

## Terms & Conditions to IRIDIUM CERTUS Services

These Terms & Conditions (hereinafter the “Terms & Conditions”) apply to any Iridium Certus Services (hereinafter the “Services”) the Customer orders and / or receives from Tototheo Middle East Limited and / or from any of its subsidiary, affiliated, associated or parent companies (hereinafter referred to either individually or collectively as the “Provider”).

### 1. DEFINITIONS

1.1. In these Terms & Conditions, the following words, expression or phrases shall have the following meanings:

- 1.1.1. **“Affiliate(s)”** means any natural or legal Person, now or hereafter existing, who directly or indirectly controls, is controlled by or is under common control with such Party, directly or indirectly, by possession of or being entitled to possess more than 50% of its voting rights, income or capital.
- 1.1.2. **“Broadband Core Transceiver”** or **“BCX”** means the core transceiver module, internal to Iridium Certus Value Added Manufacturer products, providing Iridium Certus Services.
- 1.1.3. **“Bypass”** means (i) any mechanism, including pricing differentials, intended to divert to any destination other than the Iridium Commercial Gateway any inbound Iridium Traffic originating from a Public Switched Telephone Network (“PSTN”) and/or other network and currently routed to the Iridium Commercial Gateway and then forwarded to Iridium subscribers; or (ii) any mechanism intended to bypass Iridium Commercial Gateway for routing of calls through the various PSTN, PLMN, PTT or IXC providers; or (iii) any other mechanism which Iridium or the Provider determines, in its sole judgment, constitutes network abuse or otherwise has a potentially damaging effect, including abnormal wear and tear, on the Iridium Communications System or causes or could potentially cause abnormal call Service performance or call and/or network congestion
- 1.1.4. **“Contract”** shall mean the accepted Proposal by the Customer, together with the Iridium Certus Activation Form and any Schedule(s) of listed vessels, entered into between the Customer and the Provider and these Terms and Conditions.
- 1.1.5. **“Customer”** any person or entity purchasing the Services as referred to in the Iridium Certus Activation Form or Contract from the Provider.
- 1.1.6. **“Effective Date”** means the date that the Services are activated. For the avoidance of doubt the Services shall be deemed activated when the SIM card is activated as per the information provided in the Iridium Certus Activation Form and/or any consequent written instructions provided by the Customer and agreed to by the Provider.
- 1.1.7. **“ICE”** or **“Iridium Compatible Equipment”** means an enhanced broadband terminal capable of connecting to the Iridium Communication System, or a terminal subsystem that incorporates or is used in conjunction with a BCX (or other ISU), including without limitation, antennae and other accessories, if applicable.
- 1.1.8. **“IMEI”** means the International Mobile Equipment Identity Numbers.

- 1.1.9. **“Intellectual Property”** means all intellectual property worldwide including, but not limited to, inventions, patents, copyrights (including renewal rights), trademarks, trade secrets, know-how, mask works, Proprietary Information, design rights, computer software (including source code), ideas, processes, discoveries, methods, and all other forms of intellectual property and any registrations or applications for registration thereof.
- 1.1.10. **“ISU” or “Iridium Subscriber Unit”** means the individual component (i.e., Broadband Core Transceiver, including new models and versions developed and introduced by Iridium Certus<sup>SM</sup> VAMs or Iridium) used within ICE for purposes of transmitting and/or receiving voice and/or data communications using the Iridium Communications System.
- 1.1.11. **“Proposal”** shall be the offer issued in writing by the Provider and sent to the Customer, by any means whatsoever, setting out the details regarding the Services to be offered which shall include, but shall not be limited to, the price, subscription service, equipment and term.
- 1.1.12. **“Iridium Certus Activation Form”** refers to the document setting out the details of the Services entered into with the Customer for specific vessels.
- 1.1.13. **“Person”** means an individual, corporation, limited liability company, syndicate, association, trust, partnership, joint venture, unincorporated organization, government agency or any agency, instrumentality or political subdivision thereof, or other entity.
- 1.1.14. **“Security Breach”** means
  - (i) any act or omission that compromises either the security, confidentiality or integrity of Personal Information or the physical, technical, administrative or organizational safeguards put in place by the Provider that relate to the protection of the security, confidentiality or integrity of personal information of a Customer or subscriber, or (ii) receipt of a complaint in relation to the privacy practices of Provider or a breach or alleged breach of this Agreement relating to such privacy practices.
- 1.1.15. **“Services”** means the Iridium Certus<sup>SM</sup> mobile satellite services
- 1.1.16. **“SIM”** means the Subscriber Identity Module used in connection with the Services.
- 1.1.17. **“Supporting Documentation”** means any documents that are attached hereto or are provided to the Customer in writing, and in any form, which shall form part of the Contract and shall be fully binding.
- 1.1.18. **“Term”** means the minimum period of the contracted Services as set out in the Proposal, Iridium Certus Activation Form or these Terms & Conditions or any other contract entered into in writing between the Provider and the Customer, which shall commence from the Effective Date.

