

CHALLENGER MOBILE COMMUNICATIONS LIMITED (“CHALLENGER”)

STANDARD TERMS AND CONDITIONS OF BUSINESS

These Conditions contains the following information:

- Standard terms – pages 1 – 18;
- Schedule 1 (Equipment Sales including mobiles, car kits and radios) – pages 19 – 25;
- Schedule 2 (Fixed Wire/Landline) – pages 26 – 28;
- Schedule 3 (Mobile via Third Party Network Operator) – pages 29 – 30;
- Schedule 4 (Broadband) – pages 31 – 34;
- Schedule 5 (VOIP) – pages 35 – 37;
- Schedule 6 (Additional Services) – page 38;
- Schedule 7 (PAYT Software) – pages 39 – 41; and
- Schedule 8 PAYT mobile application) – pages 42 - 43.

1. DEFINITIONS

1.1 In these Conditions, the following definitions (as well as those found in the Schedules) apply:

Additional Service: an additional Service which is taken out by the Customer (after the date of the original Order) whilst the Services continue to be performed by CHALLENGER (during the Term).

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

Charges: the charges payable by the Customer for the supply of the Services and/or the Sale Equipment in accordance with clause 7.

Commencement Date: the date of the Order or the commencement of the provision of the Services, whichever is the later.

Conditions: these terms and conditions as amended from time to time in accordance with clause 18.8, including and as amended by the bespoke provisions of the Relevant Schedules (whichever are applicable to the appropriate Service).

Contract: the contract between CHALLENGER and the Customer for the supply of Services and/or the sale of the Sale Equipment in accordance with these Conditions, constituting the Order and these Conditions (which include the Relevant Schedules).

Customer: the person, firm or company who purchases the Services, Equipment or Sale Equipment from CHALLENGER, as set out in the Order.

Early Termination Fee: means, unless set out differently in the appropriate Relevant Schedule which applies to a particular Service and disregarding Schedule 1, the Customer’s average monthly spend under the Contract (when the Customer has been using the Service normally), multiplied by the number of complete months remaining until the Contract which would otherwise have expired (up until the Minimum Term or the year anniversary thereof (if applicable)).

Equipment: the equipment, hardware and/or software supplied as part of the Services plus any additional equipment as is agreed between the parties to be supplied from time to time following the Commencement Date.

Intellectual Property Rights: all intellectual property rights whatsoever.

Minimum Term: means the minimum term of the Contract starting on the Commencement Date and running for the period of months set out in the Relevant Schedule, which is extended until the Minimum Term of any Additional Service if an Additional Service is taken out by the Customer during the Term.

Order: the order form signed by the parties setting out the Services and/or Sale Equipment to be supplied by CHALLENGER to the Customer pursuant to these Conditions.

CHALLENGER: Challenger Mobile Communications Limited a private company limited by shares and registered in England and Wales with company number 2780264.

CHALLENGER Materials: has the meaning set out in clause 6.1(k).

Relevant Schedule: the schedule(s) which applies to the appropriate Service which is supplied pursuant to the Order, setting out the bespoke terms and conditions in relation to such Service.

Sale Equipment: the equipment which CHALLENGER agrees to sell to the Customer (as per Schedule 1) pursuant to these Conditions.

Service(s): the service(s) supplied by CHALLENGER to the Customer as set out in the Order, plus any Additional Service that CHALLENGER agrees to supply to the Customer from time to time, pursuant to these Conditions.

Site: the location(s) at which the Services are to be provided or the Sale Equipment is to be delivered as set out in the Order.

Term: the term of the Contract (including any extension courtesy of an Additional Service as per clause 2.3), being from the Commencement Date until the Minimum Term and thereafter continuing on a rolling annual basis unless and until notice is served in accordance with these Conditions.

2. APPOINTMENT AND DURATION

2.1 With effect from the Commencement Date, and in consideration of the payment of the Charges by the Customer, CHALLENGER agrees to supply the Services and/or sell the Sale Equipment to the Customer in accordance with these Conditions.

2.2 The Contract shall commence on the Commencement Date and shall continue for the Minimum Term and thereafter shall continue subject to either the Customer or CHALLENGER giving 30 days' notice of termination in writing to the other party.

2.3 In the event that the Customer engages CHALLENGER in respect of any Additional Service during the Term from time to time, then the term of all of the current Services at that time shall be extended until the Minimum Term of the Additional Service and thereafter shall continue and be terminable collectively as per clause 2.2.

2.4 Notwithstanding any other provisions in these Conditions and if the Customer is contracting as a consumer, the Customer may terminate the Contract by serving notice in writing on CHALLENGER in the form below within 14 days of the Commencement Date (i.e. a ‘cooling off’ period). For the avoidance of doubt, if the Customer wishes to terminate an Additional Service within 14 days then said notice of termination shall only serve to terminate that particular Additional Service and specifically does not terminate the Contract and the other on-going Services being provided to the Customer at that time.

To: [*] (the relevant Accounts Manager as notified to the consumer)

“I/We[*] hereby give notice that I/We[*] cancel my/our[*] contract for the supply of the goods[*]/for the supply of the service/s[*], as follows[*]

,

Ordered on [*/Received on [*

Name of consumer

Address of consumer

Signature of consumer (only if this form is notified on paper)

[] Complete/delete as appropriate*

3. BASIS OF CONTRACT

3.1 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of CHALLENGER which is not set out in the Contract.

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

3.3 The Customer acknowledges that CHALLENGER has relied and will rely upon the information, documents and materials provided by the Customer. The Customer warrants that the information supplied has been and will at the time of supply be compiled with reasonable skill and care and shall not by virtue of any error or omission be misleading or inaccurate in any material respect.

3.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3.5 Any quotation given by CHALLENGER shall not constitute an offer, and is only valid for a period of 30 days from its date of issue.

4. SUPPLY OF SERVICES

- 4.1 CHALLENGER shall use its reasonable endeavours (so far as it reasonably can) to procure that the Services are provided in a reliable and professional manner and in accordance with good industry practice.
- 4.2 CHALLENGER shall supply the Services to the Customer, at the Site (if applicable), in accordance with the Order in all material respects.
- 4.3 CHALLENGER shall use all reasonable endeavours to meet any performance dates specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 4.4 CHALLENGER shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and CHALLENGER shall notify the Customer in any such event.
- 4.5 CHALLENGER shall comply with all applicable health and safety laws when it undertakes installation and/or maintenance work.
- 4.6 CHALLENGER shall endeavour to rectify and/or fix and/or assist with any fault in the Services (if appropriate) as soon as reasonably practicable.
- 4.7 CHALLENGER will normally carry out any installation and/or maintenance work during normal working hours but may, on reasonable notice (no less than 12 hours except in case of emergency), require the Customer to provide access at other times. At the Customer's request CHALLENGER may agree to work outside normal working hours but the Customer may be asked by CHALLENGER to pay any relevant overtime charges for relevant staff.
- 4.8 CHALLENGER warrants to the Customer that the Services will be provided using reasonable care and skill.

5. EQUIPMENT

- 5.1 If CHALLENGER provides Equipment to the Customer as part of the Services then unless as set out as otherwise in the Contract:
 - (a) the Equipment shall remain the sole property of CHALLENGER and title will remain with CHALLENGER at all times;
 - (b) the Customer will not interfere with or modify the Equipment and will not remove or alter any identification mark on the Equipment showing that it is owned by CHALLENGER;
 - (c) the Customer will make clear to third parties that the Equipment is CHALLENGER's property;

