

**ARTICLE 7. GENERAL TERMS**

* 1. The Agreement documents shall not be modified or amended except for an agreement in written signed by the Parties.
  2. The Service Order Form and other Appendixes constitute the integral and substantive parts of this Agreement.
  3. ThisAgreement shall be governed and construed under the laws of Kingdom of Cambodia. If any provision in this Agreement is​​ considered illegal or unenforceable, that specific provision will become void, leaving the remainder of this Agreement in full force and effect.
  4. Any dispute arising in connection with the performance of this contract shall be settled by friendly negotiation. If no agreement can be reached within thirty (30) days from the date of negotiation, the disputes shall be referred to the Telecommunication Regulator of Cambodia (TRC) for mediation. In the event that no mediation or conciliation can be achieved, either Party has the right to bring the dispute to the authoritative arbitration or court of Cambodia for settlement. All related litigation costs shall be borne by the defaulting Party.
  5. This Agreement is made in English into 02 (Two) copies with equal legal value, Party A keeps 01 (One) copy and Party B keeps 01 (One copy).

|  |  |
| --- | --- |
| **FOR AND ON BEHALF OF**  **THE PROVIDER**  *(Signed and stamped)*  Name: Mr. Bui Minh Binh  Position: Vice General Director | **FOR AND ON BEHALF OF**  **THE CUSTOMER**  *(Signed and stamped)*  Name:  Position: |

**APPENDIX 01 - ORDER FORM**

**(Attached to the SMS Brand-Name Service Agreement**

**No: …………………. dated ………………….)**

This Appendix 01 is made on ……………… between Viettel (Cambodia) Pte. Ltd. and …………………………. in order to provide the SMS Brand-Nam Service with the price as below:

* Fee calculation: total SMS successful \* unit price of one SMS:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **No.** | **Item(s)** | **Quantity** | **Fee** | **Note** | | | |
| 1 | Brandname |  |  | Free the first brandname, will be charged from second brandname. | | | |
| **No.** | **Services** | | | | **Total SMS** | **Price** | **Amount** |
| 1 | On-net BulkSMS: Send the message **without** advertising content to customer’s database, who use Metfone number | | | |  |  |  |
| 2 | On-net Advertising Message (AMS): Send the message **with** advertising content to customer’s database, who use Metfone number | | | |  |  |  |
| 3 | On-net Targeting AMS: Send the message **with** advertising content to Metfone subscribers, filter by some special criteria | | | |  |  |  |
| 4 | Off-net BulkSMS: Send the message **without** advertising content to customer’s database of other providers | | | |  |  |  |
| 5 | Off-net AMS: Send the message **with** advertising content to customer’s database of other providers | | | |  |  |  |
|  | Total | | | | | |  |
|  | VAT 10% | | | | | |  |
|  | **Grand Total** | | | | | |  |
|  | ***In words:......................................... United States Dollars only./.*** | | | | | | |

|  |  |
| --- | --- |
| **FOR AND ON BEHALF OF PARTY A**  Name: Mr. Bui Minh Binh  Position: Vice General Director | **FOR AND ON BEHALF OF PARTY B**  Name:  Position: |