



Revised: 14-June-2010

# Fixed To Mobile Satellite Services

## Terms and Conditions of Service

The following terms and conditions ("Terms and Conditions") apply to fixed-to-mobile Inmarsat services provided to the customer ("Customer") by Stratos Wireless Inc. and/or Xantic Sales B.V. (collectively, "Stratos").

### Article 1 - The Services

- 1.1 Stratos shall provide the Customer with Inmarsat Services as agreed upon in the order form completed and executed by Customer and Stratos ("Order"). No Order shall be deemed final until executed by Stratos.
- 1.2 The Customer has the right to sell the Inmarsat Services in its own name to subscribers, being a consumer or legal entity ("Subscriber") on a non-exclusive basis in accordance with these Terms and Conditions.

### Article 2 – Duration and Termination

- 2.1 These Terms and Conditions shall become effective upon the execution by Stratos of an Order ("Effective Date") and shall remain in effect for as long as such Order and, as applicable, succeeding Orders remain in effect ("Term").

### Article 3 – Pricing, Billing and Payment

- 3.1 The prices for the Inmarsat Services are set out in the Order.
- 3.2 Stratos shall render monthly invoices to the Customer for the Inmarsat Services. The Inmarsat Services shall be invoiced per minute. The monthly invoice shall contain a detailed summary of the Inmarsat Services and the amounts due in accordance with these Terms and Conditions.
- 3.3 Unless agreed stated in the Order, the amount due shall be stated on the invoice in USD (\$), and payment shall be made in the same currency to Stratos's bank account mentioned on the invoice, within 30 days after the invoice date ("Due Date").
- 3.4 Without prejudice to Stratos's other rights, amounts not paid by the Due Date will be subject to an interest charge of the lesser of (1) one and one-half percent (1.5%) per calendar month or (2) the highest rate permitted by law.
- 3.5 If any portion of the amount invoiced is subject to a bona fide dispute by Customer, Customer must, within thirty (30) days of its receipt of the invoice containing such disputed amount, give notice to Stratos of the amount it disputes ("Disputed Amount") and include in such notice the specific details and reasons for disputing each item. If the Disputed Amount is resolved in favor of Stratos, Customer must pay the Disputed Amount together with interest as provided in Article 3.4 upon final determination of such dispute. Stratos will issue any applicable credits to Customer upon resolution of any disputes in favor of Customer. An invoice is deemed to be accepted if no written notice of a dispute is provided before the invoice due date. The submission of a dispute objection shall not entitle the Customer to suspend payment of the undisputed part of an invoice.
- 3.6 Stratos may amend the charges and/or rates in connection with the Inmarsat Services by giving thirty (30) days prior written notice. An amendment of the rates and/or charges shall come into effect on the date determined by Stratos.
- 3.7 For the purposes of calculating the amounts due by the Customer under these Terms and Conditions, the information kept by Stratos shall be final and conclusive in determining such amounts. Stratos shall compile such information with the care that may reasonably be expected in comparable circumstances.

### Article 4 – Inmarsat Provisions

- 4.1 Stratos reserves all rights to suspend any provision of the Inmarsat Services temporarily and/or to restrict the use of the Inmarsat Services if the Customer fails to meet any payment or other obligation towards Stratos in connection with these Terms and Conditions.



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- 4.2 In order to safeguard the integrity of the Inmarsat Services, Stratos shall always have the right to take all measures and/or to give any instruction to the Customer that Stratos deems necessary in order to prevent and/or correct faults in the Inmarsat Services. The Customer hereby agrees to follow all such reasonable instructions to prevent and/or correct such faults.

#### **Article 5 – Obligations of the Customer**

- 5.1 The Customer shall:
- (a) pay Stratos charges for the Inmarsat Services as invoiced;
  - (b) in performing under these Terms and Conditions, comply with the provisions of all relevant national and/or international laws and/or regulations;
  - (c) comply with any reasonable procedural, administrative, technical and/or operational instructions, given by or on behalf of Stratos; and
  - (d) not publish and/or use, without the prior written consent of Stratos, any trademark, trade name logo and/or service mark of Stratos and/or its affiliates and/or holding companies.

