

## **1. Introduction**

- 1.1. You wish to use our Service as either a paying customer ("Customer") and / or Our Free Service as a non-paying customer ("Non-Paying Customer"). Whether or not You are entering into this Agreement as a Customer or as a Non-Paying Customer will be set out on the front signature page of the Agreement (the "Signature Page") or as part of your online registration.
- 1.2. You wish to use the Service and / or the Free Service and We are willing to make the Service and / or the Free Service available to You subject to and in accordance with the terms and conditions of the Agreement.
- 1.3. The terms and conditions of the Agreement
  - 1.3.1.1. are the only terms and conditions upon which We are prepared to make the Service and / or the Free Service available to You; and
  - 1.3.1.2. shall govern Your access to and use of the Service and / or the Free Service to the exclusion of all other terms and conditions.

## **2. The Service and the Free Service**

- 2.1. The Service enables a Paying Customer to do one or more of the following:
  - 2.1.1. send and receive SMS, MMS, voice and / or other format messages;
  - 2.1.2. receive voicemails;
  - 2.1.3. send and receive faxes;
  - 2.1.4. make and receive voice calls; and / or
  - 2.1.5. locate a GSM or GPS device.as more particularly defined in the Signature Page or as part of your online registration.
- 2.2. Any such message, voicemail, fax, voice call or device detection shall be referred to in these Terms and Conditions as a "Transaction"
- 2.3. The Free Service will enable a Non-Paying Customers to:
  - 2.3.1. trial one or more elements of the Service described in the above clause 2.1; and / or
  - 2.3.2. use any element of the Service described in the above clause 2.1 or any other service made available by Us to You free of charge from time to time at Our absolute discretion.
- 2.4. The Service and / or the Free Service is made available to you as an account, to which a unique 11 digit virtual mobile number or a unique combination of shared short code and keyword may be allocated.
- 2.5. Some or all elements of the Service and / or the Free Service may be accessed via a web application, an email gateway, a software tool and / or a web service more particularly described on our website at [www.adikat.ie](http://www.adikat.ie)

## **3. Availability and Interruption of the Service**

- 3.1. We will make the Service and / or the Free Service available to You as either a Customer and / or a Non-Paying Customer using reasonable skill and care. You do however acknowledge and agree that the availability of the Service and / or the Free Service, Your ability to access and / or use the Service and / or the Free Service and the conducting of any given Transaction may depend upon factors beyond Our reasonable control, including (but not limited to):
  - 3.1.1. factors affecting the operation of the Service and / or the Free Service and / or preventing Transactions from being successfully conducted such as, by way of example, geographical or topographical shortcomings in the network of any telecommunications network operator ("Network Operator"), network capacity, physical obstructions or atmospheric conditions; or
  - 3.1.2. factors preventing end-users from receiving messages, voicemails, faxes and / or voice calls (as applicable) such as, by way of example, the terms and conditions of an end-users' service provider.
- 3.2. We cannot therefore guarantee:
  - i. that the Service and / or the Free Service will be available to You at all times or free from faults or interruptions;
  - ii. the receipt by any intended recipient of any message, fax and / or voice call sent using the Service and / or the Free Service (as applicable);
  - iii. the retrieval by any intended recipient of any voicemail using the Service and / or the Free Service (if applicable); or