In these Terms & Conditions:

- 1.2. headings are for convenience only and shall not affect the interpretation of any term and/or provision in the Terms & Conditions; and
- 1.3. any schedules attached to the Iridium Certus Activation Form shall form an integral part of the Terms & Conditions and shall be considered as being part of the Contract and shall be binding on both the Customer and the Provider.

1.4. amendments and revisions may be made to these Terms and Conditions.

## **2. ORDER**

- 2.1. The Terms and Conditions will apply to any of the Services selected by the Customer and as may be set out in the Iridium Certus Activation Form and any and all Schedules attached thereto listing the vessels and / or fleet of the Customer.
- 2.2. In order to enable the Provider to offer a Proposal the Customer must inform the Provider of the Services requested and any additional instructions along with the requested activation date for the Services.
- 2.3. Upon receipt of a Proposal for Services in writing from the Provider and upon acceptance and signature of same by the Customer in writing, the ordered Services shall be set out and indicated in the Iridium Certus Activation Form and signed by the Customer. The Customer may request a change to its ordered Services which are to be set out in the Iridium Certus Activation Form and the Provider will advise the Customer in writing as to the period within which such changes shall be implemented and any possible charges that will be incurred. Any such requests for changes shall be made by the Customer in writing and shall not be deemed as accepted for implementation until the Provider advises of the period within which such changes can be implemented and any possible charges that will be incurred and which will be subject to acceptance by the Customer.

## **3. CUSTOMER OBLIGATIONS**

3.1. The Customer shall:

- 3.1.1. Comply by these Terms and Conditions strictly and in full.
- 3.1.2. Comply with all requirements as set out in the Supporting Documentation.
- 3.1.3. Cooperate with any third party to whom the Provider designates or instructs in relation to the provision of the Services.
- 3.1.4. Comply with all applicable laws, regulations and obligations with regards to the use of the Services.
- 3.1.5. Promptly notify the Provider should any SIM cards or IMEI numbers become lost, stolen, misused or damaged
- 3.1.6. Always provide a minimum of thirty (30) days' notice should there be a requirement to terminate the Services. Notwithstanding the aforementioned, termination of Services may be subject to fees and/or penalties for the account of the Customer. Such fees and/or penalties shall be communicated to the Customer by the Provider upon receipt of written advice of the Customer's intention to terminate the Services.
- 3.1.7. care of any ICE that is provided, if applicable, and ensure that it is not used or distributed to a third party.

- 3.1.8. Notify the Provider of a Security Breach as soon as practicable and no later than twenty-four (24) hours after the Customer becomes aware of the relevant Security Breach.
- 3.1.9. Conduct business and operations, specifically with regards to the use of the Services or the ICE in an ethical, lawful and professional manner.

#### **4. PROVIDER OBLIGATIONS**

The Provider shall:

- 4.1. Provide the Services in accordance with these Terms and Conditions.
- 4.2. Comply with all applicable laws, regulations and obligations with regards to the use of the Services.
- 4.3. Provide technical support to the Customer in relation to the proper functioning of the Services and always at the Provider's discretion depending on priority and support level required.
- 4.4. The Provider will use its reasonable efforts to comply with the activation date that has been provided.
- 4.5. Use and distribute to the Customer ICE for use with the Services, if applicable.