#### **Article 6 – Financial Issues**

- 6.1 Any applicable government taxes, charges, duties and fees, whether charged to Stratos and/or to the Customer, in relation to the Inmarsat Services under these Terms and Conditions, are payable by the Customer (to Stratos directly, as the case may be) in addition to the fees due by the Customer. If any withholding tax is payable, the gross amount due to Stratos is to be adjusted so, that the net amount paid to Stratos (after deduction of withholding tax) is equal to the gross amount due to Stratos before adjustment.
- 6.2 In the event that any tax, duty, impost, levy or the like charge becomes payable in any territory, either by deduction or otherwise, on or in respect of any amount to be paid by Company to Stratos, or which Company may be required to withhold in respect of any amount due to Stratos, such tax, duty, impost levy or like charge shall be for the account of Company and Company shall pay to Stratos such an amount as to yield to Stratos a net equal to the amount that but for such tax, levy, impost or charge would have been received by Stratos. Stratos will provide reasonable assistance to Company to minimize the amount of such withholdings or deductions, including providing any relevant certification of its status as a non-resident or a jurisdiction or of its entitlement to benefits under a treaty.
- 6.3 During the Term, Stratos has the right to request that the Customer provide Stratos with an irrevocable and unconditional bank guarantee for an amount equal to three (3) months invoices. The bank shall guarantee to pay all sums payable by the Customer under these Terms and Conditions at first demand of Stratos, without set off or other deduction.
- 6.4 The bank guarantee referred to in Article 6.2 shall be supplied by a bank to be approved by Stratos in advance in writing.
- 6.5 The bank guarantee referred to in Article 6.2 shall be valid for the duration of the Term and a further six months after the termination or expiration of the Term, at which point Stratos shall return it immediately, provided the Customer has settled all outstanding invoices.
- 6.6 If the Customer fails to pay any amount, which it owes under these Terms and Conditions, Stratos shall be entitled to use the bank guarantee for the sums payable by the Customer. A written request of payment by a duly authorised representative of Stratos stating the amount so payable shall be conclusive unless manifestly incorrect.

#### **Article 7 - Termination**

- 7.1 Either Party may terminate an Order, and its obligations under these Terms and Conditions, with immediate effect, by giving notice in writing to the other Party, in the event that:
- (a) a Party becomes subject to any form of insolvency procedure under any law, including but not limited to suspension of payment order;
  - (b) a Party ceases its activities, liquidates its assets and/or enterprise and/or if the other Party transfers its business activities.
  - (c) the other Party violates a non-disclosure obligation;
  - (d) a government regulator with jurisdiction over a Party issues a determination, notice and/or direction in respect of and/or relating to these Terms and Conditions and/or the Services;
  - (e) a force majeure event occurs pursuant to Article 12, which subsists for a continuous period exceeding three (3) months.
- 7.2 Stratos may terminate any Order, and its obligations under these Terms and Conditions, with immediate effect by giving notice in writing to the Customer in case of:
- (a) material breach of these Terms and Conditions by the other Party (“defaulting party”) that has not been



remedied within twenty (20) days after receipt of written notice from Stratos, provided that such notice period will be ten (10) days in the case of a failure to pay amounts under the Order or these Terms and Conditions; or

(b) material breach of these Terms and Conditions by the Customer that is not capable of cure.

#### **Article 8 – Authorisations and Acknowledgements**

8.1 The Customer shall obtain and maintain all necessary approvals, authorisations or licences from all such regulatory agencies, authorities or tribunals as are necessary to provide the Inmarsat Services.