- iv. that the Service and / or the Free Service will enable the location of any given GSM or GPS device to be accurately detected in every case.
- 3.3. We may, at Our sole discretion, alter or improve the Service and / or the Free Service We provide to You at any time, provided that any such alteration does not materially affect the nature or detract from the functionality of the Service and / or the Free Service.
- 3.4. It may be necessary from time to time for Us to suspend the Service and / or the Free Service that We provide to You for routine or emergency maintenance and / or repairs and We will, in so far as it is reasonably possible, provide You with a reasonable period of notice prior to any such suspension.
- 3.5. We may at Our sole discretion suspend Your access to the Service and / or the Free Service and / or cease to allow any Transactions to be conducted by You if:
  - 3.5.1. You are in material breach of the Agreement and / or any applicable codes of practice, guidelines, rulings or regulations of any national telecommunications regulatory authority or other competent body or authority ("Regulator") relating to the Service and / or the Free Service that may be introduced or made from time to time during the continuation of the Agreement and with which You must comply or to which You have agreed to be bound ("Codes"), including (but not limited to) those issued by ICSTIS and the Industry Code of Practice for the use of mobile phone technology to provide passive location services in Ireland;
  - 3.5.2. You are doing or have done anything unlawful in the course of using or relating to Your use of the Service and / or the Free Service;
  - 3.5.3. a Network Operator or a Regulator requires it;
  - 3.5.4. at any time the number of Transactions that You are conducting exceeds any forecast You have given Us of the number of Transactions that You expected to conduct at that time ("Forecast") or, in the absence of any applicable Forecast, the number of Transactions conducted by You at any time causes or is likely to cause congestion to any telecommunications network; or
  - 3.5.5. We are entitled to terminate the Agreement for any reason, in which case We will give You appropriate notice as soon as is reasonably possible.

#### **4. Employees**

- 4.1. Our employees are never allocated to the management of Your account or to the provision of the Service and / or the Free Service under the Agreement. Both You and We therefore recognise that there is no grouping of Our employees and that the Transfer of Undertakings (Protection of Employment) Regulations 2006 do not apply to the Agreement.

#### **5. Freedom of Information**

- 5.1. We acknowledge that certain public bodies are subject to the Freedom of Information Act 2000. If you are a public body then We will assist and co-operate with You (at Your expense) to enable You to comply with any information disclosure requirements.
- 5.2. We will, at our sole discretion, and without liability determine whether any of the information requested by You is confidential, commercially sensitive and / or exempt from disclosure under the Freedom of Information Act 2000.

#### **6. Confidentiality and Data Protection**

- 6.1. We will at all times keep confidential all information acquired as a consequence of the Agreement in respect of You or Your business, except for information already in the public domain or information which We are required to disclose by law, requested by any Regulator or reasonably required by Our professional advisors for the performance of their professional services.
- 6.2. You will at all times keep confidential all information acquired as a consequence of the Agreement in respect of Us, the Service, the Free Service or any Network Operator, except for information already in the public domain or information which You are required to disclose by law, requested by any Regulator or reasonably required by Your professional advisors for the performance of their professional services.
- 6.3. Each of us will comply with the Data Protection Act 1998 and all regulations made under that Act in the processing of any personal data, including the mobile telephone numbers of Your end-user who will be sent messages, voicemails, faxes and / or voice calls (as applicable) as a consequence of making the Service and / or the Free Service available to You ("End-User

Data”), under or in connection with the Agreement. Please note that Our full privacy policy is set out on our website at [www.adikat.ie](http://www.adikat.ie)

- 6.4. We will treat Your End-User Data as confidential and will not disclose it to any third party or use or copy any part of it except for the purposes of making the Service and / or the Free Service available to You and providing any technical support required. We will make no further use of Your End-User Data without your specific authorisation.

## **7. Customer and Non-Paying Customer Support**

- 7.1. Unless We otherwise agree in writing, We will provide on-line support in respect of the Service from 09:00 to 17:00 Irish time, Monday to Friday (except for Bank Holidays in Ireland), and outside such hours We will use reasonable efforts to provide support in respect of the Service and / or the Free Service.