#### **5. PRICING AND PAYMENT TERMS**

- 5.1. Prices relating to the Services contracted are set out in the Contract and a schedule of prices relating to all the Services can be found in the Proposal and/or Supporting Documentation.
- 5.2. All pricing and payment related to the Services and/or otherwise arising under this Agreement shall be expressed and made in US Dollars (USD).
- 5.3. Invoices shall be issued and fully settled by the Customer within thirty (30) days from the invoice date.
- 5.4. The prices are subject to change and the Customer will be given at least fifteen (15) days' prior notice or as reasonably feasible under the circumstances and which shall then be set out in the Supporting Documentation forming part of the Contract.
- 5.5. Any additional applicable fees and taxes will be identified and stated separately on monthly electronic invoices, always in accordance with local laws.
- 5.6. All fees and charges are computed exclusive of value added tax (VAT) or sales taxes or any other taxes or similar liabilities. Any taxes now or hereafter imposed with respect to the Services and the transactions contemplated by the Contract shall be the responsibility of the Customer and if paid or required to be paid by the Provider, the amount thereof shall be invoiced to the Customer.
- 5.7. All SIM cards must be prepaid unless otherwise agreed in writing between the Customer and the Provider.

5.8. Balances which remain unpaid for a period of more than thirty (30) days from the date of the invoice shall be subject to an additional late fee which shall be the equivalent of two percent (2%) per month of the overdue amount.

5.9. Overdue payments will be settled in the following priority order:

- i. Late fees
- ii. Overdue amounts
- iii. Remaining balance

5.10. Any good faith objection to the price and/or any disputed items must be notified by the Customer to the Provider within fifteen (15) days of the date of the invoice. The Provider shall use its best endeavours to revert to the Customer within 15 days of receipt of the billing dispute. Any charges which were not charged correctly shall be credited to the Customer. Any billing dispute which cannot be resolved amicably by the Parties shall be subject to the dispute resolution procedure set out in Section 20.

5.11. The Customer agrees and confirms that all undisputed invoices, or parts thereof which are deemed as undisputed, shall be paid in accordance with clause 5.4 hereof, and will continue to abide by its payment obligations as provided for herein.

## **6. DELIVERY OF EQUIPMENT/ HARDWARE**

6.1. Should the Customer require any ICE, the Provider may supply same on the basis of a separate order process. Any sales of equipment shall be subject to the Tototheo Middle East Quotation Terms and Conditions found <https://www.tototheo.com/wp-content/uploads/2021/11/General-Terms-and-Conditions-Middle-East.pdf>.

6.2. The Provider may also provide other hardware or equipment necessary for the performance of the Services, to the Customer at an additional fee and always subject to [the Tototheo Maritime Quotation Terms and Conditions](#).

## **7. RESTRICTED AND PROHIBITED USE**

7.1. The Customer is prohibited from using the Services in any way which:

7.1.1. May interfere with or diminish the use of the NEXT network by other subscribers;

7.1.2. Is illegal

7.1.3. Infringes the rights of others

7.2. The Customer should refer to the Supporting Documentation for further guidance on conduct and technical restrictions.

7.3. The Provider reserves the right:

7.3.1. In any case of any violation as to the use of the Services to refuse to transmit and to block any information or materials that are deemed a violation.

7.3.2. Immediately suspend or terminate the Services in circumstances of violations.

## **8. NETWORK AVAILABILITY, SERVICE, MAINTENANCE AND OUTAGE**

The Provider may suspend services for maintenance and outage with or without prior notice:

- 8.1. For planned interruptions or outages, the Provider shall give at least two (2) business days' notice
- 8.2. For unplanned or emergency interruptions and/or outages, the Provider will notify the Customer as soon as practical.

## **9. NOTICES**

- 9.1. Any and all notices referred to in these Terms & Conditions under or in connection with the provision of the Services shall be in writing, in the English language.

To Tototheo: Tototheo Middle East Limited  
89, Omonoias Avenue  
Limassol – 3048  
Republic of Cyprus  
Attn: Legal Department  
Email: [legal@tototheo.com](mailto:legal@tototheo.com)

To the Customer: As per Contact Details for Notices recorded in the signed Proposal.

- 9.2. The notice shall also be delivered personally or sent by email to the party due to receive the notice at its respective address or e-mail address in the event of electronic notice.
- 9.3. If a notice or other communication is made by email, it shall be deemed received by the receiving Party once it is read by the receiving Party or within three business days of delivery, whichever occurs first. If a notice or other communication is made by hand delivery, reputable express courier service, it shall be deemed received by the receiving Party once it is signed for by the receiving Party or within three business days of delivery, whichever occurs first.

## **10. ASSIGNMENT**

- 10.1. Neither Party may assign, novate, subcontract, charge, transfer or otherwise dispose of the underlying Agreement to which these Terms and Conditions apply, or any rights or obligations under it without the written consent of the other Party (which consent shall not be unreasonably withheld or delayed), except that the Provider may assign or novate any and all rights and obligations hereunder to any of the Provider's affiliates but always with reasonable prior written notice to the Customer.