#### **Article 9 – Limitation of Liability**

- 9.1 STRATOS WILL NOT BE LIABLE TO COMPANY OR ITS CUSTOMERS FOR ANY LIABILITY, CLAIMS, EXPENSES, COSTS OR DAMAGES, WHETHER DIRECT OR INDIRECT, SUSTAINED BY REASON OF ANY DEGRADATION, FAILURE, BREAKDOWN OR INTERRUPTION OF THE SERVICES PROVIDED UNDER THESE TERMS AND CONDITIONS, OR THE TELECOMMUNICATIONS SYSTEMS UTILIZED IN PROVIDING SUCH SERVICES, REGARDLESS OF THE CAUSE OF SUCH DEGRADATION, FAILURE, BREAKDOWN OR INTERRUPTION AND REGARDLESS OF HOW LONG IT LASTS.
- 9.2 NOTWITHSTANDING ANY OTHER PROVISION OF THESE TERMS AND CONDITIONS, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, ECONOMIC OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION, DAMAGES ARISING OUT OF LOSS OF DATA, LOSS OF INCOME, LOSS OF PROFIT OR FAILURE TO REALIZE EXPECTED SAVINGS, FORESEEABLE OR NOT, ARISING FROM ITS PERFORMANCE OR NON-PERFORMANCE OF ITS OBLIGATIONS UNDER THESE TERMS AND CONDITIONS, WHETHER THROUGH NEGLIGENCE OR OTHERWISE.
- 9.3 EXCEPT AS SPECIFICALLY SET FORTH IN THESE TERMS AND CONDITIONS, STRATOS DOES NOT MAKE ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND THOSE ARISING FROM A COURSE OF PERFORMANCE OR DEALING, TRADE USAGE OR OTHERWISE. EXCEPT AS SPECIFICALLY SET FORTH IN THESE TERMS AND CONDITIONS, STRATOS DOES NOT WARRANT THAT THE SERVICES WILL OPERATE UNINTERRUPTED OR ERROR FREE, THAT ALL DEFICIENCIES, ERRORS, DEFECTS OR NON-CONFORMITIES WILL BE CORRECTED, OR THAT THE SERVICES WILL MEET WITH THE COMPANY'S SPECIFIC REQUIREMENTS.
- 9.4 The limitations of liability of Articles 9.1, 9.2 and 9.3 shall apply to any claim by Customer against a supplier of services to Stratos. The Customer shall incorporate in the terms and conditions applicable to any agreement with its Subscribers, agents and resellers, the disclaimers of liability that it has agreed to under these Terms and Conditions together with the other terms and conditions affecting the Subscribers, agents and/or resellers.
- 9.5 The total aggregate liability of Stratos to Customer for any and all claims whatsoever related to the services hereunder or these Terms and Conditions for damages to Customer (or to any affiliate of Customer) for any claims whatsoever, regardless of the form of action, whether in contract, tort (including negligence), or otherwise, however arising will be limited to damages actually proven as directly attributable to Stratos, and further limited to an amount equal to the last three (3) months of payments made by Customer to Stratos under these Terms and Conditions preceding the date of any claim made against Stratos.
- 9.6 Nothing in these Terms and Conditions shall exclude or limit liability:
- (a) for any amounts due and payable for the services hereunder; or
  - (b) under Article 9.8 (Indemnification) or Article 11 (Confidentiality).
- 9.7 Nothing in this Article 9 will exclude or limit either Party's liability for death or personal injury resulting from its own negligence in any jurisdiction where, as a matter of law, such liability cannot be excluded or limited.
- 9.8 Indemnification. Customer will defend, indemnify and hold harmless Stratos from and against any and all liabilities, costs, damages, fines, assessments, penalties, and expenses (including reasonable attorney's fees), including in connection with claims by Subscribers of Customer or other third parties, resulting from:
- (a) breach of these Terms and Conditions by Customer, its employees or agents;
  - (b) misrepresentation, negligence, or illegal act of Customer, its employees or agents, arising out of Customer's performance hereunder; or
  - (c) infringement of patent, copyright, or other intellectual property right by the services or facilities of Stratos, except to the extent such infringement results from combination of such services or facilities with the services or facilities of Customer.

#### **Article 10 – Assignment and Change of Control**

10.1 All rights and/or obligations of Stratos under these Terms and Conditions may be exercised by it and/or any appointee (being any agent, distributor and/or sub-contractor appointed by Stratos), as may be appointed



by it. Furthermore, all releases, pleas and/or other benefits in favourable to Stratos shall apply to such appointees, where applicable.

