



Espria

Empowering digital workspace



Comms

GENERAL TERMS AND CONDITIONS

1 DEFINITIONS AND INTERPRETATION

1.1 In the Terms and Conditions, the words and expressions defined in the Contract Details or any other Schedule forming part of the Contract shall apply and in addition the following definitions apply:

Business Day means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Contract means the contract between the Customer and the Supplier for the supply of the Equipment and the Services in accordance with the Contract Details, the Terms and Conditions and any applicable Schedules.

Contract Details means the document headed Contract Details to which the Terms and Conditions are attached.

Commencement Date means the date specified in the Contract or such other date as agreed between the Supplier and the Customer.

Equipment means the equipment detailed in the Contract Details to be hired by the Customer from the Supplier or a Funder and includes all internal cabling as well as the network test termination point or other demarcation point.

Extended Term means the extended term for each individual Service as set out in the Contract Details or the Schedules.

Force Majeure Event means any event beyond the Supplier's reasonable control including (without limitation) disease, pandemic, flood, fire, war or threat of war, sabotage, civil disturbance, governmental action, default of any supplier of services to the Supplier or any legal and regulatory restrictions.

Funder means a third-party finance provider willing to provide finance for the Equipment and enter into a Rental Agreement with the Customer.

Intellectual Property Rights means all patents, rights to inventions, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Premises means the place or places at which the Supplier agrees to provide the Services to the Customer.

Previously Paid Termination Charges means any early termination charges paid by the Supplier on behalf of the Customer to the Customer's previous line rental provider at any time before or after the Commencement Date.

Rental Agreement means the agreement for the hire of the Equipment in the standard form produced by the Funder or the Supplier as the case may be.

Schedules means the schedules to the Contract.

Services means the services, each an individual Service, indicated in the Contract Details, including, where applicable, Maintenance Services, Pre-Installation Services and Network Service.

Service Minimum Term means the minimum term for each Service as set out in the Contract Details or the Schedules.

Service Provider means any third party provider of the telecommunications network.

Service Provider Equipment means equipment owned or provided by the Service Provider.

Small Business Customer means a Customer which is not a communications provider and is either i) a business for which no more than 10 individuals work, whether as employees or otherwise; or ii) a body for which no more than 10 individuals work as employees or otherwise but excluding volunteers and whose income is applied solely for charitable or public purposes and which may not distribute its assets to its members.

Supplier Code of Practice means the code of practice set out on the Supplier's Website as amended by the Supplier from time to time.

Supplier's Website means www.espria.com

Terms and Conditions means the terms and conditions set out in these general terms and conditions.

Toll Fraud means any interference or access to the Customer's PABX phone system or the Customer's telephone lines and/or the making of calls by any third party utilising the Customer's telephone lines whether fraudulent or otherwise. For the avoidance of doubt, fraudulent activity includes but is not limited to: (i) calls made from the Customer's PBX without their knowledge; (ii) calls made utilising the Customer's authentication details; and (iii) calls made from an authenticated IP address.

1.2 A reference to a statute or statutory provision in the Contract is a reference to it as amended, re-enacted or extended from time to time.

1.3 The headings in the Contract shall not affect the interpretation of the Terms and Conditions.

1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

2 BASIS OF CONTRACT

2.1 The Contract shall be formed of the Contract Details, the Terms and Conditions and any applicable Schedules to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 The Contract shall come into force on the Commencement Date and shall continue, unless terminated earlier in accordance with the provisions of the Contract, until the end of the last to expire of the Service Minimum Terms. Unless specified otherwise in relation to a Small Business Customer, the term of the Contract shall automatically extend in relation to an individual Service for an Extended Term at the end of the relevant Service Minimum Term and at the end of each Extended Term, unless either party gives written notice to the other, no later than 90 days before the end of the Service Minimum Term or the relevant Extended Term, to terminate the Contract in relation to that Service at the end of the Service Minimum Term or the relevant Extended Term as the case may be.

2.3 Any drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures or on the Supplier's Website, are issued or published for the sole purpose of giving an approximate idea of the service described in them and shall not form part of the Contract or have any contractual force.

2.4 Any quotation given by the Supplier shall not constitute an offer and is only valid for a period of 20 Business Days from its date of issue.

2.5 **Annual Price Increase.** As set out in our Simple document, Espria is a reseller of communications services so our charges for our network and mobile services will be increased annually [ON 1 APRIL] in line with the Consumer Price Index to reflect the increase in our supply chain costs. By entering into this Contract you explicitly agree to this annual price rise.

3 CUSTOMER OBLIGATIONS

3.1 The Customer agrees and undertakes:

- to co-operate with the Supplier in all matters relating to the Services and provide the Supplier with assistance from the Customer's employees where reasonably required;
- to permit or procure permission for the Supplier to freely and safely access its Premises and service connection points and, where necessary, a continuous mains electricity supply;
- to provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
- to use the Services in accordance with such instructions/conditions as may be notified in writing by the Supplier from time to time;
- not to use the Services for a purpose other than for which each Service is provided;
- not to use the Services or permit the Services to be used for the transmission of any material which is intended to be defamatory, offensive, abusive or menacing in character;
- not to use the Services or permit the Services to be used in any way which would constitute a violation or an infringement of the rights of any other party;
- to supply the Supplier with all such information as it may request from time to time.

3.2 The Customer warrants that the number of employees and/or other individuals that work at or for the Customer stated on in the Contract Details is correct.

3.3 Should the Supplier or the Service Provider be required to cross any land belonging to any party other than the Customer or to put the Service Provider's Equipment on any property which does not belong to the Customer (for example a neighbour or a landlord), the Customer

will obtain the prior written permission (including any wayleaves) of such party.

3.4 The Customer shall indemnify and keep indemnified the Supplier completely and in full against all costs and losses (including without limitation, damages, claims, charges, damage to property, call costs charged by the Service Provider or others and expenses) incurred by the Supplier as a result of or in connection with:

- any breach of the Customer's obligations under the Contract;
- the death or personal injury of any of the Supplier's employees caused by the negligence or wilful misconduct of the Customer;
- Toll Fraud or other fraudulent activity;
- investigations into Toll Fraud or other fraudulent activity;
- any claims made by third parties because the Service is faulty or cannot be used where the Service is used for business purposes.

The Customer shall reimburse the Supplier on written demand for any such costs and losses sustained by the Supplier pursuant to this condition 3. The Supplier recommends the Customer obtains professional security advice with regard to PBX, trunking or other equipment or resource.

3.5 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):

- the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Service (or part of) until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this condition 3; and
- the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

4 PAYMENT

4.1 The Supplier shall invoice the Customer monthly in advance. The Supplier may at its discretion submit invoices to the Customer via email. The Customer may also view its invoices online on the Supplier's Website.

4.2 The Customer shall pay each invoice submitted by the Supplier by direct debit by the due date detailed on the invoice (Due Date). Time for payment shall be of the essence of the Contract.

4.3 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of valued added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Service at the same time as payment is due for the supply of the Service.

4.4 Without limiting any other right or remedy of the Supplier, if the Customer fails to make any payment due to the Supplier under the Contract by the Due Date, the Supplier has the right to charge the Customer interest on the overdue amount at the rate of 4 per cent per annum above the then current Bank of England base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.

4.5 The Supplier reserves the right to charge an administration fee of £75 if the Customer has cancelled its Direct Debit instruction or has insufficient funds in its bank account on the Due Date, without informing the Supplier in advance. The Customer agrees that this administration fee is reasonable and proportionate to recompense the Supplier for the cost incurred in recovering sums due.

