

SCHEDULE 3.5(B) – MOBILE INCENTIVES

1. APPLICATION

- 1.1 This schedule forms part of the Agreement entered between the Parties together with the General Conditions and other documents listed at clause 1.4 of the General Conditions.
- 1.2 Definitions and interpretations that are specific to this schedule are set out in Annex 1 and apply in addition to the definitions and interpretations set out in **Schedule 1 (Definitions)** of the General Conditions.

2. SERVICE DESCRIPTION

- 2.1 These terms and conditions apply to the following incentives which the Supplier offers in conjunction with the sale of mobile services and will apply where stated on the Order:
- 2.1.1 Hardware Credits; and
- 2.1.2 Cash Back Payments (“Incentives”).
- 2.2 The Customer will enter into an Airtime Agreement directly with the Network Provider and the Customer shall be responsible for all aspects (including the management) of that Airtime Agreement. The Supplier shall assist the Customer wherever possible in the management of the Airtime Agreement.

3. HARDWARE

- 3.1 Where the Supplier provides Hardware to the Customer for use with the Network Mobile Services, it is supplied subject to clause 4 of the General Conditions. This paragraph 3 is supplemental to clause 4 of the General Conditions and is not intended to supersede it except where there is an express conflict.
- 3.2 Where the Supplier provides the Customer with Hardware free of charge, the Supplier is providing the Hardware in consideration for the Customer fulfilling its commitments as set out in this Agreement and the Airtime Agreement including but not limited to:
- 3.2.1 paying all Charges due to the Network Provider in relation to the Network Mobile Services; and
- 3.2.2 achieving any applicable Minimum Spend, Minimum Holding or Minimum Period.
- 3.3 Where the Customer fulfils its commitments as detailed at paragraph 3.2 then upon expiry of the Airtime Agreement and this Agreement, title to the Hardware will pass to the Customer.
- 3.4 In the event the Customer does not fulfil its commitments to the Supplier and Network Provider as detailed at paragraph 3.2, the Customer shall be required to return the Hardware to the Supplier upon expiry and/or termination of the Airtime Agreement and this Agreement. Should the Customer fail to return the Hardware within 30 days of a request by the Supplier, the Supplier shall be entitled to invoice the Customer a sum equal to the value of the Hardware as at the date it should have been returned (“**Non-Return Charge**”) which shall be payable in accordance with clause 6 of the General Conditions.
- 3.5 Where the Supplier provides Hardware to the Customer free of charge, it shall endeavour to supply the same as soon as practicable and reserves the right to alter specifications or designs at any time to meet such delivery target.

4. INCENTIVES

HARDWARE CREDITS

- 4.1 Where the Supplier has agreed to pay the Customer a Hardware Credit, the amount of the Hardware Credit and the

dates upon which it is redeemable shall be detailed in the Order.

- 4.2 The Suppliers obligation to make payment of the Hardware Credit shall be subject to the Customer fulfilling its commitments as set out in the Airtime Agreement and this Agreement including but not limited to:
- 4.2.1 paying all Charges due to the Network Provider in relation to the Network Mobile Services; and
- 4.2.2 achieving any applicable Minimum Spend, Minimum Holding or Minimum Period.
- 4.3 Hardware Credits can be used by the Customer to purchase any Hardware available to purchase from the Supplier.
- 4.4 The Customer must redeem the Hardware Credits prior to the expiry or termination of the Airtime Agreement. If the Customer fails to do it shall be deemed to have waived its right to the Hardware Credit.
- 4.5 Where the Customer enters into a subsequent Airtime Agreement and/or an Agreement with Chess for the provision of services which replace the Mobile Network Services then the Customer shall not be permitted to carry over the balance of its Hardware Credit it has yet to redeem unless otherwise stated agreed in writing by the Supplier
- 4.6 The Supplier shall be entitled to set off any Hardware Credit due to the Customer under this Agreement against any outstanding balance due to the Supplier by the Customer under this Agreement or any other agreement between the Supplier and the Customer.
- 4.7 The Supplier shall be entitled to Clawback an amount equal to the Hardware Credit(s) paid to the Customer under this Agreement where the Airtime Agreement is terminated by the Customer or terminated by the Network Provider due to breach by the Customer prior to achieving any Minimum Spend or Minimum Holding, or prior to the expiry of the Minimum Period.