- 10.2 Each Party has the right to assign and/or transfer the burden and/or benefit of these Terms and Conditions by giving one month written notice of such assignment to the other Party. In the event that any such assignment takes place, the assignor shall remain fully liable for the performance of these Terms and Conditions.
- 10.3 Neither Party shall be entitled to terminate an Order or these Terms and Conditions in case of any change of control in either of the Parties, its affiliates and/or shareholders.

#### **Article 11 - Confidentiality**

- 11.1 All Confidential Information must be treated by the Parties as information confidential to the other Party. The Parties shall not disclose any Confidential Information to any person except as permitted under this Article. This clause survives for a period of three years after the expiry or termination of these Terms and Conditions.
- 11.2 These Terms and Conditions do not prohibit the disclosure of Confidential Information:
- (a) which is required to be disclosed by law, provided that the disclosing Party has given the other Party sufficient notice to enable the other Party to seek a protective order or other relief from such disclosure; or
  - (b) in respect of which the non-disclosing Party has given its written consent (which consent may be given or withheld in its absolute discretion).
- 11.3 On expiry or termination of an Order or these Terms and Conditions, the Parties shall return to each other all documents (including copies) and/or information, which are reasonably assumed to be Confidential Information.

#### **Article 12 – Force Majeure**

- 12.1 The Parties shall be entitled to invoke force majeure if the execution and/or the performance of an Order or these Terms and Conditions is, in whole or in part, temporarily or not, prevented or impeded by extraordinary circumstances reasonably beyond its control, including but not limited to (i) site or building blockades, acts of terrorism, strikes, riots, civil disruption, war, inclemency, epidemic, specific work interruptions, delay in transportation, earthquake, fire, storm, flood, water damage, (ii) delay in and/or cancellation of the delivery to Stratos of parts, goods or services ordered from third parties, delay or interruption in and/or cancellation of the provision to Stratos of transponder capacity, (iii) governmental, legal or regulatory restrictions and/or acts of God.
- 12.2 Any Party whose ability to perform is affected by a force majeure event shall take all reasonable steps to mitigate the impact of such event.
- 12.3 The Party affected by the force majeure shall give notice within (5) five working days since the event has occurred. Failure to give notice shall not affect the right to invoke this Article.

#### **Article 13 - Act or Decisions of Inmarsat**

- 13.1 In the event that any term or condition herein cannot be performed by Stratos as a result of an act or decision of Inmarsat, the non-performance shall not be deemed to be a breach of these Terms and Conditions in the event that the act or decision of Inmarsat is a result of an act or omission of the Customer or, as the case may be, its Subscribers and Stratos shall not incur any liability for damages or otherwise.

#### **Article 14 – Governing Law; Disputes**

- 14.1 These Terms and Conditions shall be governed by and construed in accordance with the laws of England and Wales and subject to the jurisdiction of the English courts, without regards to the conflicts of law principles thereof.
- 14.2 In the event of any dispute arising under these Terms and Conditions, including any allegation of breach and any failure to reach mutual agreement hereunder, the Parties shall refer the matter for consideration and resolution by the responsible executives of the Parties. The responsible executives shall use their best efforts to resolve the dispute amicably.
- 14.3 All controversies, disputes or claims arising out of or relating to these Terms and Conditions or the breach thereof which shall not have been amicably settled by the Parties shall be exclusively and finally settled in any court of competent jurisdiction in England.

#### **Article 15 – Contact Persons and Notices**

- 15.1 Each Party has appointed a contract manager who shall act as its contact person for the other Party in matters relating to these Terms and Conditions, which details are set out in the Order form.



- 15.2 Unless agreed otherwise in writing, all notices required or permitted to be given under these Terms and Conditions shall be in writing and addressed to the other Party's general counsel.
- 15.3 Each Party may replace its own contract manager at any time by giving prior written notice in accordance with the provisions of this Article 15.
- 15.4 All notices required under these Terms and Conditions must be in writing in the English language and addressed to the recipient at the respective address or facsimile number set out in the Order form.
- 15.5 A letter, facsimile or e-mail is taken to be received:
  - (a) in the case of a posted letter, on the fifth day after posting;
  - (b) In the case of facsimile, on production of an entry in a transmission log kept by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient; or
  - (c) In the case of an email, on the date on which the email was successfully transmitted.