4.6 The Customer agrees that the Supplier may recover from the Customer all its legal and other costs reasonably incurred by the Supplier in recovering any sums due to it pursuant to the Contract.

4.7 The Customer agrees that any dispute relating to an invoice (including the calculation of any amounts payable) must be notified to the Supplier within six months of the date of the invoice and the Customer shall not be entitled to any credit or refund relating to disputes raised after the expiry of this period.

4.8 All amounts due under the Contract shall be paid without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

5 INTELLECTUAL PROPERTY RIGHTS

All Intellectual Property Rights in or arising out of or in connection with the Service shall be owned by the Supplier. The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier the license such rights to the Customer.

6 LIMITATION OF LIABILITY

6.1 Nothing in the Terms and Conditions shall limit any liability which cannot legally be limited, including, but not limited to liability for death or personal injury caused by the Supplier's negligence, or the negligence of its employees, agents or subcontractors; fraud or fraudulent misrepresentation; or breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.

6.2 Subject to condition 6.1 :

- the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit; loss of sales; loss of business; loss of anticipated savings; loss of use or corruption of software, data or information; or any indirect or consequential loss arising under or in connection with the Contract;
- the Supplier shall have no liability for any breach of the Customer's security; and
- the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed an amount equal to the aggregate price paid by the Customer to the Supplier in the three month period immediately preceding the matter giving rise to the liability in question.

6.3 Subject to condition 6.1, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

6.4 The Supplier's employees or agents are not authorised to make any representations concerning the Service unless confirmed by the Supplier in writing.

7 INSOLVENCY OF CUSTOMER AND SUSPENSION

7.1 Without limiting its other rights or remedies, the Supplier may terminate or suspend all or some of the Services supplied in the Contract by giving 14 days written notice to the Customer if:

- the Customer suspends payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- a resolution is passed, or an order is made, for or in connection with the winding up of the Customer;
- the Customer is the subject of a bankruptcy petition or order;
- a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
- a floating charge holder over the assets of the Customer has appointed an administrative receiver;
- a receiver is appointed over the assets of the Customer;
- the Customer fails to pay any amount due under the Contract on the Due Date;
- the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy;

- j) the Customer at any time does not have the necessary valid licence to run its telecommunications system;
- k) the Customer commits a material breach of the Contract and (if such breach is remediable) fails to remedy that breach within 14 days of being notified in writing of the breach.
- 7.2 Without limiting its other rights or remedies:
- the Supplier may terminate the Contract for convenience without liability at any time by giving 30 days written notice to the Customer;
 - the Supplier shall have the right to suspend provision of the Services under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in condition 7.1 or the Supplier reasonably believes that the Customer is about to become subject to any of them.
- 7.3 If the Service is suspended:
- the Supplier will tell the Customer what needs to be done before it can be re-instated. It is at the Suppliers sole discretion to reconnect the Service;
 - the Customer may still make emergency calls;
 - the Customer will continue to pay for the Service whilst the Contract continues;
 - the Supplier may at its complete discretion elect to reconnect a Service which has been terminated. In such case a reconnection charge of £120 per analogue line and £250 per pair of ISDN lines will be payable by the Customer.
- 8 TERMINATION BY THE CUSTOMER PRIOR TO EXPIRY OF MINIMUM TERM**
- 8.1 Notwithstanding any other provision of the Contract, the Customer may terminate the Contract in relation to any Service:
- upon 90 days' written notice to the Supplier prior to the expiry of the Service Minimum Term; and
 - with immediate effect without penalty on providing the Supplier written notice to take effect prior to any proposed change made by the Supplier in accordance with condition 11.4 taking effect.
- 8.2 If the Contract is terminated by the Supplier under condition 7.1 or by the Customer pursuant to condition 8.1a) the Customer shall pay to the Supplier all charges for all Services received up until the date of termination and all outstanding payments due under the terminal equipment agreement.
- 9 CONSEQUENCES OF TERMINATION**
- 9.1 On termination of the Contract for any reason:
- the Customer shall immediately pay to the Supplier, in addition to those payments due pursuant to condition 8.2, all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
 - conditions or clauses which expressly or by implication have effect after termination shall continue in full force and effect.
- 10 DATA PROTECTION**
- 10.1 In this condition 10 the following definitions shall apply:
- Applicable Laws** means (so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law
- Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures:** as defined in the **Data Protection Legislation**. Data Protection Legislation means the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.
- Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.
- UK Data Protection Legislation** means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
- 10.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This condition 10 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 10.3 The parties acknowledge that for the purposes of the Data Protection Legislation, each party may be a Controller but the Supplier may be a Processor of the Customer's data. Condition 10.8 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 10.4 Without prejudice to the generality of clause 10.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier and/or lawful collection of the Personal Data by the Supplier on behalf of the Customer for the duration and purposes of this agreement.
- 10.5 Without prejudice to the generality of clause 10.2, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:
- process that Personal Data only on the documented written instructions of the Customer unless the Supplier is required by Applicable Laws to otherwise process that Personal Data. Where the Supplier is relying on Applicable Laws as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;
 - ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
 - not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
 - the data subject has enforceable rights and effective legal remedies;
 - the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
 - assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - notify the Customer without undue delay on becoming aware of a Personal Data Breach;
 - at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the Personal Data; and
 - maintain complete and accurate records and information to demonstrate its compliance with this condition 10 and allow for audits by the Customer or the Customer's designated auditor and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.
- 10.6 The Supplier uses third-party processors in the course of its business and the Customer consents to such appointments At the Commencement Date the third-party processors are: Mode Communications Ltd t/a Espria, The Sage Group Plc & Union Street, BT, Talk Talk, Gamma, Daisy, Nine, Voiceflex, Voicehost, Timico. But the Supplier reserves the right to terminate or make new appointments from time to time. The Supplier confirms that it has entered or (as the case may be) will enter with each third-party processor into a written agreement substantially on that third party's standard terms of business or incorporating terms which are substantially similar to those set out in this condition 10 and in either case which the Supplier confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this condition 10.
- 10.7 The Supplier may, at any time on not less than 30 days' notice, revise this condition 10 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).
- 10.8 The Supplier records and monitors call calls received and made by it and will be the Controller of all Personal Data collected by the Supplier in the course of such recording and monitoring. The Supplier's Privacy Policy sets out details of how the Supplier will use such Personal Data.
- 10.9 This condition sets out the nature and purpose of processing by the Supplier and the types of Personal Data and categories of Data Subject
- Scope: the provision of the Services and administration of the Contract
 - Nature: use of data in order to contact and liaise with the Customer and in order to supply the Services
 - Purpose of processing: for the purpose processing information generated by the Customer's use of the Services in accordance with the Contract
 - Duration of the processing: the term of the Contract
 - Types of Personal Data: name, telephone number, email address, bank details, gender, data of birth, recordings
 - Categories of Data Subject: the Customer, users and employees of the Customer and third party participants in calls.
- The information listed in this condition is not exhaustive as the Customer will specify what Customer Personal Data is processed
- 11 GENERAL**
- 11.1 The Supplier will endeavour, but does not guarantee, to make a donation to the charitable organisation selected by the Customer as set out in the Contract Details. The Supplier reserves the right to make a charitable donation in the same amount to a different charity.
- 11.2 The Supplier shall not be liable or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform the Service or any of the Supplier's obligations under the Contract if the delay or failure was due to a Force Majeure Event.
- 11.3 If any dispute arises in connection with the Contract then the parties will attempt to settle it. If the parties are unable to reach an agreement then the Customer may refer the dispute to any recognised dispute resolution service. Details of these and how to refer a dispute are set out in the Supplier Code of Practice.
- 11.4 The Supplier reserves the right to change any term of the Contract at any time and increase our charges as set out in these Terms and Conditions..
- 11.5 Any variation to the Terms and Conditions and any representations about Services shall have no effect unless expressly agreed in writing and signed by a director of the Supplier or a duly authorised signatory.
- 11.6 The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. The Terms and Conditions set out the entire and complete agreement between the Supplier and the Customer and supersede all prior arrangements and understandings whether written or oral regarding the subject matter of the Contract. Nothing in this condition shall exclude or limit the Supplier's liability for fraudulent misrepresentation.
- 11.7 If the Supplier, in an effort to comply with any statute, regulation or British Standards Institution requirement deems it necessary to vary any terms of the Contract, then the Supplier may do so.
- 11.8 Any notice required to be given under the Contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in the Contract, or such other address as may have been notified by that party for such purposes.
- 11.9 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.
- 11.10 Conditions 11.8 and 11.9 shall not apply to the service of any proceedings or other documents in any legal action.
- 11.11 No delay or failure by the Supplier in enforcing any provision of the Contract shall constitute a waiver of that provision or any other provision. No waiver by the Supplier of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision. No waiver by the Supplier shall be effective unless in writing.
- 11.12 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severed and the remainder of such provision and the remaining provisions of the Contract shall continue in full force and effect.
- 11.13 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Agreements (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 11.14 The Supplier may assign its rights under the Contract or any part of it to any person, firm or company. References to the Supplier in the Contract shall include its successors and assigns.
- 11.15 The Customer shall not be entitled to assign its rights under the Contract or any part of it without the prior written consent of the Supplier.
- 11.16 The Contract and any dispute arising under or in connection with it shall be governed by and construed in accordance with English law, and the parties submit to the exclusive jurisdiction of the English courts.
- SCHEDULE 1**
- PRE INSTALLATION SERVICES - TERMS AND CONDITIONS**
- 1 DEFINITIONS AND INTERPRETATION**
- In this Schedule the words and expressions defined in the Terms and Conditions, in the Contract Details or in any other Schedule forming part of the Contract shall apply and, in addition, the following definition shall apply:
- Pre-Installation Services** means the assistance to be provided by the Supplier pursuant to condition 2.3 below together with all other services which the Supplier deems is required in readiness for installation of the Equipment at the Premises which shall include without limitation order administration, the booking of engineers and a site survey.
- 2 HIRE OF EQUIPMENT**
- 2.1 By signing the Contract the Customer expressly agrees to hire the Equipment in accordance with the terms of the Rental Agreement, subject to the Funder and/or the Supplier (as the case may be) approving the Customer's application for finance.
- 2.2 The Customer will use its best endeavours to obtain third party finance from a Funder and to enter into a Rental Agreement as soon as possible after the date of this Order Form.
- 2.3 The Supplier shall use reasonable endeavours to assist the Customer with its application for third party finance from a Funder but shall have no liability to the Customer if any application the Customer makes fails to secure the finance requested.
- 2.4 The Customer will make available to the Supplier or a Funder all information reasonably requested by either of them in support of its application for finance for the Equipment.
- 2.5 If the Customer's application for third party finance with a Funder is unsuccessful, the Supplier may, in its sole discretion, provide finance for the Customer and enter into a Rental Agreement with the Customer directly, but shall be under no obligation to do so. If the Supplier is agreeable