CASH BACK PAYMENT

- 4.8 Where the Supplier has agreed to pay the Customer a Cash Back Payment, the amount of the Cash Back Payment and the dates upon which it is redeemable shall be detailed on the Order.
- 4.9 The Suppliers obligation to make payment of the Cash Back Payment shall be subject to the Customer fulfilling its commitments as set out in the Airtime Agreement and this Agreement including but not limited to:
- 4.9.1 paying all Charges due to the Network Provider in relation to the Network Mobile Services; and
- 4.9.2 achieving any applicable Minimum Spend, Minimum Holding or Minimum Period.
- 4.10 The Customer must redeem the Cash Back Payments prior to the expiry or termination of the Airtime Agreement. If the Customer fails to do so it shall be deemed to have waived its right to the Cash Back Payment.
- 4.11 The Supplier shall be entitled to set off any Cash Back Payment due to the Customer under this Agreement against any outstanding balance due to the Supplier by the Customer under this Agreement or any other agreement between the Customer and the Supplier.
- 4.12 The Supplier shall be entitled to Clawback an amount equal to the Cash back Payment paid to the Customer under this Agreement where the Airtime Agreement is terminated by the Customer or terminated by the Network Provider due to breach by the Customer prior to achieving any Minimum

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Spend or Minimum Holding, or prior to the expiry of the Minimum Period.

- 4.13 The amount of the Cash Back Payment will remain static for the duration of the Airtime Agreement and the Customer acknowledges and agrees that the overall cost of the Mobile Network Services will not necessarily remain static as the Network Provider may increase its charges which are payable by the Customer. It is further agreed by the Customer that the Supplier has not agreed to any increase to the Cash Back Payments in the event the Network Provider increases the charges payable by the Customer under the Airtime Agreement.

5. LIABILITY

- 5.1 This paragraph 5 is supplemental to clause 9 of the General Conditions and is not intended to supersede it except where there is an express conflict.
- 5.2 The Supplier's liability in tort, contract or otherwise arising out of or in connection with the performance of its obligations under this Agreement shall be limited in aggregate to a sum equal to the Incentives stated in the applicable Order.
- 5.3 Subject to paragraphs 5.7 and 5.8 and excluding any payment obligations provided in this Agreement, the Customer's liability in tort, contract or otherwise arising out of or in connection with the performance of its obligations under this Agreement shall be limited in aggregate to a sum equal to the Incentives stated in the applicable Order.
- 5.4 The Customer agrees that the Supplier shall not be liable for any loss or costs suffered by the Customer:
- 5.4.1 following any loss by the Customer of Hardware and/or the unlawful use thereof by a third party; or
 - 5.4.2 resulting from loss of network service or other network issues (including the porting of numbers).
- 5.5 The Customer shall be liable for the costs incurred by the Supplier of obtaining PAC, MAC or similar codes required for the transfer of the Network Mobile Services.
- 5.6 The Supplier will be paid commission (initially and on an ongoing basis) by the Network Provider for introducing the Customer. Such commission may be subject to Clawback in certain circumstances due to the act or omission of the Customer, including if the Airtime Agreement is terminated or in respect of GSM Gateway or unauthorised use by the Customer.
- 5.7 The Customer shall indemnify the Supplier against any Clawback by the Network Provider in accordance with paragraph 5.4 above and shall immediately on demand pay to the Supplier an amount equivalent to the amount of which the Network Provider has Clawback from the Supplier.
- 5.8 The indemnity provided by the Customer to the Supplier at paragraph 5.6 shall not be subject to the limitations and exclusions applicable to the Customer's liability as detailed in clause 9 of the General Conditions and this paragraph 5 to the extent permitted by law.

ANNEX 1 - DEFINITIONS

"Airtime Agreement" means the Network Providers standard business airtime agreement as may be notified to the Customer by the Supplier or the Network Provider from time to time;

"Clawback" and **"Clawed Back"** mean the recovery or refund of incentives paid by the Supplier to the Customer;

"GSM Gateway" means any Equipment containing a SIM Card which enables the routing of Calls from fixed apparatus to Equipment by establishing a mobile-to-mobile Call or event;

"MAC" means a migration authorisation code;

"Minimum Term" means the period during which a Customer may not terminate the Airtime Agreement without incurring a termination fee as set forth in the Airtime Agreement;

"Network Mobile Service" or **"Network Mobile Services"** means all or part of the services provided by the Network Provider under the Airtime Agreement;

"Network Provider" means the provider of the Network Mobile Services and who is a party to the Airtime Agreement;

"PAC" means a porting authorisation code.