- (d) the Customer is responsible at all times for the safe use and safe custody of the Equipment whilst it is in the Customer's custody, including procuring and maintaining an appropriate insurance policy to cover against loss of, or damage to, the Equipment;
 - (e) the Customer must keep the Equipment at the Site (save for mobiles) in accordance with CHALLENGER's instructions;
 - (f) the Customer must permit CHALLENGER to inspect or test the Equipment remotely at such times as may be agreed between CHALLENGER and the Customer, such agreement not to be unreasonably withheld or delayed;
 - (g) the Customer must not attempt to let, sell, charge or otherwise deal with the Equipment in any way inconsistent with CHALLENGER's ownership of such Equipment;
 - (h) the Customer must not permit or suffer any execution or distress to be levied or used against the Equipment or permit or suffer the Equipment to be seized under or affected by any distress, execution or other legal process;
 - (i) the Customer will be liable to CHALLENGER for any loss or damage to the Equipment except where it can be shown that CHALLENGER was responsible for such loss or damage. The Customer must notify CHALLENGER immediately of any loss or damage to the Equipment;
 - (j) the Customer must notify CHALLENGER immediately if the Equipment is lost or stolen.
- 5.2 CHALLENGER warrants that each item of Equipment will conform in all material respects to the manufacturer's specification for a period of 12 months (but in the case of software 90 days) from the date on which each item of Equipment is dispatched to the Customer by CHALLENGER (the "**Warranty Period**") unless special conditions associated with certain Equipment apply.
- 5.3 If, within the Warranty Period, the Customer notifies CHALLENGER of any defect or fault in the Equipment arising under normal use in consequence of which it fails to conform in any material respect with the manufacturer's specification CHALLENGER shall, at CHALLENGER's option either: repair the faulty Equipment; or, replace the faulty Equipment with the same or an equivalent item of Equipment which may be a new or refurbished item. In the event that Equipment is provided to replace Equipment which has failed during its Warranty Period, the replacement Equipment will be provided with its own Warranty Period which shall last for the greater of: a) 3 months from the date on which the replacement Equipment is dispatched to the Customer; or b) the outstanding period of the original Warranty Period.
- 5.4 Following the expiry of the Warranty Period of Equipment provided under the Contract in which CHALLENGER retains title, CHALLENGER will extend the Warranty Period in respect of such Equipment until the end of the Minimum Term ("**Extended Warranty Period**"). Upon expiry of the Minimum Term, or termination of the Contract, the Extended Warranty Period shall cease.

- 5.5 The warranty obligations set out in clauses 5.2 and 5.4 shall not apply in the event that the Customer, or anyone acting with the authority of the Customer, has amended or damaged the Equipment, or used it for a purpose or in a context, other than in accordance with CHALLENGER's or the manufacturer's instructions and advice.
- 5.6 Following any upgrade or replacement of Equipment or disconnection of Equipment from the Wireless Services (as defined in Schedule 3), CHALLENGER shall reserve the right to request the safe return of any such Equipment in which CHALLENGER retains title pursuant to clause 5.4 from the Customer to CHALLENGER at the Customer's expense.
- 5.7 If the Equipment is not returned following expiry of the Term or is damaged in any way during the Term then the Customer must inform CHALLENGER immediately and within 7 days pay for the Equipment at the then retail purchase cost from time to time, or such equivalent replacement cost if the item of Equipment is no longer available for purchase. Disregarding the aforementioned, mobile Customers (Schedule 3) shall be entitled to retain mobile handsets at the end of the Minimum Term.
- 5.8 CHALLENGER reserves the right to add to, substitute, or to discontinue any item of Equipment at any time. CHALLENGER does not guarantee the continuing availability or any particular item of Equipment.
- 5.9 CHALLENGER may either remotely (or at the Site by prior arrangement) make or procure any inspection, test, modification, change, addition to or replacement of any Equipment provided CHALLENGER acts in a reasonable manner.

6. CUSTOMER'S OBLIGATIONS

- 6.1 The Customer shall (as appropriate):
- (a) ensure that the terms of the Order are complete and accurate;
 - (b) co-operate with CHALLENGER in all matters relating to the Services;
 - (c) comply with the reasonable operating instructions given by CHALLENGER to the Customer in respect of the use of the Services;
 - (d) provide CHALLENGER, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by CHALLENGER;
 - (e) provide CHALLENGER with such information and materials as CHALLENGER may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
 - (f) prepare the Customer's premises for the supply of the Services and meet any related costs;
 - (g) provide an adequate electricity supply and a suitable earth connection in the room for the operation of the Equipment to be installed at the Site;
 - (h) notify CHALLENGER immediately if it becomes aware of any fault in the Services;

- (i) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
- (j) comply at all times with all laws, codes of practice and obligations, applicable to the Customer. CHALLENGER will have no liability under the Contract for failure to comply with its obligations in any case where the Customer does not comply with any such relevant laws or obligations or does not obtain any necessary consents or approvals;
- (k) keep and maintain all materials, equipment, documents and other property of CHALLENGER (**CHALLENGER Materials**) at the Customer's premises in safe custody at its own risk, maintain CHALLENGER Materials in good condition until returned to CHALLENGER, and not dispose of or use CHALLENGER Materials other than in accordance with CHALLENGER's written instructions or authorisation;
- (l) ensure that the Services are used predominately for the Customer's own genuine business purposes and specifically not for any illegal, immoral, menacing or unlawful purpose or not in any way which infringes the rights of any third party (including copyright and confidentiality) or for the transmission of any material which is illegal, defamatory, obscene, offensive or abusive in any way (or is intended to be);
- (m) immediately reimburse CHALLENGER if CHALLENGER incurs any liability whatsoever (from a third party or otherwise) in respect of clause 6.1 (l); and
- (n) comply with all of its obligations under the Contract at all times.

6.2 If CHALLENGER'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**) (in addition to clause 8):

- (a) CHALLENGER shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays CHALLENGER's performance of any of its obligations;
- (b) CHALLENGER shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from CHALLENGER's failure or delay to perform any of its obligations as set out in this clause 6.2; and
- (c) the Customer shall reimburse CHALLENGER on written demand for any costs or losses sustained or incurred by CHALLENGER arising directly or indirectly from the Customer Default.

7. CHARGES AND PAYMENT

7.1 The Charges for the Services and/or Sale Equipment shall be such charges, costs, disbursements, tariffs and expenses as set out in the Order and/or (referred to in) the Relevant Schedule plus such additional charges which are incurred by the Customer from time to time.

7.2 CHALLENGER shall invoice the Customer in accordance with the payment schedule of the Order and/or the Relevant Schedule.

7.3 The Customer shall pay each invoice submitted by CHALLENGER (at any time):

- (a) within 7 days of the date of the invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by CHALLENGER, and

time for payment shall be of the essence of the Contract.

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

7.5 Without limiting any other right or remedy of CHALLENGER, if the Customer fails to make any payment due to CHALLENGER under the Contract by the due date for payment (**Due Date**), CHALLENGER shall have the right to charge interest, compensation and charges pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

7.6 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against CHALLENGER in order to justify withholding payment of any such amount in whole or in part. CHALLENGER may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by CHALLENGER to the Customer.

7.7 Upon 28 days' notice or as much notice as is reasonably practicable in the circumstances, CHALLENGER reserves the right to pass on any price increases (in its charges) to the Customer where such change arises as a consequence of changes imposed by third party manufacturers or suppliers or a regulatory body for example.

7.8 The Customer is urged to regularly check the amounts and frequency of payments made to CHALLENGER. In the event that there has been some form of overcharging by CHALLENGER then the Customer is only permitted to reclaim 6 months' worth of overcharging from the point of notifying CHALLENGER of such error. In the event of adding any additional Services or renewing any of the Services then the right to reclaim any previous overcharging is irrevocably waived and released at that point.

8. SUSPENSION/INTERRUPTION OF SERVICES

8.1 CHALLENGER shall be entitled (upon reasonable notice or immediately if appropriate) to temporarily suspend and take out of use any Services for operational or other reason, including:-

- (a) where CHALLENGER is entitled to terminate the Contract pursuant to clause 11 (without prejudice to any of CHALLENGER's other rights, remedies and/or causes of action);
- (b) improving, upgrading, updating and/or altering any content or part of the Services;
- (c) replacing, maintenance, repair and upgrade of any of the Services;
- (d) dealing with any actual or suspected security breach, virus, or attack or any misuse;
- (e) where required by any regulatory, governmental or other competent authority;
- (f) any emergency or taking any other action that CHALLENGER reasonably considers necessary as a reasonable and prudent provider of the Services;
- (g) where CHALLENGER believes there has been and/or there is and/or there is expected to be a suspected abuse of the Services, including for example a high call spend on premium numbers;
- (h) where CHALLENGER believes the Customer is not using the Services in accordance with their usual practice or is not using the Services properly;
- (i) where the Customer has not paid for the Equipment and/or the Sales Equipment by the due date;
- (j) excessive usage of the Services;
- (k) false or incorrect information has been provided by the Customer; and
- (l) any reason whatsoever where CHALLENGER has good and genuine cause to do so.