## **8. Customer Charges and Payment**

- 8.1. The provisions of this clause 8 only apply to Customers and do not apply to Non-Paying Customers.
- 8.2. You agree to:
- 8.2.1. pay all Charges due to Us in respect of making the Service available to You and Your access to and use of the Service (“Customer Charges”) by the payment method and in accordance with the applicable payment plan and terms agreed between Us and detailed in the Signature Page. Unless We otherwise agree, payment by You of the Customer Charges:
    - 8.2.1.1. will be due and payable 15 days after the date of invoice if You are paying by direct debit; or
    - 8.2.1.2. will be due and payable 30 days after the date of invoice if You are on 30-day credit terms; and
  - 8.2.2. Us checking Your details and / or those of Your principal directors with one or more licensed credit reference and fraud prevention agencies before agreeing on the most appropriate payment method and terms for You and from time to time thereafter during the continuation of the Agreement. They and We will keep a record of these checks and the payment details from Your account and will share that information with other organisations and, if any of You and / or Your principal directors’ details are false or inaccurate and We reasonably suspect fraud, this will also be recorded. We will also be entitled in our sole but reasonable discretion to alter Your payment terms at any time upon providing You with such prior notice as is reasonable in the circumstances.
- 8.3. Each time any given Transaction is conducted, You will incur a corresponding Charge. Alternatively, you may wish to pre-purchase Transaction credits for each month of the Agreement or such other period as is agreed between us, in which case We will allocate to You a corresponding number of Transaction credits for that period, 1 SMS message Transaction, for example, costing 1 corresponding unit Charge in pence (subject to any variation thereof) and allowing You to send 1 SMS message using the Service. Each Transaction that You conduct using the Service will therefore reduce the value of the Transaction credits available to You by 1 corresponding unit Charge in pence (subject to any variation thereof).
- 8.4. Any Transaction credits purchased by You are only valid for the period in respect of which they have been allocated and any additional Transactions that You conduct in such period over and above Your allocation shall be additionally charged by Us at the applicable tariff rate set out in the Signature Page (subject to any variation thereof). Any such additional Customer Charges will be invoiced to You by Us at the end of the month in which they arise.
- 8.5. You shall be solely responsible, by seeking adequate Transaction credit allocation(s) and checking Your remaining available Transaction credit level on Our website at [www.adikat.ie](http://www.adikat.ie), for ensuring that You have enough Transaction credits to meet Your requirements from time to time and We shall not be in any way responsible or liable in the event that You have insufficient Transaction credits to meet Your requirements, and / or have exceeded Your Transaction credit allocation(s), for any period.
- 8.6. For the avoidance of doubt, a Charge will be incurred for every Transaction conducted by You regardless of whether it is successful.
- 8.7. If You do not pay any Customer Charges in accordance with the applicable payment terms, We reserve the right to, in Our sole discretion:
- 8.7.1. use any pre-payment or deposit that You have provided to Us as full or part payment of the outstanding sum;

- 8.7.2. suspend Your access to the Service and / or cease to allow any Transactions to be conducted by You until payment of the outstanding sum is received by Us in full and cleared funds from You; and / or
- 8.7.3. without prejudice to any of Our rights under the Late Payment of Commercial Debts (Interest) Act 1998, to charge interest on the outstanding sum, calculated at the rate of 8% per annum above the base rate of the European Central Bank applying from time to time to run from the due date for payment until receipt by Us of the outstanding sum in full and cleared funds whether or not after judgment and without prejudice to any of Our other rights or remedies.
- 8.8. We may vary any of the Customer Charges on giving You not less than 90 days' written notice. If You do not agree with any proposed Charge variation, You have the right to terminate the Agreement on giving Us no less than 30 days' written notice, such notice to take effect no sooner than the date on which the Charge variation was to become effective.

## 9. Marketing

- 9.1. You agree to issue with Us a joint press release and / or an Adikat blog entry regarding this Agreement within a reasonable time after the Effective Date of this Agreement. Any press releases concerning this Agreement must be approved in writing by both parties prior to release.