#### **Article 16 - Miscellaneous**

- 16.1 Each of the Parties is a legal entity separate and independent of the other. Nothing contained in these Terms and Conditions is to be construed or deemed to create a principal and agent relationship between the Parties and/or any form of partnership or joint venture. Neither Party has any authority to bind the other in any respect, except as specifically provided herein. Both Parties shall refrain from making any statements that suggest a more far-reaching form of co-operation with the other Party than is justified on the basis of these Terms and Conditions. In addition, the Parties shall refrain from actions which may reasonably be expected to harm the good name of the other Party among (potential) Customers and/or any other third party, especially where statements are concerned which can reasonably be expected to come to the knowledge of third parties.
- 16.2 The indemnities contained in these Terms and Conditions, including, without limitation, those contained in Article 9.8, are continuing obligations under these Terms and Conditions, separate and independent from the other obligations, and will survive for a period of three years from the termination and/or rescission of these Terms and Conditions.
- 16.3 Any failure of either Party to exercise its right and/or option under these Terms and Conditions, or to insist upon strict compliance with any provision of these Terms and Conditions, shall not constitute a waiver of these Terms and Conditions or any provision hereof with regard to any subsequent breach thereof.
- 16.4 If any provision of these Terms and Conditions is invalid, void, ineffective, unenforceable and/or illegal, such will not affect the validity and/or enforceability of the remaining provisions of these Terms and Conditions. In such a case, the Parties shall enter into good faith negotiations to amend such a provision in conformity with the original intents of the Parties.
- 16.5 In promoting and/or advertising its services Stratos and/or any of its direct or indirect subsidiaries shall be entitled to refer to the Customer as being a Customer of Stratos, unless otherwise advised in writing by the Customer, and this reference shall not constitute an infringement of the Customer's intellectual property rights.
- 16.6 These Terms and Conditions, together with the Order, constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all prior or contemporaneous correspondence, representations, proposals, negotiations, understandings or agreements of the Parties, whether oral or written. The Parties also hereby acknowledge that there are no collateral contracts between them with respect to the subject matter hereof and unless expressly stated to the contrary, nothing in these Terms and Conditions is intended to grant any third party a directly enforceable right under these Terms and Conditions.

#### **Article 17 - Interpretation**

- 17.1 In these Terms and Conditions, including the annexes thereto:
  - (a) "Terms and Conditions" means these Terms and Conditions together with the Order form and any and all annexes and appendices, which may be amended from time to time.
  - (b) "Confidential Information" means all information (regardless of form) including, without limitation, all statements, contracts or agreements, designs, specifications, drawings, reports, documents, technology, knowledge, know-how disclosed by one Party to the other Party at any time or known to a Party in relation to: the Order, these Terms and Conditions; or the contents of any Customer communication and all materials (regardless of form) generated by any person.
  - (c) "Inmarsat" means Inmarsat Ltd. A company incorporated under the laws of the United Kingdom, including its subsidiaries and affiliates.
  - (d) "Inmarsat Services" means any mobile satellite telecommunications service provided using the Inmarsat System, including but not limited to voice telephony, facsimile, telex, and data services.



- (e) "Inmarsat System" means the system of satellites and associated facilities operated by Inmarsat, as well as associated facilities operated by Stratos and other entities.
- (f) "Notice" means any notice required or permitted to be given under these Terms and Conditions.

**Article 18 – Restricted Destinations**

18.1 No Services shall be used in, or Equipment imported into, any country where doing so is a violation of applicable U.S. law, and no Services shall be used by, or Equipment transferred to, any person or entity identified on the U.S. Specially Designated Nationals (SDN) List. Without limiting the foregoing, in no instance shall Services be used in, or Equipment imported into, the following countries without the express written consent of Stratos, which will only be provided upon a showing that the proposed use or importation is licensed or otherwise authorized by the applicable authority: Cuba, Iran, Syria, Sudan and North Korea.