- to this the Customer agrees that it will enter into the Rental Agreement accordingly.
- 2.6 Once the Customer has entered into a Rental Agreement, the Customer will be bound by the provisions of the Rental Agreement and consequently the Customer cannot cancel the hire of the Equipment unless otherwise permitted in accordance with the terms of the Rental Agreement.
- 2.7 If the Customer's application for third party finance with a Funder is unsuccessful and the Supplier is unable or unwilling to enter into a Rental Agreement with the Customer, the Supplier will notify the Customer accordingly and the order for Equipment will be deemed cancelled without any liability on the Customer or the Supplier except in respect of the Customer's liability to pay for Pre-Installation Services unless the Customer elects to purchase the Equipment without using third party funding.
- 2.8 By signing the Contract, the Customer expressly agrees to and authorises the Supplier to commence the Pre-Installation Services immediately and to purchase the Equipment. The Customer agrees to use all reasonable endeavours to assist the Supplier to enable the Pre-Installation Services to be carried out (including without limitation providing access to any property reasonably required by the Supplier) notwithstanding they are carried out prior to the entry into a Rental Agreement. The Customer also expressly acknowledges and agrees that the Customer will be liable for payment in respect of such Pre-Installation Services and the Equipment if the Customer cancels the Contract as set out in condition 2.9 below or otherwise fails to enter into a Rental Agreement.
- 2.9 If, after signing the Contract, and before entry into a Rental Agreement, the Customer wishes to cancel the order for the Equipment, then the Customer is permitted to do so by giving the Supplier 5 business days' notice in writing subject to the payment of a cancellation fee as and by way of liquidated damages equal to:
- Costs Incurred: 15% of the cost incurred by the Supplier in purchasing the Equipment (it being acknowledged that this is a reasonable and proportionate amount which protects the Supplier's legitimate interests) together with the actual costs incurred in carrying out the Pre-Installation Services. The costs of the Pre-Installation Services will be calculated by reference to the time incurred by the Supplier employees or contractors in carrying out the Pre-Installation Services multiplied by the Supplier standard rates for such services in force at the relevant time (as set out on the Supplier's website); or at the Supplier's sole discretion;
 - Funder Payment: 15% of the aggregate fee and commission that would have been received by the Supplier from a Funder in the event the Customer entered into the Rental Agreement with the Funder, it being acknowledged that such fee and commission represents payment to the Supplier for introducing the Customer to the Funder and undertaking Pre-Installation Services. The Supplier agrees that notwithstanding the above in no circumstances will the Customer be liable for a cancellation fee which exceeds a sum equal to the aggregate of three (3) quarterly hire payments that would have been charged had the Customer entered into the Rental Agreement.
- 2.10 Any cancellation of this order for Equipment for any reason shall be without prejudice to any other services that the Customer has ordered from the Supplier under the Contract which shall remain in full force and effect in accordance with the applicable terms and conditions for that service. For example, if the Customer has also ordered network services, those services will continue notwithstanding termination of any other Services covered by this Contract or any order for Equipment and nothing in this Contract will operate to give the Supplier or the Customer any rights to terminate those services beyond that which is contained in the terms and conditions for those services as set out in the Contract.
- 2.11 Title to the Equipment shall remain in the ownership of the Funder at all times, unless the Customer has (a) entered into a Rental Agreement with the Supplier in respect of the Equipment, in which case title to the Equipment shall remain in the ownership of the Supplier at all times, or (b) purchased the Equipment.
- 2.12 By signing the Contract Details the Customer represents and warrants that the Customer is not an individual for the purposes of the Consumer Credit Act 1974.
- ### 3 CASH PURCHASE
- 3.1 The risk in the Equipment shall pass to the Customer on completion of delivery.
- 3.2 Title to the Equipment shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Equipment.
- 3.3 Until title to the Equipment has passed to the Customer, the Customer shall:
- store the Equipment separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - not remove, deface or obscure any identifying mark or packaging on or relating to the Equipment;
 - maintain the Equipment in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - notify the Supplier immediately if it becomes subject to any of the events listed in clause 7.1 a) to clause 7.1 g) of the Terms and Conditions; and
- e) give the Supplier such information as the Supplier may reasonably require from time to time relating to:
- the Equipment; and
 - the ongoing financial position of the Customer.
- 3.4 Subject to clause 3.5, the Customer may use the Equipment in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Equipment.
- 3.5 At any time before title to the Equipment passes to the Customer:
- 3.5.1 the Supplier may by notice in writing, terminate the Customer's right under clause 3.4 to use the Equipment in the ordinary course of its business; and
- 3.5.2 require the Customer to deliver up all Equipment in its possession and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Equipment is stored in order to recover them.
- 3.6 The price of the Equipment shall be the price set out in the Contract Details, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery.
- 3.7 Unless agreed otherwise by the Supplier, the Customer shall pay for the Equipment as follows:
- 3.7.1 A deposit of 50% of the price of the Equipment on signing the Contract Details; and
- 3.7.2 The balance of the price of the Equipment to be paid within 10 days' of installation;
- 3.7.3 in full and in cleared funds to a bank account nominated in writing by the Supplier.
- 3.8 The Supplier will pass on to the Customer the benefits of any warranties given by any third party manufacturer and no additional warranty shall be given by the Supplier.
- 3.1 The Supplier shall supply the Network Service to the Customer from the Commencement Date in accordance with the Specification in all material respects. The Supplier may at its discretion wait until a survey of the Premises has been conducted by the Service Provider before agreeing the Commencement Date with the Customer.
- 3.2 The Supplier reserves the right to change the Specification without the prior consent of the Customer so that the Network Service conforms to any applicable safety or other statutory requirements or which do not materially affect the nature or quality of the Network Service.
- 3.3 From time to time it is possible that the Service Provider may need to change, reallocate or withdraw the codes or the numbers allocated to the Customer or otherwise interrupt the Network Service for operational reasons, to comply with applicable law and/or to comply with the instructions of an applicable regulator. Should this occur all charges hereunder remain payable. The Customer accepts that the Service Provider may from time to time provide instructions regarding the Network Service and agrees to follow any such instructions.
- 3.4 The Network Service includes a telephone number. This number will be put in the appropriate telephone directories, together with the Customer's details, and made available from any Directory Enquiries Service unless the Customer requests otherwise. The Service Provider may agree to a special entry in the telephone directories at an additional charge.
- 3.5 All telephone numbers remain the property of the Supplier and the Customer has no right to sell or to agree to transfer any such telephone numbers. The Customer shall comply with any instructions provided to the Customer in relation to the use by the Customer of its allocated numbers.
- ### 4 MANAGING THE NETWORK SERVICE
- 4.1 The Supplier does not warrant or guarantee that the Network Service will be free of faults or interruptions.
- 4.2 The Customer shall promptly report all Service Failures to the Supplier. Without prejudice to condition 4.1, the Supplier shall use reasonable endeavours to repair or procure that the Service Provider repair a Service Failure by midnight on the first Business Day after the day the Service Failure is reported to the Supplier.
- 4.3 The Supplier's obligation under condition 4.1 does not apply in circumstances where:
- the Service Failure is caused by any party other than the Service Provider;
 - the Service Provider is rejected access to the Premises by the Customer; or
 - the Service Provider reasonably asks for other help and the Customer does not provide it; or
 - the Customer is in breach of the Contract.
- 4.4 In the event it is not possible to repair a Service Failure by the time period referred to in condition 4.1, the Customer may elect to use call diversion (as described in condition 5 below). This service will only be made available to the Customer if it is reasonably practicable to do so, and the Customer acknowledges that technical restrictions may prevent the Supplier/the Service Provider from providing this service.
- 4.5 In the event that the Network Service fails to operate and the Customer makes use of another service provider, the Supplier will not be liable for that service provider's charges or fees.
- 4.6 The Customer may be charged for any maintenance or repair work carried out in the event that the Customer reports a Service Failure and the Supplier finds that no Service Failure exists, or that the Customer has caused the Service Failure.
- 4.7 To the extent that repairs are required outside of the timeframes referred to in condition 4.1 and are agreed to be provided by the Supplier or the Service Provider as appropriate, the Customer shall pay any additional charges incurred as a result.
- ### 5 CALL DIVERSION
- 5.1 Where call diversion is provided by the Supplier, the Service Provider will divert the Customer's incoming calls to another fixed line or mobile telephone number of the Customer's choice. Once the Service Failure has been remedied, the Supplier will cancel the Customer's call diversion.
- 5.2 The number chosen by the Customer for the call diversion service must be a UK number and is subject to the prior approval of the Service Provider. Freephone telephone numbers such as 0800 and 0870 will not be accepted. In the event that the call diversion telephone number selected by the Customer is a mobile telephone number then all additional costs for making the Call will be payable by the caller.
- ### 6 CUSTOMER OBLIGATIONS
- 6.1 The Customer agrees and undertakes:
- to prepare its Premises according to any instructions issued by the Supplier or the Service Provider, and to provide the Service Provider with reasonable access to the Premises;
 - to provide at its own cost and expense a suitable location and appropriate conditions for the Service Provider Equipment including, where necessary, a continuous mains electricity supply and connection points;
 - to maintain its telecommunications apparatus at all times in good working order in conformation with the relevant standards;
 - that following completion of any work carried out by the Service Provider, the Customer is responsible for returning all items back to their original position and for any re-decorating which may be required as a result of the work;
 - obtain and maintain all necessary licences, permissions, consents, registrations and approvals which may be required before the Commencement Date;
 - not to contravene the Telecommunications Act 1984 or any relevant regulations or licences;
 - comply with the Supplier's and the Service Provider's reasonable safety and security requirements;
 - to procure that the Network Service is not used fraudulently or in connection with a criminal offence or to make offensive, indecent, menacing, nuisance or hoax Calls and in this respect the Customer shall, without limitation, secure implementation and management of their systems including any hardware not provided by the Supplier such as Firewalls or PBX; (ii) maintain security and confidentiality of authentication details for online service portals and other services; and (iii) mitigate exposure to any suspected or known security breach by resetting passwords, requesting that accounts are disabled and reporting the incident to the Supplier immediately and in any event within 24 hours of becoming aware of the incident;
 - to obtain and maintain all necessary licences, permissions, consents, registrations and approvals which may be required before the Commencement Date;
 - to be solely liable for any costs arising as a result of Toll Fraud;
 - if the Contract includes Broadband Services, obtain and install at its own cost such equipment as the Supplier advises is required for the provision of the Broadband Service.
- 6.2 The Customer shall reimburse the Supplier on written demand for any such costs and losses sustained by the Supplier pursuant to this condition 6.
- 6.3 The Customer acknowledges that the service known as 'fraud monitor' is not a fraud prevention system and does not prevent unauthorised access to the Customer Equipment. It is the sole responsibility of the Customer to setup and maintain their own security independently of the Supplier and therefore the Supplier accepts no liability whatsoever for any liability incurred as a result of a breach of security. The Supplier reserves the right to invoice the Customer for any fraudulent activity made.
- ### 7 MISUSING THE BROADBAND SERVICE
- 7.1 The Customer must not use the Broadband Service:
- in a way that does not comply with the terms of any legislation or any license applicable to the Customer or that is in any way unlawful or fraudulent or has any unlawful or fraudulent purpose or effect;
 - to send or procure the sending of any unsolicited advertising or promotional material other than to its own customers;
 - in any way that does not comply with any instructions the Supplier or the Service Provider has given;
 - in any way that in the Supplier's reasonable opinion could materially affect the quality of any service, including the Network Service, provided by the Supplier or the Service Provider;
 - in a way that in the Supplier's reasonable opinion could affect the experience of other users on the network. By way of specific example: heavy download users may affect the performance of the network. For the avoidance of doubt, heavy download users affecting the performance of the network may be asked to upgrade their products.
- 7.2 The Supplier will be entitled to suspend the Broadband Service or terminate the Contract (without any liability to the Supplier) where the Supplier has reasonable grounds to believe the Customer is in breach of any provision of this clause 7.
- 7.3 The Customer acknowledges and accepts the following technical limits relating to the Broadband Service:

SCHEDULE 2

NETWORK SERVICE AND LINE RENTAL TERMS AND CONDITIONS

1 DEFINITIONS AND INTERPRETATION

1.1 In this Schedule the words and expressions defined in the Terms and Conditions, in the Contract Details or in any other Schedule forming part of the Contract shall apply and, in addition, the following definitions apply:

Broadband Service means the internet service to be supplied to the Customer's telephone lines by the Supplier and which may include a broadband access line that will provide internet connectivity as outlined in the Specification

Call means a signal, message or communication that is silent, spoken or visual.

Customer Equipment means equipment that is not part of the Service Provider's network and which the Customer uses or plans to use with the Network Service.

Network Service means the telecommunications service to be supplied to the Customer's telephone lines by the Supplier to enable a Call to be made or received (or both) and which may include a Broadband Service.

Service Failure means the continuous total loss of the facility to make or receive a Call or of any related Network Service provided to the Customer under the Contract.

Service Provider means the third party supplier of the telecommunications network.

Service Provider Equipment means equipment owned or provided by the Service Provider.

Specification means the description or specification of the Network Service as set out in the Contract Details.

2 BASIS OF CONTRACT

2.1 The Extended Term for the Network Service shall be 36 months unless the Customer is a Small Business Customer in which case the Contract shall continue unless and until terminated by either party on 30 days' written notice at any time, and by entering into this Agreement the Small Business Customer is explicitly agreeing to a term of longer than 24 months.

3 SUPPLY OF THE NETWORK SERVICE

- a) transmission performance of some metallic local loops will mean it is technically impracticable to provide Broadband Services to all customers within the Broadband Service availability area.
 - b) the Broadband Service is not available to premises where all or part of the access connection is provided over fibre optic cable or radio systems.
 - c) that the Broadband Service may also affect the performance of some PSTN customer premises equipment.
 - d) that some technical service effects and limitations may not become apparent until after the Broadband Service has been installed and working for some time. In such circumstances the Broadband Service may need to be withdrawn.
 - e) those in the case of any rate-adaptive product, upload speeds (and download speeds) are dependent on distance from the exchange, atmospheric conditions and quality of the metallic path and may vary without notice to the Customer
 - f) rate adaptation can occur several times a day and may cause the link to the DSLAM to reset.
 - g) that in the case of any rate adaptive product, throughput guarantees will relate only to the actual rated speed of an individual connection, not any implied speed of service.
- 7.4 In the circumstances referred to in Clause 7.3, the Supplier will have no liability to the Customer relating to the provision of the Broadband Service (or the Supplier's inability to provide the Broadband Service), the performance of the Broadband Service, its effect on other services or equipment or the withdrawal of the Broadband Service.
- 7.5 The Customer will co-operate with the Supplier's reasonable requests for information regarding the Customer's use of the Broadband Service and supply such information without delay.
- 7.6 Technical support for the Broadband Service is available by telephoning 0330 175 5588 or by sending e-mail to support@modesolutions.com Technical support is available during normal Supplier office hours.
- 7.7 The Customer accepts that the Supplier is reliant on fix times given by the Service Provider and that no service levels are committed to in relation to technical support and/or the resolution of Broadband Service faults or Broadband Service failure and therefore the Supplier excludes all liability (so far as it is legal to do so) in relation to technical support, Broadband Service faults or Broadband Service failure.
- 8 CUSTOMER EQUIPMENT**
- Where the Customer wishes to connect Customer Equipment to the Service Provider's network other than by using the Service Provider's main telephone socket, the Customer must obtain the Service Provider's prior permission. Any Customer Equipment must be technically compatible with the Network Service and not harm the Service Provider's network or another customer's Equipment and connected and used in line with any relevant Instructions, standards or laws.
- 9 PRICE**
- 9.1 The price of the Network Service shall be the relevant price at the time the Network Service is in use as determined by the tariff stated or referred to in the Contract Details.
- 9.2 The Supplier shall be entitled to vary the tariff stated or referred to in the Contract Details from time to time by giving not less than three months written notice to the Customer.
- 9.3 Some call tariffs may be subject to a connection or minimum call charge.

SCHEDULE 3

MAINTENANCE AGREEMENT – TERMS AND CONDITIONS

1 DEFINITIONS AND INTERPRETATION

In this Schedule the words and expressions defined in the Terms and Conditions, in the Contract Details or in any other Schedule forming part of the Contract shall apply and, in addition, the following definitions shall apply:

Additional Equipment means equipment provided by the Supplier to the Customer during the term of the Contract in addition to the Equipment.

Maintenance Services means rectification of faults as referred to in condition 2.

Variation means a variation to the Contract by which Additional Equipment or extra services are agreed to be supplied to the Customer.

2 MAINTENANCE SERVICES

- 2.1 The Supplier undertakes to provide the Maintenance Services in respect of the Equipment upon the terms and conditions of the Contract in consideration of the Customer's payment for the annual service charge.
- 2.2 The Customer may request the following Maintenance Services:
 - a) the inspection testing and diagnosing (by attendance on site or remotely) by the Supplier or any fault reporting in an item of Equipment; and
 - b) the carrying out by the Supplier of such repairs, replacement of parts or adjustment as the Supplier shall deem necessary to remedy the said fault.
- 2.3 Appropriately qualified engineers will carry the maintenance in question.
- 2.4 The Service Minimum Term for Maintenance Services shall be seven years from the Commencement Date.
- 2.5 The Extended Term for Maintenance Services shall be three years.

3 TIMES FOR MAINTENANCE SERVICES

- 3.1 The Supplier shall provide the Maintenance Services within the following periods based upon the agreed tier of service detailed in the Contract Details:
 - a) Espria Assure TIER 1: 24 hours a day including weekends and public holidays
 - b) TIER 2: Between the hours of 9.00am and 5.00pm on Business Days
- 3.2 The Supplier will use its reasonable endeavours to ensure that response times to the Customer's notification of a fault are not more than:
 - a) 8 working hours if the Equipment has failed completely; or
 - b) 16 working hours if the Equipment has failed partially.