## 10. Your Liabilities and Obligations

- 10.1. You warrant that You will not:
  - 10.1.1. use the Service and / or the Free Service or permit the Service and / or the Free Service to be used to send messages, voicemails, faxes and / or voice calls (as applicable) to any end-user without that end-user's explicit request for or prior consent to receiving them. Prior to You sending any message, voicemail, fax and / or voice call (as applicable) for commercial purposes to any of Your end-users who have explicitly requested that You send or otherwise provide explicit prior consent to You sending such a message, voicemail, fax and / or voice call (as applicable) for commercial purposes, You must give those end-users the right to opt out of receiving any further messages, voicemails, faxes and / or voice calls (as applicable) sent by You for commercial purposes (and You shall promptly process any end-user's election to opt out);
  - 10.1.2. use the Service and / or the Free Service or permit the Service and / or the Free Service to be used to convey messages, voicemails, faxes and / or voice calls (as applicable) to any end-user, the frequency and number of which is excessive in Our reasonable opinion;
  - 10.1.3. use the Service and / or the Free Service or permit the Service and / or the Free Service to be used for any improper, fraudulent, immoral or unlawful purpose;
  - 10.1.4. use the Service and / or the Free Service or permit the Service and / or the Free Service to be used for the transmission of any material which is of a defamatory, offensive, abusive, obscene or menacing character or nature;
  - 10.1.5. use the Service and / or the Free Service or permit the Service and / or the Free Service to be used in a manner that infringes the intellectual property rights or any other proprietary rights of any third party; or
  - 10.1.6. use the Service and / or the Free Service or permit the Service and / or the Free Service to be used in a manner that may injure or damage any person or property or cause the quality of the Service and / or the Free Service to be impaired.
- 10.2. You will at all times during the continuation of the Agreement:
  - 10.2.1. send only messages, voicemails, faxes and / or voice calls (as applicable) that comply with all applicable laws, regulations and Codes and that contain nothing which is likely to cause offence in view of the generally prevailing standards of decency and propriety from time to time;
  - 10.2.2. comply with all reasonable directions and instructions issued by Us from time to time in relation to the Service and / or the Free Service;
  - 10.2.3. comply with and observe at all times all applicable laws, regulations and Codes and any directions, recommendations and decisions of any Regulator; and
  - 10.2.4. not act in any manner likely to bring Us, the Service, the Free Service or any Network Operator into disrepute.
- 10.3. You will, upon request, provide Us or any Network Operator or Regulator with any information relating to Your use of the Service and / or the Free Service that the requesting party

- reasonably requires. You are responsible for ensuring that any information relating to Your end-users, including (but not limited to) Your end-user Data, is accurate and complete.
- 10.4. You will not state or imply any approval by Us of any particular message, voicemail, fax and / or voice call (as applicable) that You send using the Service and / or the Free Service or refer to Us in any way without Our prior written approval.
- 10.5. Where requested by Us, You will promptly provide Us with a representative Forecast of Your Service and / or Free Service needs for the requested period, including (but not limited to) all reasonable details required for Us to plan network capacity requirements.
- 10.6. We may, at Our sole discretion:
- 10.6.1. cease to convey, and You will promptly cease to transmit at Our request, any message, voicemail, fax and / or voice call (as applicable); or
- 10.6.2. cease to enable, and You will promptly cease to carry out at Our request, any GSM or GPS device location detection (if applicable), which We reasonably consider to be in breach of the Agreement.
- 10.7. You will not acquire any title or other proprietary right to any intellectual property, including (but not limited to) any patents, knowhow, registered or unregistered trademarks, design rights or copyright, relating to the Service and / or the Free Service, nor will You cause or knowingly permit anything to be done which may in any way damage or endanger any such intellectual property. You will notify Us of any suspected infringement of Our intellectual property of which You become aware and will take all reasonable action as We may direct in relation to that suspected infringement.
- 10.8. You warrant that You are the sole owner or licensor or all rights in Your End-User Data or You have obtained all necessary rights, licences and consents from all relevant third parties to enable You, Us and Our sub-contractors to use the End-User Data for the purposes of the Agreement.
- 10.9. Without prejudice to any other rights or remedies available to Us under the Agreement or at law, You shall fully indemnify Us for all liabilities, losses, damages, costs and expenses suffered or incurred by Us as a result of any breach by You or any of Your officers, employees or sub-contractors of any term(s) or condition(s) of the Agreement.
- 11. Our Liability to You**
- 11.1. Nothing in the Agreement will in any way exclude or limit either party's liability for death or personal injury caused by its negligence, for fraudulent misrepresentation or concealment or for any other liability that cannot be excluded or limited at law.
- 11.2. We will not be in any way liable to You for any liabilities, losses, damages, costs and / or expenses incurred or suffered by You as either a Customer and / or a Non-Paying Customer as a result of Your use of the Service and / or the Free Service, except to the extent that such liabilities, losses, damages, costs and / or expenses directly result from Our negligence or wilful misconduct.
- 11.3. We will not be in any way liable for the content of any messages, voicemails, faxes and / or voice calls (as applicable) sent or transmitted using the Service or for any use of the Service by You as either a Customer or a Non-Paying Customer to detect the location of any GSM or GPS device(s)], nor will We be in any way liable for any failure to make the Service and / or the Free Service available to You to the extent that such failure results from a technical or other failure on the part of any Network Operator or any other event which is beyond Our reasonable control.
- 11.4. As a Customer, except as otherwise expressly provided in the Agreement Our aggregate liability to You in contract, tort, negligence or otherwise arising under or in connection with the Agreement shall be limited to the higher of:
- 11.4.1. the total Customer Charges paid by You under the Agreement in the preceding 12-month period or, where You are prepurchasing Transaction credits, the total value of Transaction credits pre-purchased by You under the Agreement (excluding any additional Customer Charges paid) in the preceding 12-month period; or
- 11.4.2. the actual proceeds received by Us under Our professional indemnity policy (or other relevant insurance policy) in respect of the liability in question.
- 11.5. As a Non-Paying Customer, due to Our provision of the Free Service, We are not in any way liable to You in contract, tort, negligence or otherwise under or in connection with the Agreement.
- 11.6. Subject to any express provision to the contrary in the Agreement, neither You (as either a Customer or a Non-Paying Customer) nor We will in any circumstances be liable in contract,