8.2 Where Services are suspended in accordance with clause 8.1, the following provisions will apply:

- (a) subject to any requirements of any third party services provider, CHALLENGER will use reasonable efforts to minimise any downtime, and to carry out routine maintenance of upgrading at a suitable time agreed with the Customer in advance;
- (b) CHALLENGER will use reasonable efforts, wherever practicable, to inform the Customer at least 24 hours in advance that the Services shall be suspended;
- (c) A reconnection charge of £25 shall be payable by the Customer.

8.3 CHALLENGER and any third party services provider shall be free to carry out emergency or urgent maintenance at any time to ensure the Services are continued to be supplied. CHALLENGER shall advise the Customer if practicable prior to the conducting of any such emergency or urgent maintenance.

8.4 In the event that the Customer is in breach of its payment obligations, CHALLENGER may at its reasonable discretion (and without prejudice to any other rights which CHALLENGER may have) and upon giving the Customer prior written notice, suspend the provision of all or any of the Services from a date and time not less than 7 days from the date of such written notice having been given. CHALLENGER shall recommence provision of the Services as soon as reasonably practicable following the Customer's fulfilment of its payment obligations (in respect of all of the Services). In the event that the breach is not remedied within the

period of 7 days from the date that the Services are suspended, then CHALLENGER shall have the option (without prejudice to any other rights which CHALLENGER may have) to terminate the Contract with immediate effect in accordance with clause 11.1.

8.5 In the event that a third party services provider suspends the provision of all or any of the third party services to CHALLENGER, CHALLENGER shall have the right to suspend the provision of any part of the Services which is wholly or partly dependent on CHALLENGER receiving the third party services. Where this clause 8.5 applies CHALLENGER shall give to the Customer as much notice as is reasonably practicable that the Services will be suspended and shall resume the provision of the suspended Services as soon as is reasonably practicable after the resumption of the provision of the third party services to CHALLENGER.

8.6 During any period of suspension of the Services:

8.6.1 CHALLENGER shall not be responsible for the provision of the suspended Services or for any requirements or service levels not being met (save to the extent that CHALLENGER's failure to comply with the other terms of the Contract or to provide the Services which are not suspended adversely affects provision of the suspended Services); and

8.6.2 the Customer shall not pay any Charges in respect of the suspended Services, unless the suspension was due to the Customer's breach of its obligations under the Contract.

8.7 Any period of suspension of the Services may be to such extent and of such duration as CHALLENGER may reasonably specify.

9. LIMITATION OF LIABILITY

9.1 Nothing in these Conditions shall limit or exclude CHALLENGER's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

9.2 Subject to clause 9.1:

- (a) CHALLENGER 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, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) CHALLENGER'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

2x the amount paid by the Customer to CHALLENGER during the preceding 12 months before the purported breach in respect of that particular Service (or in respect of the Sale Equipment 2x the invoice value of the particular item of Sale Equipment).

- 9.3 CHALLENGER shall under no circumstances be liable to the Customer in respect of any direct, indirect or consequential losses resulting from:
- (a) damage, improper use, operation or neglect of the Equipment or the subjection of the Equipment by the Customer to unusual physical or electrical stress, the neglect or misuse of the Equipment or any failure or fluctuation of electrical power, air conditioning, humidity control or other environmental controls or where the environment in which the Equipment operates and is sited does not meet BS 6701 requirements;
 - (b) modification of the Equipment or its merger (in whole or part) with any other equipment unless approved in writing by CHALLENGER;
 - (c) the Customer failing to implement recommendations for any solutions to faults advised by CHALLENGER;
 - (d) faults due to failures of electrical supplies, networks or PBX systems;
 - (e) electrical work external to the Equipment;
 - (f) transportation or relocation of the Equipment not performed by or on behalf of CHALLENGER;
 - (g) use of the Equipment for a purpose for which it was not designed or breach by the Customer of any maintenance agreement covering the Equipment;
 - (h) any repair, adjustment, alteration or modification of the Equipment by a third party and without CHALLENGER's prior written consent;
 - (i) any force majeure event (as defined in clause 18.1(a)) or any event outside of the reasonable control of CHALLENGER; or
 - (j) a third party succeeding in "hacking" into the Equipment.
- 9.4 To be valid, any claim against CHALLENGER arising out of or in connection with the Contract whether in contract, tort or otherwise, must be brought within 12 months of the beginning of the commencement of the purported circumstances and/or breach which allegedly gave rise to such claim.
- 9.5 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 9.6 This clause 9 shall survive termination of the Contract.

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Equipment and/or Services are owned absolutely by CHALLENGER or a third party (who in such circumstances shall have licensed the same to CHALLENGER).
- 10.2 To the extent possible, CHALLENGER grants the Customer a non-exclusive and non-transferable licence to use the Equipment for the sole purpose of the Services. The Customer is strictly forbidden from reproducing all or any part of the Equipment, save for the Customer will be entitled to make a single back-up copy for security purposes only. The Customer will not modify, adapt, translate, reverse engineer or disassemble the Equipment but if the Customer wishes to exercise its rights under section 50B of the Copyright, Designs and Patents Act 1988 then CHALLENGER will give the Customer information about the terms on which such rights may be exercised.
- 10.3 Copyright in all documents, drawings and information including if applicable any access codes supplied to the Customer in connection with the Contract remain vested in CHALLENGER or the copyright owner. Such documents, drawings and information are confidential and will not be copied, disclosed or used (except for the purpose for which they were supplied) without CHALLENGER's prior written consent.
- 10.4 All CHALLENGER Materials are the exclusive property of CHALLENGER.
- 10.5 The Customer shall inform CHALLENGER of any breaches or alleged or purported breaches of the Intellectual Property Rights in respect of the Equipment and/or Services and shall provide CHALLENGER with all such reasonable assistance to this regard as requested by CHALLENGER.

11. TERMINATION

- 11.1 Without limiting its other rights or remedies, CHALLENGER may terminate the Contract with immediate effect by giving written notice to the Customer if:
- (a) the Customer commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of the Customer being notified in writing to do so;
 - (b) the Customer suspends, or threatens to suspend, 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;
 - (c) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;

- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of that other party;
 - (e) the Customer (being an individual) is the subject of a bankruptcy petition or order;
 - (f) 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;
 - (g) an application is made to court, or 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 (being a company);
 - (h) a floating charge holder over the assets of the Customer (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - (i) a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the other party;
 - (j) any event occurs or proceeding is taken with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.1(b) to clause 11.1(i) (inclusive);
 - (k) the Customer suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
 - (l) the Customer (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 11.2 Without limiting its other rights or remedies, CHALLENGER may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 11.3 Without limiting its other rights or remedies, CHALLENGER shall have the right to terminate the Contract by giving the Customer 30 days' written notice following the expiration of the Minimum Term.
- 11.4 In the event that the Contract is terminated (for whatever reason) before the Minimum Term or the year anniversary thereof (if applicable), the Customer shall pay the Early Termination Fee to CHALLENGER within 7 days.
- 11.5 For the avoidance of doubt the Early Termination Fee is payable in respect of all applicable Services (regardless of the date upon which the Services were entered into) at the actual time of termination.
- 11.6 The parties acknowledge and accept that the Early Termination Fee does not constitute a penalty and is a genuine estimate of loss on behalf of CHALLENGER.

11.7 If the Contract is terminated in breach of these Conditions, then any discounts previously granted to the Customer will become immediately repayable to CHALLENGER.

12. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to CHALLENGER all of CHALLENGER's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, CHALLENGER shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of CHALLENGER Materials and Equipment which has not been fully paid for. If the Customer fails to do so, then CHALLENGER may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) 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
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

13. INDEMNITY IN RESPECT OF BREACHES BY THE CUSTOMER

13.1 The Customer agrees to indemnify on a full indemnity basis and hold CHALLENGER harmless in respect of any breaches, and/or purported breaches, of these Conditions.

13.2 In particular, if CHALLENGER find it necessary to use solicitors or other professional parties to recover any monies owing to them under the Contract or in dealing with any breaches of the Contract by the Customer, the Customer shall in addition be required to pay the costs incurred by CHALLENGER and shall indemnify CHALLENGER in respect of the same regardless of any court decision as to the liability for costs.

14. DATA PROTECTION

14.1 In this Contract the terms "**Personal Data**", "**Sensitive Personal Data**", "**Data Processor**" and "**Data Controller**" are as defined in the Data Protection Act 1998 ("**DPA**").

