

## TERMS AND CONDITIONS

### 1 **The Services**

1.1 In consideration of the Customer satisfying its obligations under these Terms and Conditions, Puca shall provide the Services in accordance with these Terms and Conditions from the Commencement Date until the end of the Term.

1.2 The Customer acknowledges and agrees that the Services, and the terms and conditions which govern them, shall be subject to changes resulting from changes made by the relevant Network Operator to the corresponding services provided by the Network Operator to Puca or the terms and conditions which govern such corresponding services.

### 2 **Customer Commitments**

2.1 The Customer warrants and undertakes to Puca as follows: a) that neither the Customer Content nor the Customer Data or its supply to or use by Puca or any End-user shall infringe the rights of any third parties or any laws or regulations, including, without limitation, any and all applicable laws and rules governing messaging services and customer information privacy, including customer proprietary network information, in any country where any message is originated, delivered or in respect of which any of the Services are performed; b) to ensure that the Services are used for proper and lawful purposes only and in accordance with such instructions as Puca may from time to time notify to the Customer; and c) at its own expense, to comply with all requirements and conditions at any time imposed by law or regulation which are applicable to or affect the Services or the conduct of the Customer's business.

2.2 The Customer undertakes not to use the Services or permit the Services to be used: a) for sending any communication which is defamatory, offensive or abusive or of an obscene or menacing nature; b) for the persistent sending of messages without a reasonable cause or for the purpose of causing annoyance, inconvenience or distress to any person; c) in any way that contravenes applicable law or regulation in any country where the Services are marketed or provided; and d) for the sending of unsolicited messages.

3 **Compliance** The Customer agrees: a) to comply, and to ensure that all of the Customer Content and all use of the Services complies, in all respects, with all regulations, directions, codes of practice and other rules and guidelines, mandatory or otherwise, promulgated from time to time by Mobile Network Operators and any other relevant authorities (collectively, "Codes"); and b) to ensure that all advertising of the Services complies with applicable advertising laws, standards, regulations and codes.

### 4 **Payment**

4.1 The charges for the Services shall be as set out in the relevant Quotation and Booking Order Form.

4.2 All amounts payable under these Terms and Conditions are exclusive of any Tax that may be applicable to the Services. The Customer will be responsible for payment of all such Taxes.

4.3 Where an invoice is issued for sums payable to Puca by the Customer: a) such sums shall be paid by the Customer within 30 days of the date of Puca's invoice; and b) unless otherwise specified, Puca will issue such invoices to the Customer on a monthly basis. All delayed payment will bear a late payment penalty of 0.2% per day overdue.

4.4 Unless otherwise expressly agreed in writing between the parties; a) all payments of charges by the Customer to Puca and other transfers of funds between the parties required shall be made by bank transfer, and b) all charges and fees relating to such transfers (including, without limitation, those levied by the paying and payee bank or other financial institution) will be borne by the Customer; Puca will include the amount of such charges and fees in invoices and statements issued to the Customer under these Terms and Conditions.

### 5 **Confidentiality**

5.1 For the purpose of these Terms and Conditions, "Confidential Information" shall mean all Intellectual Property Rights, drawings, software, data, specifications, processes, testing procedures, customer information, financial information, product and services information and all other technical, business and other information and material relating or belonging to a party or its customers and any other information designated as Confidential Information by a party which is obtained by either party in relation to the other, either directly or indirectly.

5.2 Confidential Information shall not include: a) information which was in the public domain at the time of disclosure; b) information which, though originally Confidential Information, subsequently falls into the public domain other than as a result of any breach of this Clause or any other duty of confidentiality; c) information received by a party from a third party, or already known by such party, without any breach of this Clause or any obligation of confidentiality; d) information that is trivial or obvious; and e) information that is required to be disclosed by a government body or court of competent jurisdiction or by operation of law or in order to comply with the rules of a recognized stock exchange, but only to the extent so required.

5.3 Each party hereby agrees, other than as permitted by these Terms and Conditions, to keep the Confidential Information of the other in complete confidence and not to disclose the same to any third parties (except as set out above), nor use it for any purposes other than for the performance of its duties under these Terms and Conditions (the "Specific Purposes"). Either party may disclose the Confidential Information of the other to its employees but only to the extent reasonably necessary for the Specific Purposes and subject to the recipient being subject to obligations of confidentiality relating to that Confidential Information no less stringent than the requirements of this Clause. Each party hereby agrees to use reasonable endeavours to ensure that all such employees do not disclose Confidential Information of the other party to third parties or use the same otherwise than as reasonably required for the Specific Purposes. The provisions of this Clause shall continue in full force and effect notwithstanding the termination of these Terms and Conditions for any reason whatsoever.

### 6 **Warranties / Liability**

6.1 Puca warrants that the Services will be performed with reasonable care and skill with the objective of meeting the requirements of these Terms and Conditions.

6.2 Puca shall have no obligation, duty or liability whatsoever in contract, tort (including negligence, breach of statutory duty and any other tort) or otherwise, except as otherwise expressly provided in these Terms and Conditions.