tort, negligence or otherwise for any economic loss (including, but not limited to, any loss or profits, business, contracts, revenue, turnover or anticipated savings) or for any indirect or consequential losses, whether or not they were foreseen or foreseeable.

- 11.7. Each of us acknowledges that neither You (as either a Customer or a Non-Paying Customer nor We have entered into the Agreement on the basis of or in reliance upon any representation (save for any representation made fraudulently), warranty or other term except as otherwise expressly provided in the Agreement and, as such, all conditions, warranties and other terms implied by statute, common law or otherwise are hereby excluded to the greatest extent permitted by law.

## 12. **Contract Period and Termination**

- 12.1. Unless otherwise set out in the Signature Page and subject to earlier termination in accordance with these Terms and Conditions, the Agreement is for an initial minimum 12-month period (the "Initial Term"). The Initial Term will start on the Start Date and expire on the End Date. On the expiry of the Initial Term the Agreement will continue automatically unless and until We give You 30 days' written notice or either You or We otherwise terminate the Agreement in accordance with these Terms and Conditions. [If at any time during the Initial Term You request that We make available any additional component(s) as part of the Service or remove any component(s) from the Service and We agree to such addition or removal, the Initial Term shall restart from the date such addition or removal takes effect and, from that Start Date:
- i. references in the Agreement to the "Service" shall mean all or any component part(s) of the Service as altered;] and
  - ii. if you are a Customer the Customer Charges shall be correspondingly altered.
- 12.2. If at any time You wish to terminate the Agreement, You must either:
- i. give Us written notice to that effect within the 7-working day period from and including the Start Date set out in the Signature Page, such notice to take effect immediately; or
  - ii. give Us no less than 30 days' written notice, such notice to take effect no sooner than the End Date set out in the Signature Page (subject to any variation thereof). If You wish to terminate the Agreement with effect from any date preceding such End Date and are unable to do so for cause or any other reason under these Terms and Conditions, if you are a Customer under the Agreement then You must pay Us the Customer Charges due for each month (or part thereof) remaining of the minimum 12-month period post-termination, such Customer Charges to be calculated on the basis of the monthly Customer Charges as set out in the Signature Page (as varied if applicable), and any prepayment of Customer Charges that You have made to Us will not be credited or refunded.
- 12.3. Either party may also terminate this Agreement with immediate effect by notice to the other party if:
- 12.3.1. the other party becomes insolvent, makes any arrangement with or for the benefit of its creditors, goes into compulsory or voluntary liquidation, has a receiver, administrative receiver, liquidator or other similar official appointed over its assets, is subject to an administration or similar order or ceases trading;
  - 12.3.2. the other party commits a material breach of the Agreement and (where such breach is capable of remedy) fails to remedy the breach within 14 days of a written notice from the party not in breach requiring its remedy; or
  - 12.3.3. any licence required for Us to operate the Service and / or the Free Service is revoked, terminated or modified or, in the case of new licence requirements being imposed, the applicable licence:
    - i. is not granted to Us; or
    - ii. is granted to Us but in such a way as to prevent Us from continuing to make the Service and / or the Free Service available or a Network Operator from enabling Us to make the Service and / or the Free Service available.
- 12.4. We may terminate the Agreement immediately on giving You 14 days' written notice in the event that any relevant legislation of regulation is implemented or modified with the effect that it is no longer commercially viable or possible for Us to make the Service and / or the Free Service available.
- 12.5. If you are using the Free Service under this Agreement You acknowledge that We reserve the right to, at Our absolute discretion, stop providing the Free Service to You on either a temporary or a permanent basis for any reason whatsoever without any prior notice