14.2 The CHALLENGER acknowledges that under the terms of the Contract;

- (a) it will act as a Data Processor appointed by the Customer who is a Data Controller; and
- (b) the data concerning the business and activities of the Customer to which it has access is Personal Data and may contain Sensitive Personal Data.

- 14.3 Each Party shall comply with the DPA.
- 14.4 CHALLENGER will only process the Personal Data to the extent necessary for the purposes of the Contract. CHALLENGER shall take such reasonable security measures as required to enable it to process the Personal Data in compliance with the obligations equivalent to those imposed on the Customer by the Seventh Principle of the DPA.
- 14.5 The Customer agrees that, under its contracts with third party services providers, CHALLENGER may be required to pass details of customers to whom it provides the relevant third party services to the third party services provider. The Customer gives consent to CHALLENGER to transfer the Personal Data to a third party services provider where this is reasonably required for CHALLENGER to fulfil its contractual obligations to that third party services provider. Where this clause 14.5 applies, CHALLENGER shall use reasonable endeavours to procure that the third party services provider complies with the obligations of CHALLENGER set out in this clause 14.5.
- 14.6 For the avoidance of doubt the parties acknowledge that all the Personal Data is the property of the Customer.

15. DIRECT DEBIT GUARANTEE

- 15.1 In accordance with the terms of the Order, CHALLENGER may permit the Customer to pay for some of the Services by way of direct debit.
- 15.2 A direct debit guarantee is offered by all banks and building societies that take part in the direct debit scheme, and the Customer is advised to familiarise itself with the terms of said guarantee.
- 15.3 If a direct debit bounces then CHALLENGER reserves the right to charge an administration fee of £15.

16. CONFIDENTIALITY

- 16.1 A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain, and shall ensure that such confidential information is not copied, adapted or altered in any way. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 16 shall survive termination of the Contract.

- 16.2 The Customer accepts and permits CHALLENGER to use information and data about calls routed through any Equipment including but not limited to origin, destination, duration, route and time, so that CHALLENGER:
- (a) can perform its obligations under the Contract and maintain or upgrade the quality of the telecommunications services it provides or offers; and
 - (b) can collate the information and other customer's information to produce non-customer-specific statistics to assist CHALLENGER for whatever reason.

17. COMPLAINTS

In the unlikely event of the Customer wishing to make a complaint please direct this in the first instance to your point of contact at CHALLENGER. If you are unable to resolve the issues within a reasonable time then please write to the directors of CHALLENGER at the registered office who will endeavour to deal with the matter as swiftly and professionally as possible.

18. GENERAL

18.1 Force majeure:

- (a) For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of CHALLENGER including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of CHALLENGER or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of CHALLENGER's or subcontractors.
- (b) CHALLENGER shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- (c) If the Force Majeure Event prevents CHALLENGER from providing any of the Services for more than 6 weeks, CHALLENGER shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

18.2 Assignment and subcontracting:

- (a) CHALLENGER may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- (b) The Customer shall not, without the prior written consent of CHALLENGER, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

18.3 Notices:

- (a) Any notice or other communication required to be given to the Customer under or in connection with this Contract shall be in writing and shall be delivered to the Customer personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax or email to the Customer's main fax number or main email address.
- (b) Any notice or other communication required to be given to CHALLENGER under or in connection with this Contract shall be in writing for the attention of the Customer's Account Manager (as notified to the Customer) at CHALLENGER and shall be delivered personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at his office, or sent by fax or email to the Account Manager's fax number or email address.
- (c) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.
- (d) This clause 18.3 shall not apply to the service of any proceedings or other documents in any legal action.

18.4 Waiver:

- (a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

18.5 Severance:

- (a) If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

18.6 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party

the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

- 18.7 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 18.8 Variation: CHALLENGER reserves the right to make reasonable variations to the Contract from time to time upon reasonable notice. For the avoidance of doubt the Customer cannot make any variations to the Contract unless agreed in writing with CHALLENGER.
- 18.9 Governing law and jurisdiction: The Conditions, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

19. INTERPRETATION

19.1 Construction - in these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its personal representatives, successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- (e) a reference to **writing** or **written** includes faxes and e-mails;
- (f) any obligations under these Conditions are jointly and severally liable as between the obligors.
- (g) the Schedules form part of these Conditions as if set out in the main body of these Conditions.
- (h) in the event of conflict between the terms of these Conditions and the Schedules the terms and conditions of the Schedules shall apply.
- (i) these Conditions shall govern any future relations between CHALLENGER and the Customer save for any updated terms and conditions of CHALLENGER from time to time.
- (j) these Conditions shall be interpreted constructively, intuitively and sensibly given the nature of the fact that not all of the provisions in the main body of these

Conditions and the Relevant Schedules will apply to each and every Service provided pursuant to the Order.

- (k) if a Relevant Schedule which doesn't directly relate to the Services being supplied contains a provision which in some way benefits CHALLENGER, CHALLENGER can rely on such a provision.

SCHEDULE 1 – EQUIPMENT SALES (INCLUDING MOBILES, CAR KITS AND RADIOS)

1. SALE EQUIPMENT

- 1.1 All representations as to the performance of the Sale Equipment are based on the information supplied by the manufacturer of the Sale Equipment and related to their performance in normal working conditions and when used correctly in accordance with the manufacturers' installations and user instructions.
- 1.2 Unless otherwise agreed, Sale Equipment supplied will be in accordance with the manufacturers' normal designs and specifications current at the date of manufacture or delivery and the supply by CHALLENGER of Sale Equipment differing from any contractual or pre-contractual specifications or descriptions shall not be in breach of the Contract in so far as the Sale Equipment is of approximately equivalent performance to the Sale Equipment referred to in such specifications and descriptions.
- 1.3 CHALLENGER undertakes to credit the account of the Customer (if any) or to remedy free of charge by repair or replacement of any defects in the Sale Equipment covered under the manufacturer's guarantee provided that the Customer notifies CHALLENGER promptly of any such defect and where the Customer arranges for the prompt return to CHALLENGER of the defective Sale Equipment at the Customer's risk and expense.

2. CHARGES

- 2.1 Where there is any agreement to supply Sale Equipment to be delivered by instalments which are to be separately paid for, such agreement shall not be severable and failure by the Customer to pay for or accept delivery of any instalment by the due date shall entitle CHALLENGER at its option to treat the whole agreement with the Customer as repudiated.
- 2.2 The payment terms of CHALLENGER in each case shall be as set out in the Order.

3. DELIVERY AND RISK

- 3.1 Time for the delivery of the Sale Equipment is not of the essence of the Contract. The proposed dates for delivery are estimates only and a failure by CHALLENGER to comply with them shall not be a breach of these Conditions.
- 3.2 Should the Sale Equipment that is delivered be rendered inoperable as a result of a failure of another supplier or contractor to commission services connected to the Sale Equipment, CHALLENGER shall not be in breach of these Conditions.
- 3.3 The Sale Equipment shall be at the Customer's risk from the time of delivery. The Customer is required to inspect the Sale Equipment on receipt and to notify CHALLENGER in writing of any defects or complaints within 7 days.

4. PROPERTY IN EQUIPMENT

4.1 Notwithstanding risk in the Sale Equipment passing to the Customer in accordance with clause 3.3 of this Schedule, the Sale Equipment shall remain the sole and absolute property of CHALLENGER, and title to and legal and equitable ownership of the Sale Equipment shall not pass to the Customer, until payment is received in full by CHALLENGER in respect of all Sale Equipment supplied by CHALLENGER to the Customer from time to time, and the Customer acknowledges that until such payment is made in full it is in possession of the Sale Equipment solely as a fiduciary of CHALLENGER.

4.2 Until title to the Sale Equipment passes to the Customer the Sale Equipment shall be kept separate and distinct from all other property of the Customer and of third parties and in good condition and stored in such a way as to be clearly identifiable as belonging to CHALLENGER and the Customer will not cause or permit or suffer any labels, badges, serial numbers or other means of identification of the Sale Equipment to be removed or obscured.

5. GUARANTEED BUYBACK SCHEME (in connection with mobile devices only)

5.1 Upon delivery of new equipment to the Customer, CHALLENGER offers the Customer an option for the Customer's previous mobile device (supplied by CHALLENGER) to be bought back by CHALLENGER, upon the relevant mobile device/s having been returned to CHALLENGER/collected by CHALLENGER within 30 days, and as subject to the provisions as set out in the Order. Charges in respect of this are as set out in the Order.