6.3 Nothing in these Terms and Conditions shall exclude or restrict Puca's or the Customer's liability for death or personal injury resulting from their respective negligence.

6.4 **LIMITATION OF LIABILITY.** NEITHER PUCA NOR ANYONE ELSE INVOLVED IN CREATING, PRODUCING, DELIVERING, INSTALLING, SUPPORTING, SUSPENDING OR TERMINATING THE USE OF ANY SERVICE OR SOFTWARE SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES OF ANY KIND ARISING OUT OF OR RELATING TO THESE TERMS AND CONDITIONS OR USE OF PUCA SERVICE, OR INABILITY TO USE PUCA SERVICE, OR ARISING OUT OF BREACH OF ANY WARRANTY OR SERVICE LEVEL ASSURANCE, INCLUDING BUT NOT LIMITED TO, LOST PROFITS OR REVENUE, BUSINESS INTERRUPTION OR LOSS OF BUSINESS INFORMATION, OR LOSS OF TECHNOLOGY RIGHTS, EVEN IF SUCH PERSON OR ENTITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. PUCA SHALL IN ADDITION HAVE NO RESPONSIBILITY OF ANY KIND FOR TRANSMISSION ERRORS IN, CORRUPTION OF, OR THE SECURITY OF CUSTOMER'S INFORMATION CARRIED OVER WIRELINE OR WIRELESS TELECOMMUNICATIONS PROVIDERS' FACILITIES AND NETWORKS. PUCA SHALL IN ADDITION HAVE NO RESPONSIBILITY FOR THE SELECTION, RETENTION, OR ACTS AND OMISSIONS OF, THIRD PARTIES IN CONNECTION WITH THE SERVICE, INCLUDING THOSE WITH WHOM PUCA MAY CONTRACT TO OPERATE THE PUCA SERVICE. REGARDLESS OF THE CAUSE OR THE FORM OF ACTION, PUCA' AGGREGATE MAXIMUM LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS AND CONDITIONS SHALL NOT EXCEED THE TOTAL AMOUNTS PAYABLE BY CUSTOMER THEREUNDER, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN.

6.5 **Disclaimer.** THE PUCA NETWORK AND SERVICES ARE PROVIDED "AS IS" AND WITHOUT ANY WARRANTY OF ANY KIND WHATSOEVER. PUCA DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

6.6 Puca shall have no liability to the Customer or any other person for or in respect of any Customer Content, Customer Data or instructions supplied by the Customer which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other act or omission of the Customer