- 12.6. Termination of the Agreement for any reason does not affect any rights that have accrued to either party under the Agreement up to the date of its termination and those terms and conditions of the Agreement that are by their nature capable of surviving termination will continue in full force and effect following such termination.
- 12.7. On termination of the Agreement:
- 12.7.1. You will immediately cease to use the Service and / or the Free Service; and
- 12.7.2. all monies then owing to Us under or in connection with the Agreement will become immediately due and payable.

### 13. Force Majeure

- 13.1. Neither party will be liable for any delay in the performance of or any failure to perform any of its obligations under this Agreement that is caused by any event which is beyond its reasonable control, including, but not limited to, the failure, malfunction or unavailability of necessary telecommunications, data communications and / or computer services, power supply failures or shortages, acts or omissions of third parties (including, but not limited to, Network Operators), acts of government or Regulators or telecommunications network congestion.

### 14. Assignment

- 14.1. Neither party will assign, transfer or sub-contract either in whole or in part any of its rights or obligations under the Agreement without the other party's prior written consent (not to be unreasonably withheld or delayed), provided that We shall be entitled without Your consent to assign, transfer or sub-contract in whole or in part any of Our rights or obligations under the Agreement to any company that is, or is a subsidiary of, Our ultimate holding company (as defined in section 736 of the Companies Act 1985).

### 15. General

- 15.1. Any notices to be given under the Agreement will be given in writing to the addressee at its address, its fax number or its email address as set out in the Agreement and will be deemed to have been received within 48 hours of posting first class or within 24 hours of sending if sent by facsimile transmission or email to the correct fax number or email address of the addressee.
- 15.2. Nothing in the Agreement will be deemed to constitute a partnership or joint venture between the parties or constitute any party the agent of the other party.
- 15.3. Any failure by either party to enforce any of the terms or conditions of the Agreement at any time will not be a waiver of those terms or conditions or of the right to subsequently enforce those or any other terms and conditions of the Agreement at any time.
- 15.4. In the event that any of the terms or conditions of the Agreement are held to be invalid or unenforceable, this will not affect the validity or enforceability of all remaining terms and conditions.
- 15.5. The Agreement constitutes the entire understanding between the parties and supersedes all previous agreements, arrangements, representations and understandings between the parties relating to the subject matter of the Agreement, provided that We may make changes to any terms of the Agreement from time to time. We will post the updated terms on Our website at [www.adikat.ie](http://www.adikat.ie) and notify You of the material changes We have made (if any). Wherever reasonably possible, We will try to notify You in advance of any material changes to the terms of the Agreement but this may not always be possible (for instance where the updates are required to take account of a change in law). If We make any change to the terms of the Agreement (other than to the Customer Charges) which is to Your significant disadvantage, and which materially affects the Service or the way in which You use them, You will be entitled to terminate the Agreement within 30 days of receiving notice of the change or within 30 days of the change being posted on Our website at [www.adikat.ie](http://www.adikat.ie) where no notice is sent.
- 15.6. A party who is not a party to the Agreement has no right to enforce or rely on any term or condition of the Agreement under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 15.7. The Agreement is governed by and shall be construed in accordance with the laws of Ireland and the parties hereby submit to the non-exclusive jurisdiction of the Irish courts.