5.2 For an iPhone with iOS7 the Customer must ensure that it is unlocked from the Customer's iCloud account if activated and that all lock codes are removed.

5.3 For Blackberry and Android mobile devices the Customer must ensure that all lock codes are removed.

5.4 For collection, the Customer must ensure that all the mobile devices are securely wrapped and packaged up ready (in order to avoid damage whilst in transit) for collection by DPD couriers, and are returned in good working order with no damage (including the battery).

6. PHONE CARE ASSURANCE (in connection with mobile devices only)

Definitions under this paragraph 6:

Assured Person shall mean the Customer named on the CHALLENGER cellular agreement and if applicable on the CHALLENGER cellular "Phone Care" application form or the Customer's spouse or any member of the Customer's immediate family permanently residing with the Customer

Equipment shall mean the mobile phone handset listed on the CHALLENGER cellular contract, and if applicable on the CHALLENGER cellular "Phone Care" application form

Excess shall mean the amount stated in paragraph 6.3(j) below payable by the Customer in the event of the claim in addition to the monthly premiums, which with each consecutive claim during a 12 month period shall rise incrementally by the excess stated in paragraph 6.3(j) below

Period of “Phone Care” shall mean each calendar month for which a premium has been paid. This period commences once the CHALLENGER “Phone Care” application is agreed if applicable and the Customer is registered for service with CHALLENGER

Premium shall mean the amount payable for CHALLENGER “Phone Care”

6.1 CHALLENGER offers the Customer an option for a “Phone Care Assurance” contract dealing with theft/loss, accidental damage, extended warranty and service replacement of the Customer’s mobile device (supplied by CHALLENGER), subject to the provisions as set out in the Order and the terms and conditions in this paragraph 6. Charges in respect of this are as set out in the Order.

6.2 If during the Period of “Phone Care” the Equipment shall be lost, stolen, destroyed or damaged whilst within Great Britain, Northern Ireland, Isle of Man, the Channel Islands and the Republic of Ireland (and up to 90 days at any one time worldwide), CHALLENGER will replace the property with equipment of similar specification on an indemnity basis. CHALLENGER shall not be bound to replace the property with equipment of an identical specification but only as circumstances allow.

6.3 Exclusions - CHALLENGER shall not be liable for:

(a) loss, destruction or damage caused by:

- (i) wear and tear, moth, vermin, atmospheric or climatic conditions or any gradually operating cause;
- (ii) alterations, maintenance, repairs or any process of cleaning or restoring;
- (iii) delay, confiscation or detention by order of any government or public authority;
- (iv) mechanical or electrical breakdown or derangement;

(b) consequential loss or consequential damage of any kind or description;

(c) loss, destruction or damage from:

- (i) any waterborne craft or during participation in water sports;
- (ii) directly or indirectly occasioned by happening through or in consequence of war, invasion, act of foreign enemy hostilities (whether war be declared or not), civil war rebellion, revolution, insurrection or military or usurped power;

(d) theft, loss or damage to the Equipment whilst kept in an unattended motor vehicle unless the vehicle is locked and all protections are in operation and the Equipment is concealed in the

boot of the vehicle (saloon cars) under the rear parcel shelf (hatchback cars and 4 x 4 vehicles) or in the spare wheel compartment (estate cars) so that forced and violent entry into the car is required. A copy of the repairer's account for such damage to the vehicle must be supplied with any claim. Theft, loss or damage from glove compartments, side pockets and any other interior space of the vehicle other than those specified will not be covered;

- (e) theft, loss or damage during the hire, loan or use of the Equipment by a third party other than an Assured Person;
 - (f) theft of the Equipment whilst unattended by the Assured Person from any property, place or premises unless such theft is accompanied by forcible and violent entry/exit;
 - (g) losses arising where Equipment is left unattended by an Assured Person in any property, place or premises or in or on any form of public conveyance;
 - (h) theft, loss or damage whilst in any form of public conveyance other than by forcible means to an Assured Person;
 - (i) theft of the Equipment from any convertible vehicle, open top road vehicle, or commercially registered vehicle;
 - (j) the first £25 of each and every claim by phones up to a value of £200, and £50 excess for phones over this value;
 - (k) theft, loss or damage to accessories such as battery charges, carry cases, batteries unattached to the Equipment and smart cards;
 - (l) misuse of Equipment following theft or loss.
- 6.4 Misuse of Equipment and airtime condition - The Customer must notify CHALLENGER immediately upon discovery of the theft or loss of the Equipment to enable CHALLENGER to bar the Customer's airtime connection. The Customer must also report the theft or loss to the police immediately and obtain and forward a written copy of the police report to CHALLENGER for approval.
- 6.5 Payment of Premiums - The liability of CHALLENGER under this contract at paragraph 6 for any Period of "Phone Care" shall be conditional upon payment in advance from the Customer to CHALLENGER of the premium due in respect of that Period of "Phone Care". CHALLENGER may alter the initial premium for further Periods of "Phone Care" at any time with not less than 30 days' notice to the Customer.
- 6.6 Basis of Settlement - Claims under this contract at paragraph 6 will be settled on an indemnity basis. CHALLENGER shall wherever possible replace the property with Equipment of an identical specification.
- 6.7 Conditions:

- (a) The Customer must take and cause to be taken all reasonable precautions to avoid and reduce any loss, theft or damage to the Equipment.
 - (b) The Customer will take full advantage of any manufacturer's, supplier's or repairer's guarantee or warranty given on the Equipment.
 - (c) In the event of theft or loss which may result in a claim under this paragraph 6 the Customer must immediately inform the police (and obtain a crime reference number) or transport authority (and obtain a reference number in respect of loss by theft or accidental loss).
- 6.8 Salvage and subrogation - CHALLENGER shall be entitled to take and keep possession of damaged or recovered Equipment covered under this contract at paragraph 6 and to deal with the salvage in a reasonable manner. No Equipment shall be abandoned to CHALLENGER.
- 6.9 CHALLENGER may at its own expense take such proceedings as it thinks fit in the name of the Customer in relation to the Equipment and the Customer shall give all such assistance as CHALLENGER may require.
- 6.10 Fraud - If any claim of application made in relation to this contract at paragraph 6 is fraudulent in any respect, all benefits under this contract at paragraph 6 shall be forfeited.
- 6.11 Cancellation - Minimum contract term is 12 months. Neither CHALLENGER nor the Customer shall be bound to renew this contract at paragraph 6. Either party may at any time cancel this contract at paragraph 6 by registered letter to the other party. Such cancellation to take effect 30 days from the date of posting. Prior to any cancellation being processed, all premiums must be paid up to date. Any early cancellation requests will be liable for the payment of the remainder of the 12 month minimum contract term.

7. CUSTOMER REBATE

- 7.1 CHALLENGER offers the Customer an option for one-off cash back offer/s and/or quarterly line rental rebate subject to the provisions as set out in the Order and/ or its Customer Rebate Checklist.
- 7.2 The one-off cash back offer is for a sum in the maximum of £500. The Customer shall invoice CHALLENGER for the full amount of the cheque back, 90 days after the connection date has occurred, supplying a copy of the billing summary account from the invoice of the Customer's service provider for the latest relevant period to CHALLENGER.
- 7.3 In connection with the quarterly line rental rebate, the Customer shall invoice CHALLENGER on a quarterly basis for a maximum period of 12 months, supplying a copy of the invoice of the Customer's service provider for the latest period relevant to the quarter to CHALLENGER.
- 7.4 CHALLENGER offers the Customer a kit fund allowance, being an allowance for hardware in respect of which the Customer can leave an amount of money with CHALLENGER to cover the Customer's hardware requirements. CHALLENGER'S accounts department will raise a credit on

the Customer's account for the agreed figure excluding VAT. Thereafter when the Customer decides to take new equipment, CHALLENGER'S accounts department will raise an invoice to contra off its credit, plus VAT.

7.5 In connection with Customer rebates:

- (a) There is an allotted period of time whereby the claim can be made and if an invoice is received after this period has elapsed, it may be invalid. To avoid any loss, the Customer must ensure that the Customer invoices CHALLENGER within a 60 day period from when the Customer receives the invoice from the Customer's service provider.
- (b) CHALLENGER can only accept invoices for figures excluding VAT.
- (c) Faxes will not be accepted and any difference in amount will result in a delay in payment to the Customer.
- (d) Payment will be made at the end of the calendar month following the month that CHALLENGER receives the invoice from the Customer,
- (e) CHALLENGER reserves the right to refuse rebate payments on connections that fail to prove they have accrued a call spend.
- (f) All mobile numbers should still be active and must be connected to the CHALLENGER O2 dealer account. The mobile numbers must not be ported out or terminated as this will affect payment.
- (g) The service providers' account should not be in arrears.
- (h) Payment is subject to CHALLENGER'S discretion.