4 MAINTENANCE CHARGES

- 4.1 Services provided by the Supplier to the Customer in addition to the Maintenance Services shall be paid by the Customer at the Supplier's standard rates from time to time upon presentation of the Supplier's invoice.
- 4.2 The annual charge for the Maintenance Services is subject to annual review and may be increased provided that in any twelve-month period, such charges are not increased (i) more than once; or (ii) by more than fifteen percent (subject to the following provisions of this condition 4).
- 4.3 The Supplier may increase its charges for the Services by more than fifteen percent in any twelve-month period if the Supplier has given the Customer two months' prior written notice of such an increase ("Price Notice"). If the Supplier serves a Price Notice then the Customer may, within one month of the service of the Price Notice, serve three months' written notice on the Supplier to terminate the Contract insofar as it relates to the Services. During such notice period the charges shall remain at the same level as applicable at the date of the Price Notice.
- 4.4 Where the Supplier receives erroneous notification of an Equipment failure more than twice in any calendar month, the Supplier has the discretion to make a proportionate charge in line with current rates.

5 EXCLUSIONS

- 5.1 The Supplier accepts no obligations or liability whatsoever in relation to Maintenance Services:
 - a) in respect of any defect caused by the Customer arising from wilful damage, negligence (including improper storage), abnormal working conditions, failure to follow the Supplier's instructions (whether oral or in writing), misuse or alteration or repair of the Equipment without the Supplier's approval;
 - b) where loss is suffered by the Customer due to the Equipment neglecting to perform to its specifications and the failure is based on faults in the service provided by the network provider;
 - c) in respect of any delay caused in the execution of any repair due to circumstances beyond the reasonable control of the Supplier;
 - d) in respect of remedying defects in electricity or network supply to the Equipment; defects caused by failures or surges of electrical power; failure of the Equipment due to changes in the electrical supply service or the public network;
 - e) for delay in performing, or failure to perform, any of its obligations if such delay or failure result from events, circumstances or causes beyond its reasonable control.

6 THE CUSTOMER'S OBLIGATIONS

- The Customer undertakes to:
 - 6.1 settle with the Supplier outstanding amounts due to the Supplier in relation to the provision of the Maintenance Services by the due date for payment;
 - 6.2 make sure that the Equipment is not:

- a) moved from the Premises; or
 - b) altered, adjusted or interfered with in any way except by the Supplier's servants or agents. Alterations include the reprogramming of the Equipment to change network providers for the purpose of least cost routing.
- 6.3 provide the Supplier with complete access to the Equipment during the agreed hours in line with the agreed service tier to enable maintenance of the said Equipment to be carried out.
- 6.4 pay the Supplier's charges in the event of errors, by persons other than the Supplier's servants or agents, for reprogramming the Equipment due to such errors.
- 6.5 not to alter or extend the Equipment without prior notification to the Supplier (an additional charge may, at the Supplier's sole discretion be made for the maintenance of altered Equipment); provide the Supplier with details of the installer of the Equipment, a copy of its Pre-Connection Inspection Certificate and access to all relevant site records.
- 7 ADDITIONAL EQUIPMENT**
- 7.1 Where the Supplier agrees to provide the Customer with Additional Equipment:
- a) the provision of such Additional Equipment will be recorded on a Variation to be agreed between the Supplier and the Customer;
 - b) the Service Minimum Term for Maintenance Services shall be extended to a period of seven years from the date on which the Variation is agreed; and
 - c) the annual charge for Maintenance Services shall be increased by an amount equal to the agreed annual charge for Maintenance Services as specified in the Variation with effect from the date of agreement of the Variation.

SCHEDULE 4

MOBILE SERVICES

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Schedule the words and expressions defined in the Terms and Conditions, in the Contract Details or in any other Schedule forming part of the Contract shall apply and, in addition, the following definitions apply:

Cancellation Fee: the fee payable on termination of the Contract (or any part thereof) by the Customer, consisting of the total of the charges payable for the remainder of the Minimum Term.

End Users: means a person using the Mobile Service, who is an employee or contractor of yours or any other person you give permission to use the Mobile Service under this Contract.

Mobile Services: means the mobile voice and/ or data services supplied to the Customer in accordance with the Specification

Mobile Services Contract: means a Contract for the provision of Mobile Services incorporating the Terms and Conditions, the Contract Details and this Schedule 4. References to "Contract" in this Schedule 4 shall be a reference to a Mobile Services Contract.

Service Charges: the charges for the use of the Mobile Services as set out in the Contract Details, the Tariff and on the Website, as applicable.

SIM Card or SIM: means a card which enables you to access the Mobile Services.

Specification: means the description or specification of the Mobile Service as set out in the Contract Details.

Tariff: the tariff of prices for certain Mobile Services set out at [insert] as updated from time to time.

- 1.2 Notwithstanding anything to the contrary in this Contract, in the event of a conflict between the terms of this Schedule 4 and any other term in the Contract, this Schedule 4 shall take precedence.

2 PROVISION OF THE SERVICES

- 2.1 Supplier will provide the Customer with the Mobile Services within Supplier's network area in the UK and by roaming on to other networks internationally. Customer acknowledges that this is not a Contract for the supply of mobile equipment or devices and that within Supplier's coverage area, there may be areas where Customer does not have access to all Mobile Services or where coverage is otherwise limited or unavailable.
- 2.2 Customer agrees that Supplier, any network provider and Supplier's suppliers can process Customer's information, which Supplier collects, or which Customer submits during any sales or registration process, for a number of purposes, as set out in Supplier's 'Privacy Notice'.
- 2.3 The duration of this Mobile Services Contract will be 36 months ("**Minimum Term**") and commence from the connection date(s) of each number or where a data only service is being provided, the activation of the relevant SIM. Supplier's obligations under this agreement will commence on the connection date. Notwithstanding anything to the contrary, the Contract will not automatically renew without Customer's prior written consent
- 2.4 Regardless of clause 2.3 if you are a Small Business Customer the duration of the Mobile Service Contract shall be 12 months and then shall continue unless terminated by either party on 30 days' written notice.

3 PHONE NUMBER AND SIM

- 3.1 As between the parties the SIM Cards shall remain the property of Supplier and the Customer shall be entitled to use the SIM Cards (including any Software they contain) for receipt of the Mobile Services only.
- 3.2 Customer hereby warrants that SIM Cards are only used with its authorisation and Customer will inform Supplier as soon as is reasonably practicable after becoming aware that a SIM Card is lost, stolen or damaged. Subject to condition 5.1 Customer shall be liable for any loss or damage suffered as a result of unauthorised use of SIM Cards (including due to loss or theft), up to the time that Customer notifies Supplier that such SIM Card is being used without authorisation. Following such notification, the SIM card will be barred for all usage. Customer will be liable for all costs up until the request to bar.
- 3.3 Supplier shall allocate telephone numbers to Customer, and Customer shall only use such numbers to access the Mobile Services. Supplier may reallocate or change such telephone numbers to comply with legal or regulatory obligations but will exercise reasonable endeavours to minimise any disruption. Supplier may withdraw telephone numbers that have been allocated to Customer as a result of Customer's breach of Contract.
- 3.4 If Customer requests to Port a number allocated by Supplier, Supplier shall release such number(s) for the nominated network operator to transfer in accordance with OFCOM regulations.
- 3.5 Each SIM may only be used in devices enabled for Mobile Services and connection to the network. Customer acknowledges that any attempt to use the SIM in other equipment may result in serious damage to the equipment and its usage, including the making of emergency calls. In these instances, Supplier and/or any network provider are not responsible for any such damage or usage problems.