## **11. LIMIT OF LIABILITY**

- 11.1. The Provider makes no warranties, either express or implied, representations, guarantees or conditions, including without limitation, any implied representations, guarantees, conditions or warranties of merchantability and fitness for a particular purpose, non-infringement, satisfactory quality, non-interference, accuracy of informational content, or arising from a course of dealing,

law, usage, or trade practice, or related to the performance or non-performance of any products, accessories, facilities, or services, except as expressly stated in this agreement, and it is understood and agreed that any other standards of performance, guarantees, conditions and warranties are hereby expressly excluded and disclaimed to the fullest extent permitted by law.

- 12.2 The Provider shall not be liable to the Customer (or its dealers) or subscribers or other end users, nor shall the Customer make any claim against the Provider, for any losses, damages, liabilities, judgments, fines, amounts paid in settlement, expenses and costs of defence sustained by reason of any unavailability, delay, faultiness or failure of the facilities, services, or products to be provided or by the Provider pursuant to these Terms and Conditions ("losses"), including losses resulting from any past, present, or future claim, demand, suit, action or proceeding brought or initiated by a third party, including without limitation, actions by any governmental authority.
- 11.2. Except with respect to breaches of security, fraud and bypass protection, in no event shall the total liability of the Provider to the Customer in any twelve (12)-month period exceed the payments received by the Provider from the Customer under these Terms and Conditions in such twelve (12)-month period. Furthermore, except with respect to damages arising under a breach of the confidentiality or intellectual property infringement indemnification or other indemnification provisions of these Terms and Conditions, in no event shall either party be liable to the other, whether based on contract or tort or any other legal theory, including without limitation strict liability, gross negligence or negligence, for indirect, incidental, special, consequential, or punitive damages of any kind, including without limitation lost profits or revenues, loss of business, loss of privacy, loss of use, loss of time or inconvenience, loss of information, data, software or applications or other financial loss, arising out of or resulting from the use of the Services, whether foreseeable or not.

## **12. INDEMNITIES**

- 12.1. Subject to Section 12 hereinabove, the Customer shall defend, hold harmless, indemnify and keep indemnified the Provider, its employees, officers, directors, agents and shareholders against all losses, liabilities, expenses and costs arising out of or in connection with:
- 12.1.1. Any past, present or future claims or legal proceedings by a third party, arising from the Customer's use of the Services or any related equipment or use of the Services or related equipment by the Customer, its end users or Affiliates;
- 12.1.2. The use of the Services or the content of any transmission made using the Services, including any actual or alleged libel, slander, obscenity, indecency, infringement of copyright or breach of privacy or security.
- 12.1.3. Any act or omission of the Customer resulting in loss of, or damage or degradation to the provision of the Services.
- 12.1.4. Any claims, demands and causes of action of every kind and character arising out of or in connection herewith in favour of the Customer's personnel or the Customer's invitees, on account of bodily injury, death or damage to such person's property, regardless of the cause of such bodily injury, death or damage to property, excluding the gross negligence of the Provider.

- 12.2. The Customer shall not settle or compromise any claim or dispute as referred to in Sections 13.1.1-13.1.4 above without the prior written consent of the Provider.
- 12.3. The Customer shall maintain liability insurance or self-insurance to cover its indemnities as referred to in Sections 12 and 13 herein.

### **13. DATA PROTECTION**

- 13.1. The Customer hereby agrees and acknowledges that by subscribing to the Services the Provider may obtain, store and process personal data in order to provide the Services.
- 13.2. The Parties both agree to abide by all applicable data protection laws, including but not limited to the European Union Regulations.
- 13.3. The Provider may where necessary process and/or make use of such personal data only in relation to the provision of Services and in accordance with these Terms & Conditions.
- 13.4. The Provider may retain data even after the termination of the Services.
- 13.5. All and any personal data will remain confidential to the Provider and will not be disclosed to any third party unless it is necessary for the Provision of the Services.
- 13.6. If the Customer suspects violation of data protection a Notice should be sent as soon as possible and no later than three (3) days.
- 13.7. In circumstances of violation of data protection, the breaching Party shall be liable to compensate the other Party for any damage incurred by the violation.