8. HIRE

8.1 In connection with any hire arrangements made between CHALLENGER and the Customer:

- (a) CHALLENGER agrees to rent to the Customer for its/his own use the goods described in the Order for the period stated therein for the fixed rental amount stated.
- (b) The Customer undertakes to make the monthly/weekly payments specified in the Order in full, on time, and without further demand being made by CHALLENGER. Payment shall be made by bankers order, cash or in any other manner agreed with CHALLENGER in writing.
- (c) The Customer undertakes to indemnify CHALLENGER against all claims arising from the use of the goods.
- (d) The Customer undertakes to indemnify CHALLENGER against the cost of repair or replacement due to damage, however caused, other than that arising from normal usage.

- (e) The Customer undertakes to maintain insurance with a company acceptable to CHALLENGER covering the full retail price of the goods, including but not limited to all taxes, as would be incurred in connection with purchase of the goods, and to compensate CHALLENGER in full in the event of the goods being lost, stolen or damaged beyond repair without limitation as to cause.
- (f) The Customer undertakes that no person other than CHALLENGER'S engineers shall in any way install, alter, adjust, repair or otherwise tamper with the goods except with the prior consent in writing of CHALLENGER. The breaking of any seals of CHALLENGER shall be construed as breaking the requirement in this paragraph.
- (g) CHALLENGER shall be entitled, upon breach of any of the provisions of this section 8, to take possession of the goods, terminate the Order and be relieved from any obligation it may have in connection with it, without further notice to the Customer. CHALLENGER shall be entitled also to be compensated in full for the entire balance of payments under the Order or the full retail value of the goods as set out in paragraph (e) above and the Order. Any costs incurred in enforcing this section shall be borne by the Customer and repossession of the goods by CHALLENGER shall not invalidate this provision.
- (h) CHALLENGER will charge for all damage resulting from the use of Citizens Band or other radio equipment installed, or used in the proximity of, the Customer's vehicle or other place of use of the hired goods.

SCHEDULE 2 – FIXED WIRE/LANDLINE

DEFINITIONS

In this Schedule, the following definitions (as well as those found at clause 1 of the main body of these Conditions) apply:

BT: British Telecommunications Plc;

Calling Line Identifier: telephone number(s) as set out in the Order;

Manual Access: the insertion of the unique CHALLENGER access code by the Customer pre-programming computer modem or telecommunications equipment or by manual dialling of the access code;

Monthly Call Spend: the monthly call spend for each Calling Line Identifier as set out in the Order;

MLU Access: the automatic insertion of the unique CHALLENGER access code by a unit provided by CHALLENGER;

CHALLENGER Designated Carrier Network: the telecommunications system which CHALLENGER runs under the CHALLENGER licence;

PBX: an approved private automatic branch exchange;

PBX Access: the automatic insertion of the unique CHALLENGER access code by the Customer procuring that the maintainer of its PBX upgrades the software and the PBX so that the access code is inserted. It is the Customer's responsibility to procure that the maintainer of the PBX carries out the software upgrade correctly;

Services: such of the indirect access services requested by the Customer, the Customer's requirements for which are set out in the Order.

1. SERVICES SUPPLIED

The indirect access services comprise:

- (a) The routing of calls from the Site(s) over the CHALLENGER Designated Carrier Network to the destination telephone number that has been dialled, using exchange lines provided to the Site by BT. Calls are routed over the CHALLENGER Designated Carrier Network by inserting a unique CHALLENGER access code (which CHALLENGER will notify to the Customer) in front of the destination telephone number dialled. The access code may be inserted by the Manual Access method, the PBX Access method, or the MLU Access method. It may be uneconomic for the Customer to route certain calls over the

CHALLENGER Designated Carrier Network and at the request of the Customer, CHALLENGER will provide to the Customer a list of telephone codes which should not be routed over the CHALLENGER Designated Carrier Network; and

- (b) If the Customer meets CHALLENGER's requirements (which CHALLENGER will notify the Customer on request), the provision of a call detail capture device on the Site to provide management information relating to the incoming and outgoing calls made to and from the Site.

2. USE OF SERVICE(S)

In respect of MLU Access, the Customer must provide to CHALLENGER a designated carrier network test and termination point from the BT designated carrier network.

3. CHARGES

- 3.1 The Charges for the Services shall be such charges, costs, disbursements, tariffs and expenses as agreed between CHALLENGER and the Customer in writing, or in default, as set out in the "CHALLENGER Tariff Sheet from time to time. Unless otherwise stated in the Order, peak rate call charges apply from 07:00 to 19:00, Monday to Friday, weekend rate call charges apply from midnight on Friday to midnight on Sunday and off peak rate call charges apply at all times when peak or weekend call charges do not apply. CHALLENGER will invoice the Customer monthly in arrears for call charges and in advance for line rental and services charges and will collect payment by direct debit from the Customer's account on or around 14 days following the date of invoice. If CHALLENGER is unable to collect payment from the Customer using this method CHALLENGER will require the Customer to pay all sums due under the Contract on demand.
- 3.2 CHALLENGER may at any time change the charges specified in the 'CHALLENGER Tariff Sheet or other relevant CHALLENGER tariff by:
 - (a) decreasing the charges without notice; or
 - (b) increasing the charges by giving the Customer (where practicable) 30 days written notice.
- 3.3 CHALLENGER may, on seven days written notice to the Customer, stipulate a reasonable monetary limit that will apply to all charges due or which may become due to CHALLENGER from the Customer, whether or not they have been billed by CHALLENGER. If at any time the amount of charges payable to CHALLENGER (whether or not billed) exceeds the stipulated monetary limit, CHALLENGER will immediately notify the Customer and any amounts incurred in excess of the stipulated monetary limit will immediately become due and payable.
- 3.4 Unless otherwise stated in the 'CHALLENGER Tariff Sheet' or other relevant CHALLENGER tariff, call prices are quoted by the minute. The duration of each call is measured in one second increments, and then rounded up to the nearest second. Each call is

charged excluding VAT. Based on the duration, the ex VAT cost of each call is then calculated and the result rounded up to the nearest penny. VAT is then added where applicable to the total of all charges on the Customer's invoice.

4. CONTRACT TERM

The minimum term of the Contract shall be as set out in the Order.

5. SERVICE AVAILABILITY AND PERFORMANCE

5.1 CHALLENGER may at any time change the CHALLENGER Designated Carrier Network, the Services or the Equipment:

(a) if it needs to do so to comply with any applicable safety or other statutory requirements;
or

(b) where the change does not materially detract from the quality or performance of the Services (in the reasonable opinion of CHALLENGER).

5.2 CHALLENGER will pay for any change to the CHALLENGER Designated Carrier Network, Services or Equipment made under clause 5.1 of this Schedule.

6. SUPPORT LEVELS AND FAULT RESOLUTION

6.1 If CHALLENGER provides assistance to the Customer for the resolution of a fault, but it is subsequently discovered that the fault lies with neither the Equipment nor the CHALLENGER Designated Carrier Network, the Customer shall pay CHALLENGER for the resolution of the fault on a time and materials basis at the reseller current rates from time to time.

6.2 The target fix times will be those of Openreach's Service Maintenance Levels in place at any time (currently as follows):

(a) Level 1 – clear by 23.59 day after next, Monday to Friday, excluding public and bank holidays (for example report Tuesday, clear Thursday);

(b) Level 2 – clear by 23.59 next day, Monday to Saturday, excluding public and bank holidays (for example, report Tuesday, clear Wednesday);

(c) Level 3 – report 13.00, clear by 23.59 same day. Report after 13.00 clear by 12.59 next day, seven days a week, including public and bank holidays; and

(d) Level 4 – clear within 6 hours, any time of day, any day of the year.

SCHEDULE 3 – MOBILE (SERVICES PROVIDED VIA A THIRD PARTY NETWORK OPERATOR)

DEFINITIONS

In this Schedule, the following definitions (as well as those found at clause 1 of the main body of these Conditions) apply:

Airtime: the wireless airtime and network capacity procured from the Network Operator.