4 SERVICES AND COVERAGE

- 4.1 Once Customer is connected and activated, Supplier shall use reasonable endeavours to provide the Mobile Services and to ensure the security of communications at all times. However, due to the nature of mobile technology, it is impossible to provide a fault-free service and it is always possible that the quality or coverage may be affected at times.
- 4.2 Supplier shall use reasonable endeavours to provide Customer with access to overseas networks; however, Supplier shall not be responsible for the performance of overseas networks which may be limited in quality and coverage. Supplier will notify Customer of terms of access (if any) applicable to the use of overseas networks.
- 4.3 Customer may upload and send content using the Mobile Services. Customer grants Supplier and any network providers a royalty-free, perpetual and worldwide licence to store, transmit or otherwise deal with any such content.
- 4.4 Supplier may (i) change or withdraw some, or part, of the Mobile Services from time to time, including without limitation because of changing technologies, obsolescence, new or different product features, changing content providers or the need to remove, replace or modify content; /and (ii) determine or change how Mobile Services are presented and delivered to the equipment or are otherwise made available.
- 4.5 Any usage alerts provided by Supplier are given on a reasonable endeavours basis and Supplier has no liability for such usage alerts, including the failure to provide them. Customer will remain liable for all usage costs incurred whether alerted to such usage or not.
- 4.6 If Customer opts in to an international roaming bolt-on Customer agrees to opt out of any automatic barring and pay for all roaming usage outside of any bundle allowance.
- 4.7 If Customer opts to take any automatic top up bundle Customer agrees there will be no limit to the number of times the bundle will auto top up and will be liable for all automatic top up Service Charges.