### **14. INTELLECTUAL PROPERTY**

- 14.1. No rights, title or interest to all and Intellectual Property relating to or incorporated in the Services is passed to the Customer.
- 14.2. The Customer shall notify the Provider without delay of any alleged third-party infringements of Iridium Marks and/or other Intellectual Property of which Service Provider is aware, and the Customer shall assist the Provider in any action taken by the Provider against such infringements.

### **15. SUPPORTING DOCUMENTATION**

- 15.1. The Customer may be provided with various Supporting Documentation either at the Proposal stage and / or after acceptance and once the Contract is in place which are to be read in parallel to these Terms and Conditions and which shall form part of the Contract for the given Services.
- 15.2. The Supporting Documentation may include, but shall not be limited to:
  - i. Exhibits;
  - ii. Schedules
  - iii. Pricing
  - iv. Reporting requirements
  - v. Written communication relating to the Services.

## **16. FORCE MAJEURE**

- 16.1. Neither Party shall be liable for any non-performance or breach of obligations assumed under these Terms & Conditions as a result of and / or caused by any matter beyond that Party's reasonable control, including, without limitation, strike, lock out or labour dispute, acts of God, war, riot, civil commotion, malicious damage, flood, fire, storm, lightning, accidents, explosion, the failure or interruption of electricity supplies, national or local emergencies, civil disorder, industrial disputes (whether or not involving such Party's employees), adverse weather conditions, compliance with a law or governmental order, or acts or omission of any government, local or other competent authority or any suppliers whatsoever (hereinafter a "Force Majeure Occurrence"), nor for any delay due to, occasioned by, or caused as a result of a Force Majeure Occurrence.
- 16.2. A Force Majeure Occurrence shall not relieve a Party of an obligation to make payments when otherwise due and to provide defence or indemnity under these Terms & Conditions.

## **17. TERMINATION**

- 17.1. For the purpose of this Section termination of the Contract may refer to termination of a specific vessel or vessels as set out in the Iridium Certus Activation Form or schedule thereto listing the Customer's vessels or to the entire fleet of the Customer, as may be applicable.
- 17.2. Either the Provider or the Customer shall be entitled at any time with immediate effect by giving notice, terminate the Contract in the event that either Party:
  - 17.2.1. breaches an obligation under the Contract and / or these Terms and Conditions,
  - 17.2.2. breaches or is in default of a material obligation of this the Contract and / or these Terms and Conditions and fails to cure such breach or default within ten (10) days of the date of receipt of electronic notice of such default for any payment related default, or within thirty (30) days for any other default, or
  - 17.2.3. is subjected to bankruptcy or insolvency proceedings, whether voluntary or involuntary, including but not limited to the execution of an assignment for the benefit of creditors or the seeking of relief by either Party hereto under any bankruptcy or similar debtor relief laws.
- 17.3. In the event of a termination of the Services in connection with any of the terms in the Contract, the Customer shall be liable to immediately pay the outstanding fees for the remaining balance of the Term. Any outstanding fees shall be calculated by multiplying the remaining number of months in the Term by the monthly fees. Partial months which shall be remaining are to be calculated on a pro-rata basis per day.
- 17.4. Termination of the Contract shall not prejudice any of the rights and remedies of the Provider or the Customer accruing prior to termination.

## **18. INVALIDITY / ILLEGALITY / UNENFORCEABILITY**

Should any provision(s) of the Contract or Terms & Conditions be found to be invalid, illegal or unenforceable under the laws of any relevant jurisdiction in any respect, the invalid, illegal or unenforceable aspects of such provision(s) shall be given no effect and shall be deemed not to be included in the Terms & Conditions without invalidating any of the remaining provisions. The Customer and the Provider shall enter into good faith negotiations to amend the Terms & Conditions in such a way that, as amended, is valid, legal and enforceable and, to the maximum extent possible, reflects the intended effect of the invalid, illegal or unenforceable provision(s).

## **19. GOVERNING LAW**

- 19.1. The Provider and the Customer shall each comply with the Relevant Regulatory Rules and any and all other applicable laws in connection with the provision of the Services.
- 19.2. The Contract and these Terms and Conditions shall be governed by the English law.
- 19.3. Any dispute arising out of or in connection with the Contract or these Terms and Conditions, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the LCIA Rules, which Rules are deemed to be incorporated by reference into this Section. The number of arbitrators shall be one. The seat or legal place of arbitration shall be London and the language used in the arbitral proceedings shall be English.