Device: a wireless device, or Equipment incorporating a SIM card.

Mobile Extension: the service which uses certain wireless extension technology in conjunction with a private circuit or virtual private circuit and that enables certain Devices to operate as part of the Customer's wireless private or virtual private voice network.

Network Operator: the network operator who operates the wireless network or networks to which the SIM cards are connected.

SMS: the short message service, which enables text messages to be sent to, and received from Devices.

Wireless Services: the provision by the Network Operator to the Customer of Airtime, Equipment, GPRS bearer, Mobile Extension, mobile web, SMS, SMS land to mobile text messaging service and/or any other Wireless Services, which the Network Operator may from time to time provide.

1. SERVICES SUPPLIED

CHALLENGER agrees to procure the provision of the Wireless Services during the Term through the Network Provider.

2. USE OF SERVICE(S)

The Customer acknowledges that the Wireless Services shall be provided through the Network Operator therefore CHALLENGER has no liability whatsoever in relation to the same.

3. CHARGES

3.1 The prices and tariffs payable by the Customer to CHALLENGER shall be as set out in the CHALLENGER Airtime Terms & Conditions of Sale.

3.2 CHALLENGER shall bill the Customer directly for the Services.

4. CONTRACT TERM

The minimum term of the Contract is 24 months from the Commencement Date.

5. SERVICE LEVEL AGREEMENT

The Customer acknowledges that the provision of Airtime is subject to the geographic extent of Airtime coverage and local geography, topography and/or atmospheric conditions and/or other physical or electromagnetic interference and/or the number of users trying to access the Wireless Services in any particular location that may from time to time adversely affect the provision of the Airtime in terms of line clarity and call interference.

6. CLAWBACK

6.1 In the event that the Customer has received the benefit (or retains the benefit) of a special offer, such as a free handset or a cash back credit / notional credit (“**Credit**”) provided by CHALLENGER, and the Customer defaults with the Network Operator or terminates its contract with the Network Operator before the minimum term of said contract, then CHALLENGER may, at its option:

- (a) require the Customer to (within a specified time period) return all such property to CHALLENGER which was the subject of the special offer;
- (b) confirm that the Customer shall no longer entitled to receive the benefit of any Credit with immediate effect nor be able to “cash in” any Credit; and
- (c) confirm that any cash back credit shall immediately become worthless and defunct.

6.2 For the avoidance of doubt a Credit has no monetary value whatsoever save for its use within the Contract (during the Term) to set off against any monies owing to CHALLENGER in accordance with the terms of the Contract and provided that the Customer is not in breach of the terms of the Contract. Any Credit which has not been used by the Customer for 12 months or more shall be at the discretion of CHALLENGER whether to allow to be utilised or not. For the further avoidance of doubt the Customer is not entitled to “cash in” any Credit upon expiry of the Term.

SCHEDULE 4 – BROADBAND

DEFINITIONS

In this Schedule, the following definitions (as well as those found at clause 1 of the main body of these Conditions) apply:

Access Network: the copper, radio or fibre optic lines owned and operated by wholesale partners which connect Customer Sites to the CHALLENGER network.

ADSL: means Asymmetric Digital Subscriber Line which is a data transfer technology using a copper line offering greater bandwidth downstream than upstream.

Broadband Services: this refers to any ADSL, SDSL or FTTC services as defined below.

Core Network: the switching and routing infrastructure used to connect the solution components and provide Customers with Internet or private WAN access.

CPE: means Customer Premises Equipment, such as a router or switch, supplied by CHALLENGER to access the Broadband Services.

Fibre broadband (FTTC): means Fibre to the Cabinet which is a data transfer technology using a copper line to the cabinet and fibre to the Site of the Customer offering greater bandwidth downstream than upstream.

Internet Peering: where traffic breaks out from the Core Network to the Internet.

Migration authority code (MAC): a code required for the transfer of broadband services from the incumbent service provider.

Public switched telephone network (PSTN): a copper wired network carrying analogue voice data.

SDSL: means Symmetrical Digital Subscriber Line which is a digital transfer technology offering equal down and upstream bandwidth running over a pair of copper wires.

1. SERVICES SUPPLIED

1.1 The Contract includes the supply and usage of the Broadband Services utilising the Core Network and where necessary, wholesale partner Access Networks, to transmit data between the Site and Internet access.

1.2 Details surrounding the Broadband Services including the access network utilised, data transfer speed and the configuration for the Broadband Services and any associated Equipment are set out in the Order.

2. USE OF SERVICE(S)

2.1 CHALLENGER may be required to carry out additional work in order to provide the Broadband Services at the Site. Where these excess construction charges are incurred by CHALLENGER, CHALLENGER reserves the right to pass on these charges to the Customer.

2.2 If by use of CHALLENGER's service monitoring system, or through the Customer's own means, the Customer detects a service fault the Customer must inform CHALLENGER as soon as possible.

3. CHARGES

3.1 The Charges for the Broadband Services shall be as set out in the Order.

3.2 In respect of the Equipment to be supplied by CHALLENGER as part of the Broadband Services the Customer may, at CHALLENGER's option, be required to pay a set figure to CHALLENGER before installation of the Equipment or if the Customer requests a higher specification of Equipment, each as set out in the Order.

3.3 If the Customer requests replacement Equipment (due to fault) then CHALLENGER may charge for postage at their standard rates.

3.4 Upon the expiry of the Term for whatever reason or if a line is transferred to another service provider utilising a MAC (in addition to an Early Termination Fee (if applicable)) the Customer shall pay CHALLENGER a "termination fee", the amount of which is set out in the Order.

4. CONTRACT TERM

The minimum term of the Contract shall be as set out in the Order.

5. SERVICE LEVELS AGREEMENT

5.1 CHALLENGER shall use its reasonable endeavours to provide the Broadband Services within (i) 4 – 21 Business Days of request from the Customer in respect of:

(a) Broadband Services : approximately 5 – 10 Business days

(b) FTTC : approximately 14 – 21 Business Days

(c) Migrations – approximately 5 Business Days for ADSL, and approximately 10 Business Days for FTTC.

All installations are subject to Site survey.

- 5.2 There will be a 10 day training period for ADSL connections to reach their maximum stable rate, during which the CPE should be left on and not re-booted, even though the Broadband Services may be temporarily unavailable. This does not apply to Fibre broadband.
- 5.3 An ‘order matching reference’ number will be required for simultaneous ADSL and PSTN provides. The provision lead time will be between approximately 10 – 21 days from receipt of that reference number if the Customer has chosen an alternative PSTN provider. Failure to provide this reference number will result in a delay.
- 5.4 For transfer of ADSL from services from another service provider and transfer of FTTC services where no engineer appointment is required, please see paragraph 5.1 above. A MAC code will be required to process the transfer and the order cannot be progressed until this has been received.
- 5.5 The service package may not be downgraded to a level below that which has been agreed within the Contract. In the event that an upgrade or downgrade is performed, the billing rate will be changed effective from the 1st day of the next month. Upgrades or downgrades do not affect the current contractual term.

6. SERVICE AVAILABILITY AND PERFORMANCE

- 6.1 Broadband connectivity is a reasonable endeavours product and therefore a service availability target cannot be quoted against individual ADSL, SDSL or FTTC circuits.
- 6.2 In line with the Ofcom Code of Practice, the Customer will be advised of the likely download speed that will be received, along with the minimum and maximum throughput on that line before the Customer purchases the Broadband Services. However, these speeds are indicative and cannot be guaranteed as ADSL is a rate adaptive product.

7. SUPPORT LEVELS AND FAULT RESOLUTION

- 7.1 All details of the opening hours for technical support are available upon request.
- 7.2 In the event of a fault, if BT Maintenance Class 4 is applied, the target time to repair will be 24 hours, excluding applicable parked time. If BT Maintenance Class 14 is applied, the target time to repair will be 8 hours, excluding applicable parked time. These are both available 24 hours a day, 7 days a week, 365 days a year, including bank and public holidays.
- 7.3 BT Maintenance Class 5 operates 24 hours a day, seven days a week (including UK public and bank holidays). CHALLENGER will acknowledge receipt of a fault report will clear the fault within 48 clock hours (“Requisite Period”) of receipt of the fault report, excluding any allowable parked time. If an engineering visit by BT to a Site is required, then BT will respond during BT Normal Working Hours.
- 7.4 BT Maintenance Class 4 operates 24 hours a day, seven days a week (including UK Public and Bank Holidays). For engineering visits by BT to a Site (CHALLENGER or End User premises or a BT exchange) 0800-1800 Monday to Sunday including UK regional public and

bank Holidays) but for FTTC, Saturdays and Sundays will be subject to availability and not guaranteed. CHALLENGER will respond to a fault within 4 clock hours of receipt of the fault report and will clear the fault within 24 clock hours of receipt of the fault report, excluding any allowable parked time.