- 5 SIM Cards**
- 5.1 Supplier shall bear the risk of loss or damage to SIM Cards provided until the point of delivery. Subject to condition 5.2, Customer shall bear the risk of loss or damage to SIM Cards from the time the delivery is made. Customer shall have no right to return SIM Cards unless they are faulty. Once delivery has been accepted Supplier shall have no obligation to replace faulty SIM Cards.
- 5.2 Customer shall notify Supplier in writing within 24 hours of receipt if SIM Cards arrive having been damaged, or if the order has been incorrectly fulfilled. Customer shall notify Supplier in writing within 10 working days of confirmation of order acceptance if SIM Cards have not been received as expected. Following either notification, Supplier shall replace damaged new SIM Cards, or SIM Cards lost or stolen in transit free of charge.
- 5.3 If Customer is using SIM Cards with its own devices, the unlocking of those devices will be Customer's responsibility and Supplier shall not be liable for any costs arising out of or in connection with such unlocking.
- 6 DISRUPTION TO SERVICES**
- 6.1 Supplier does not guarantee continuous fault-free service, and there may be situations when Mobile Services are not available, or the quality is affected.
- 6.2 Supplier shall endeavour to keep all such disruptions to a minimum and shall give notice of such disruptions where reasonably practicable.
- 7 SUSPENSION OF SERVICES**
- 7.1 Supplier may suspend any or all of the Mobile Services immediately and without notice, compensation or liability to Customer if: (i) Supplier reasonably believes Customer has provided false or misleading details information; (ii) Supplier notifies Customer that Customer's excessive use of Mobile Services is causing problems for other users, and Customer continues such excessive use; (iii) Supplier reasonably believes Customer's device or SIM Card has been lost or stolen; (iv) Supplier reasonably believes Customer has used the Mobile Services, the SIM Card or a phone number for illegal or improper purposes; (v) Supplier receives a serious complaint against Customer; (vi) Supplier reasonably believes Customer is using the Mobile Services for an unauthorised purpose or service; (vii) where a SIM Card has been inactive for two consecutive quarters; (viii) Supplier reasonably suspects Customer is using a GSM Gateway; (ix) Customer's usage is adversely affecting the operation of the mobile network or provision of the Mobile Services; (x) Customer's usage is or may adversely affect the operation of the mobile network or any third party network or provision of the mobile services or the provision of services by Supplier to any other person; or (xi) Supplier suspects fraudulent, criminal or illegal activities are being carried out, or are likely to be carried out.
- 7.2 Customer may still make emergency calls in the event that Supplier suspends any or all of the Mobile Services (unless they have been suspended at the request of the emergency services).
- 7.3 Supplier may at its sole discretion agree to re-connect Customer upon request and there may be a re-connection Charge for this.
- 7.4 Customer shall remain liable for all Service Charges under this Contract in the event that the Mobile Services are suspended.
- 8 ORDERS AND SERVICE CHARGES**
- 8.1 Orders are binding on both parties from the date of acceptance by Supplier. If acceptance is not expressed, it shall be deemed to have occurred on activation of the Mobile Service. For the avoidance of doubt, Supplier will activate the Mobile Service within 10 working days of receipt of Customer's order, unless otherwise agreed in writing, from which date Customer will become liable for all Service Charges and the Minimum Term will commence.
- 8.2 All call types not included in any Bundle taken by the Customer and calls included in the Bundle that exceed the allowance will be chargeable at Supplier's standard pricing, or as otherwise agreed in writing.
- 8.3 All Bundles, metered and unmetered Tariffs are subject to the fair use policy which will be as detailed in the Tariff documentation, proposal or Service Agreement.
- 8.4 Unless otherwise specified in the Tariff, bolt-ons must be added at the point of connection and shall apply for the duration of the Contract and cannot be removed mid-term. Bolt-ons removed mid-term will be liable for early termination charges.
- 8.5 Notwithstanding condition 4.1 of the General Terms and Conditions, Service Charges for any additional mobile services outside the standard monthly package shall be invoiced monthly in arrears.
- 8.6 Due to the nature of roamed usage, charges for such usage may be invoiced several months in arrears. There shall be no time restriction on the invoicing of such usage and standard payment terms shall apply to these Service Charges.
- 8.7 Subject to condition 8.5, Service Charges for all mobile usage may be invoiced up to 12 months in arrears and standard payment terms shall apply.
- 9 SOFTWARE LICENCE**
- 9.1 Mobile Services provided under this Contract may contain or use Software. This software is generally not owned by Supplier. Any software that is used in relation to the Mobile Services and is not owned or licensed by the Supplier shall be governed by the terms of the applicable software licence. In all other cases, where software is provided Supplier hereby grants the Customer a non-exclusive, royalty-free licence to use any such software for the duration of this Contract.
- 9.2 The licence granted in condition 9.1 above shall be a single user licence. Customer may make one copy of the software for back up purposes. If Customer does not accept the terms of the relevant software licence, Customer shall be prohibited from using the relevant feature of the Mobile Service to which the software relates and Supplier shall not be bound to deliver the relevant Mobile Service. Customer shall be responsible for any software upgrades specified by the licensor or Supplier.
- 10 AREAS WHERE SUPPLIER HAS NO RESPONSIBILITY**
- 10.1 Supplier shall endeavour to ensure the accuracy, quality and timely delivery of Services. However: (i) neither Supplier nor any network operator accept responsibility for any use of, or reliance on, Services or their content, or for any disruptions to, or any failures or delays in, Mobile Services including, without limitation, any alert Services or virus detection Services; and (ii) other than as expressly set out in this Contract, neither Supplier nor any network operator make any representations as to the accuracy, comprehensiveness, completeness, quality, currency, error-free nature, compatibility, security or fitness for purpose of the Mobile Services or their content which are provided to Customer on an 'as is' basis; and (iii) Supplier makes no warranty as to coverage or Customer's ability to access the Mobile Services within the coverage area.
- 10.2 Neither Supplier nor any network operator will be liable: (i) for any loss Customer may incur as a result of unauthorised use of PINs or passwords; (ii) for any failure to carry out its duties, or provide Services, because of something beyond the reasonable control of either party; (iii) for any direct or indirect costs or losses as a result of errors in programming when using the Fixed Dialling Number SIM functionality; or (iv) where during a port to another provider the other provider fails to take over Customer's connections for any reason.
- 10.3 Customer may use Services: (i) to upload, email or transmit content using Services; and (ii) to access content which is branded or provided by others and to acquire goods and services from others.
- 10.4 Neither Supplier nor any network operator is responsible or liable in any way for, and does not endorse, any such content, goods or services provided by or accessed via the Mobile Services.
- 10.5 This condition 10 will survive termination or expiry of this Contract.
- 11 USE OF THE SERVICE**