- 6.7 Puca will use reasonable endeavours to meet any dates agreed between the parties in writing for the commencement of the Services.
- 6.8 The provisions of this Clause shall survive the termination or expiration of these Terms and Conditions.
- 7 **Intellectual Property Rights**
- 7.1 Ownership of all Puca Rights shall vest in and remain with Puca. Puca does not by these Terms and Conditions grant Customer any right, title, license or interest in or to any Puca software or documentation, or in any related patents, copyrights, trade secrets or other proprietary intellectual property. Customer shall acquire no rights of any kind in or to any Puca trademark, service mark, trade name, logo or product or service designation under which Puca' products or services were or are marketed (whether or not registered) and shall not use same for any reason except as expressly authorized in writing by Puca prior to such use, but in no event for a period longer than the term of these Terms and Conditions.
- 7.2 Notwithstanding the foregoing, Puca shall license to the Customer for the term of these Terms and Conditions only such use of Puca Rights as is directly and unavoidably required by the Customer to use the Services (including any documentation or software which Puca makes available to the Customer for use pursuant to these Terms and Conditions).
- 7.3 The Customer shall license to Puca the Customer Rights in order that Puca is enabled to provide the Services in accordance with these Terms and Conditions.
- 7.4 Neither party shall reverse engineer, decompile or disassemble any software comprised in the other party's Rights.
- 8 **Non-solicitation of Employees** Both parties agree, during the Term and for a period of twelve (12) months thereafter, not directly or indirectly (other than by general advertising) to solicit employ or engage, or endeavour to do so, any employees of, or any contractors used by the other party in the performance of its obligations under these Terms and Conditions without the prior written consent of the other party.
- 9 **Indemnity** The Customer shall indemnify Puca and its officers, employees, agents or contracting carriers (collectively, the "Indemnified Parties") and keep the Indemnified Parties fully and effectively indemnified against all costs, claims, demands, damages, liabilities, actions and proceedings, including reasonable attorneys' fees, made by any person or entity arising out of or in connection with (a) any breach of this Agreement by Customer, or (b) the provision or use of the Services by any person or (c) the conduct of Customer's business. In addition, Customer agrees to indemnify and hold the Indemnified Parties harmless from and against any and all claims, demands, damages, liabilities, actions and proceedings, including reasonable attorneys' fees, arising out of any claim or proceeding brought against an Indemnified Party alleging that information supplied or transmitted by Customer or its employees or agents through the Puca Services (a) infringes, misappropriates or interferes with the intellectual property rights of any third party, or (b) contains or consists of privileged, private, defamatory, libelous, slanderous, pornographic, or obscene materials or information. Supply or transmission of such information also shall be grounds for Puca, in its sole discretion, to terminate immediately this Agreement without a notice or opportunity for cure.
- 10 **Suspension and Termination** These Terms and Conditions may be terminated prior to expiration of the Term by notice in writing by either party in the event the other has failed to perform any material obligation required to be performed under these Terms and Conditions and such failure is not corrected within thirty (30) days from receipt of written notice advising of such failure from the other party. Puca may terminate this agreement by immediate notice in the event that one or more of the Network Operators or other 3<sup>rd</sup> parties upon which the provision of Services hereunder is dependent terminates its provision of those services to Puca under the terms of its or their relevant agreement(s) with Puca.
- 11 **Term** These Terms and Conditions shall continue in force until the expiration or termination of the Services.
- 12 **Data Protection**
- 12.1 The Customer warrants and undertakes that it shall comply with all applicable laws and regulations in relation to the provision of its Services, and in particular but without limitation Customer shall comply with the all applicable data protection and privacy laws.
- 12.2 Puca warrants and undertakes that without prejudice to any duties it may owe to other customers, or rights it may otherwise have acquired, it will not use Customer Data (or Customer Content) other than for the purposes expressed in, and in accordance with, these Terms and Conditions.
- 13 **Force Majeure**
- 13.1 Either party's performance of any part of these Terms and Conditions, other than payment obligations, shall be excused to the extent that it is hindered, delayed or otherwise made impractical by: a) the acts or omissions of the other party or any Network Operator; b) flood, fire, earthquake, strike, stoppage of work, or riot, failure or diminishment of power or of telecommunications or data networks or services not under the control of a party, governmental or military acts or orders or restrictions, terrorist attack; or c) any other cause (whether similar or dissimilar to those listed) beyond the reasonable control of that party and not caused by the negligence of the non-performing party (collectively referred to as "force majeure conditions" below).
- 13.2 If any such force majeure condition(s) occur(s), the non-performing party shall make reasonable efforts to notify the other party of the nature of any such condition and the extent of the delay, and shall make reasonable, good faith efforts to resume performance as soon as possible.
- 14 **General**
- 14.1 These Terms and Conditions constitute the entire understanding and agreement of the parties hereto with respect to the subject matter hereof. These Terms and Conditions supercede all prior and contemporaneous agreements, representations and understandings between the parties regarding the subject matter hereof. These Terms and Conditions and any provision hereof may be amended only by a writing signed by both parties. If Customer orders the Puca Services through its purchase order, that purchase order shall be deemed to incorporate these Terms and Conditions by reference, and any pre-printed clauses on Customer's purchase order form shall be deemed deleted and of no force and effect. If any provision of these Terms and Conditions is found to be invalid or unenforceable, such provision shall be severed from these Terms and Conditions and the remainder of these Terms and Conditions shall be interpreted so as best to reasonably effect the intent of the parties hereto.
- 14.2 Any amendment to these Terms and Conditions must be in writing signed by or on behalf of both parties. No waiver of any provision of these Terms and Conditions by either party shall be effective unless made in writing. Any waiver made by such party of any term or condition of these Terms and Conditions shall not be deemed or construed to be a waiver of such term or condition for the future, or any subsequent breach thereof. Any notice under this Agreement shall be in writing and sent by email, addressed to the recipient's email address specified in the Addendum (provided a copy of such email is retained by the sending party, and made available to the recipient if it is reasonably requested), or to such other email address as is notified by the recipient from time to time by email sent in accordance with this Clause 14.2, with a confirming copy by regular mail.
- 14.3 If any portion of these Terms and Conditions is determined to be or becomes unenforceable or illegal, such portion shall be deemed eliminated and the remainder of these Terms and Conditions shall remain in effect in accordance with its terms as modified by such deletion.
- 14.4 Except as otherwise expressly provided, any remedy provided for in these Terms and Conditions is deemed cumulative with, and not exclusive of, any other remedy provided for in these Terms and Conditions or otherwise available at law or in equity, and the exercise of any remedy shall not preclude the exercise of any other remedy. Should suit be brought to enforce or interpret any part of these Terms and Conditions, the prevailing party shall be entitled to recover, as an element of the costs of suit and not as damages, reasonable attorneys' fees and costs of suit incurred therein and in any appeal.
- 14.5 The relationship of the Parties established by these Terms and Conditions and the performance hereof is that of independent contractors, and these Terms and Conditions does not create an agency, partnership or joint venture relationship between the Parties.
- 14.6 These Terms and Conditions are governed by and shall be construed in accordance with the laws of the Peoples Republic of China.
- 14.7 These Terms and Conditions may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.
- 14.8 If any provision of these Terms and Conditions is held to be invalid by a court of competent jurisdiction, then the remaining provisions shall nevertheless remain in full force and effect. The Parties further agree to negotiate in good faith a substitute, valid and enforceable provision that most nearly effects the Parties' intent and to be bound by mutually agreed substitute provision.

SIGNED BY \_\_\_\_\_

SIGNED BY \_\_\_\_\_

FOR AND ON BEHALF OF \_\_\_\_\_

FOR AND ON BEHALF OF PUCA CHINA