- 11.1 Customer may supply the Services to its own End Users, but not to any other party. Customer is responsible for ensuring the compliance of End Users with the terms of this Contract, all applicable laws and codes of practice which may vary from time to time.
- 11.2 Customer shall not do anything that causes the network to be impaired or damaged.
- 11.3 Where a specific End User causes Customer to be in breach of this Contract, Supplier shall be entitled to suspend such End User's use of the Services. Supplier shall notify Customer of such suspension in advance if reasonably practicable to do so, allowing an opportunity to remedy the alleged breach (where it is capable of remedy); otherwise such notification shall be as soon as reasonably practicable after the suspension. This right of suspension shall only apply during the period of breach, although re-instatement of the Service may be subject to the payment of a re-connection Charge.
- 11.4 Customer may use the Services to access the internet and services not provided under this Contract. Supplier accepts no responsibility for these services, including where in accessing such services, Customer gives unauthorised parties access to the Services.
- 11.5 Customer's use of the Services outside the UK may be subject to laws and regulations that apply in that other country. Supplier shall not be liable for Customer's failure to comply with those laws or regulations.
- 11.6 Supplier may, in certain circumstances, allow the Customer to set its own limits for selected charges on its account. Supplier can and may suspend Customer's access to the Mobile Services if this limit is exceeded. Where Customer is allowed to set such a limit, and deliberately exceeds it in the reasonable opinion of the Supplier, Supplier shall have the right to charge for such Mobile Services used beyond any agreed limit.
- 12 PIN, PASSWORDS AND SIM CARD**
- 12.1 Customer shall ensure that SIM Cards are kept safe and secure in its possession and shall ensure that they can be returned to Supplier, if required to do so at any time. There will be a charge for any replacement SIM Card, unless the original SIM Card is defective.
- 12.2 Customer shall keep all PINs and passwords secure and confidential, and shall immediately change any PIN or password upon becoming aware that someone is accessing Services without permission or authorisation.
- 13 RESPONSIBLE USE OF SERVICES**
- 13.1 Customer shall only use Services: (i) as set out in this Contract; and (ii) for personal use. Customer shall not resell or commercially exploit any of the Services or content.
- 13.2 Customer must not use Services, SIM Cards or telephone numbers or allow anyone else to use Services, the SIM Cards or telephone numbers for illegal or improper use including, but not limited to: (i) to copy, store, modify, publish or distribute Services or content (including ringtones), except where authorised by Supplier; (ii) to download, send or upload content of an excessive size, quantity or frequency; (iii) in any way which breaches any security or other safeguards or in any other way which harms or interferes with the network, the networks or systems of others or Services; (iii) to falsify or delete any author attributions, legal or other proper notices or proprietary designation or labels of the origin or source of software or other content contained in any file uploaded by Customer.
- 13.3 Customer shall cooperate with Supplier at all times and follow Supplier's reasonable directions in ensuring the security and usability of the Mobile Services and shall comply with any acceptable use policy published by Supplier and/or notified to Customer from time to time.
- 13.4 Customer acknowledges that Supplier may put limits on the use of certain Mobile Services, including without limitation limiting the size of messages or storage space, and Customer shall comply with such limitations.
- 14 ENDING THIS AGREEMENT AND DISCONNECTION OF SERVICES**
- 14.1 After the end of the Minimum Term, Customer may terminate this Contract on 30 days' notice. Subject to Supplier's right to the annual price increase, the Customer will continue to pay the same core subscription price after the Minimum Term has ended.
- 14.2 Supplier may end the Contract: (i) on 30 days' notice, at any time; (ii) on 30 days' notice because of Customer's conduct in breach of this Contract.
- 14.3 In the following cases, Supplier may end the Contract immediately and Service Charges owing up until the point of disconnection will become immediately due and payable: (i) if Supplier has the right to suspend the Services and reasonably believes that the grounds are serious and have not been, or are unlikely to be, rectified; (ii) if Supplier believes that Customer's use of the Services is jeopardizing the operation of the network or any network provider's network, or is of an unacceptable nature; or (iii) in the event of Customer's bankruptcy or insolvency.
- 14.4 Supplier may terminate the Contract if Supplier no longer has access to networks needed to provide Services, or if Supplier is no longer able to provide Services due to factors beyond its reasonable control or due to its cessation of business.
- 14.5 Customer may only terminate the Contract in the ways set out in this condition 14. However, if Customer is a consumer, any statutory rights which cannot be excluded or limited, will not be affected by this condition 14.
- 14.6 If a request is received to port a mobile telephone number to another provider, Supplier will provide a porting authorisation code ("PAC") in accordance with current regulatory guidelines. Customer will remain liable for any outstanding amounts due in relation to this Contract, including any Cancellation Fees, and for all costs incurred up to the point the Customer ports away from Supplier.
- 14.7 If Customer moves to another provider and chooses not to port the telephone number across, Supplier will provide a service termination authority code ("STAC") in accordance with current regulatory guidelines. Customer will remain liable for any outstanding amounts due in relation to this Contract, including any Cancellation Fees, and for all costs incurred up to the point the STAC has been activated by the gaining provider. Should the gaining provider fail to activate the STAC for any reason Customer will remain liable for all costs.
- 14.8 If Customer ports a number away from Supplier, Supplier may charge an administration fee per number to cover its costs. Current administration charges are available on request.
- 14.9 If Supplier receives a STAC generated by another Service Provider Supplier will complete the STAC process as instructed and in accordance with current regulatory guidelines but will not be liable for any charges generated by the losing service provider.
- 15 EFFECT OF THIS CONTRACT ENDING**
- 15.1 Upon termination or expiry of this Contract for any reason: (i) Supplier shall close Customer's account and disconnect access to the Mobile Services; (ii) Customer will not be able to use Mobile Services or make emergency calls; (iii) notwithstanding condition 8.2 of the General Terms and Conditions Customer must immediately pay all Service Charges owing up to the date of termination or expiry (including the Cancellation Fee).
- 16 VARIATIONS TO THE CONTRACT OR PRICES**
- 16.1 The following are agreed to be short notice price variable services: premium rate services, roaming services, international services, personal number services, special numbers, short codes, directory assistance numbers and any other Service which Supplier determines is a short notice price variable service, such Service being subject to price changes that Supplier cannot reasonably avoid. For short notice price variable Services Supplier will pass on the burden of any cost increase by giving 30 days' notice where possible, or such lesser notice given to Supplier by a relevant third party. Clause 11.4 of the Contract shall apply.



Empowering digital workspace

Mode Communications Ltd T/A Espria
Wade Park Farm, Salisbury Road, Ower, Romsey SO51 6AG
T: 0330 175 5588

espria.com