7.5 BT Maintenance Class 14 which operates for both the reporting of faults and clearance of faults, 24 hours a day, seven (7) days a week including UK bank and public Holidays. CHALLENGER will clear the fault within 8 hours of receipt of the fault report, excluding any allowable parked time.

7.6 The target time to repair is measured from when CHALLENGER first detects the fault or is notified of it by the Customer of a fault, to the time when the Customer is informed of the resolution via email or a phone call.

7.7 If an engineer visit is required, the clock will be parked from the time of booking until the scheduled appointment. Parked time is defined as any period where CHALLENGER cannot progress the repair of a fault.

7.8 Some engineering visits either by CHALLENGER or their agents may be chargeable. Any charges will be detailed before the engineer is booked.

7.9 If an engineer visit is scheduled and does not go ahead through no fault of CHALLENGER, an abortive charge to be notified to the Customer may be levied.

8 EXCLUSIONS

8.1 Broadband is dependent on an underlying PSTN service. If the fault is found with the underlying service, a separate Services Specific Schedule/Appendix will apply to that fault where CHALLENGER does not supply the PSTN, the above broadband service schedule does not apply.

8.2 The Service Level Agreement does not apply where the fault is a result of the CPE or customer configuration.

8.3 All service levels will be suspended when BT or other Network Partners declare a major incident or implement the MBORC (Matters Beyond Our Reasonable Control) process.

SCHEDULE 5 – HOSTED VOIP

DEFINITIONS

In this Schedule, the following definitions (as well as those found at clause 1 of the main body of these Conditions) apply:

Carrier Interconnects: infrastructure providing the origination or termination of PSTN calls via a range of carrier network partners.

CPE: Customer Premises Equipment including IP telephony handsets, headsets and conferencing terminals.

Hosted VoIP: the provision of the CHALLENGER hosted Voice over IP solution allowing customers to remotely connect to an off-site telephony system to make and receive voice calls.

Platform: the application servers that provide the fully integrated multimedia features as well as the switching capability to route integrated multimedia features as well as the switching capability to route calls in and out over both IP and traditional PSTN networks.

Public switched telephone network (PSTN): a copper wired network carrying analogue voice data.

1. SERVICES SUPPLIED

1.1 The Service concerns the supply and usage of the CHALLENGER Hosted VoIP services utilising the Core network, the Platform and our Carrier Interconnects to provide the facility to make/receive voice calls over a data connection along with multimedia features.

1.2 The Site, the configuration for the Services and any associated Equipment are set out in the Order.

1.3 CHALLENGER will be responsible for all software updates to the Platform and will inform the Customer of any major changes.

1.4 Where CHALLENGER provides IP telephony CPE equipment will be tested and verified as compatible with the Services.

2. USE OF SERVICE(S)

2.1 To enable use of the Services the Customer requires a suitable data connection in order to ensure service compatibility and premium voice quality. A CHALLENGER data connection is recommended. CHALLENGER cannot agree to any Service Levels for the Services where data connectivity is being provided by a third party.

2.2 To enable use of the Services the Customer will be required to purchase compatible hardware to the minimum recommended specification, or utilise the provided software.

CHALLENGER cannot provide Service Levels for the service when hardware/software not provided by CHALLENGER is being used.

- 2.3 Hosted VoIP is not intended to be a like for like replacement for fixed telephony services and may not support all the features of PSTN or PBX services.
- 2.4 It is the Customer's responsibility to ensure passwords to VoIP accounts are secure and regularly changed. CHALLENGER does not keep customer passwords on record, but may change the password at any time for good reasons.
- 2.5 If a geographic number is not available, CHALLENGER may issue the Customer with a non-geographic number.
- 2.6 The service can be used to make emergency 999 calls. In order to connect the Customer's 999/112 call to the emergency services CHALLENGER is required to pass on the Customer's location information (address and caller line identification number) to the National Emergency Location information database. This is so CHALLENGER can provide the Customer's whereabouts in instances where the Customer is unable to do so. It is the Customer's responsibility to provide CHALLENGER with the correct address details. By default CHALLENGER will add the Customer's main billing address to CHALLENGER's emergency services register which will mean that on making a 999 call the emergency services will have a default location. This will also ensure that the call is flagged as being a VoIP call so that the emergency services operator will ask the caller to confirm their current location.

3. CHARGES

Any installation charges, on-going rental charges and Equipment charges will be as set out in the Order. These charges apply as soon as the VoIP solution is installed and is functioning.

4. CONTRACT TERM

The minimum term of the Contract is a period to be determined between CHALLENGER and the Customer.

5. SERVICE LEVEL AGREEMENT

- 5.1 CHALLENGER will use reasonable endeavours to provide a new VoIP service within 2 Business Days. However depending on the chosen numbering options, activation and porting of a number from another service provider will increase this lead time.
- 5.2 To activate a new geographic or non-geographic number, the target standard lead time is usually 3 Business Days. Porting a number in from another provider will usually take up to 10 Business Days when porting from a single analogue line, and usually up to 20 Business Days when porting from an ISDN30, however the Customer acknowledges it may take longer.

6. SERVICE AVAILABILITY AND PERFORMANCE

6.1 CHALLENGER aims to provide a continuous and high quality service, however there may be occasions out of CHALLENGER's control which could result in loss of service or reduced voice quality, for example, the weather, power disruptions, or failures of the Customer's internet service provider (ISP) or broadband connection. The Customer should also understand that in such circumstances all services (including 999/112 public emergency call services) will also be unavailable.

6.2 Where the components of the service are outside of CHALLENGER's direct control, CHALLENGER cannot make any guarantees on the availability or performance of this service.

6.3 From time to time CHALLENGER may have to upgrade the platform which may result in temporary loss of service however CHALLENGER shall endeavour to do the same out of hours.

7. SUPPORT LEVELS AND FAULT RESOLUTION

7.1 CHALLENGER always aims to repair a service affecting fault within 1 Business Day wherever it is reasonably possible to do so. The redundancy built into the underlying components of Hosted VoIP means that, in many cases, faults can be resolved in a much shorter space of time.

7.2 Fault resolution is measured from the time when CHALLENGER first detects the fault or is notified of it by the Customer, to the time when CHALLENGER informs the Customer of the resolution via email or phone call.

7.3 Whilst CHALLENGER aims to use all reasonable endeavours to avoid any downtime on hosted VoIP, some faults may relate to network services provided to CHALLENGER by a third party and hence are outside of CHALLENGER's direct control.

7.4 Some engineering visits either by CHALLENGER or their agents may be chargeable. Any charges will be detailed before the engineer is booked.

8. EXCLUSIONS

8.1 Where connectivity and/or equipment is provided by an alternative provider, CHALLENGER is not responsible for loss of service or disruption for voice quality.

8.2 Where the Customer has not maintained a secure password, CHALLENGER is not responsible for loss of any kind.

8.3 CHALLENGER is not able to guarantee the transfer of telephone numbers to other service providers should the Customer wish to cancel the Services. This is dependent on holding a porting agreement with the new provider in question.

SCHEDULE 6 – ADDITIONAL SERVICES

In this Schedule, the following definitions (as well as those found at clause 1 of the main body of these Conditions) apply:

Service/s: includes any services provided by CHALLENGER relating to Mobile Device Management, Microsoft Office, IT Consultancy and Accounts Management

1. SERVICES SUPPLIED

1.1 The Service concerns the supply and usage of the Services.

1.2 Details of the Services are as set out in the Order.

2. CHARGES

The charges will be as set out in the Order. These charges apply as soon as the Service is commenced.

3. CONTRACT TERM

The minimum term of the Contract is to be determined by the Customer and CHALLENGER.

SCHEDULE 7 – PAY AS YOU TRACK SOFTWARE

In this Schedule, the following definitions (as well as those found at clause 1 of the main body of these Conditions) apply:

“APP”: an application developed by PAYT intended to enable a smartphone to collect GPS locational data for the purpose of vehicle tracking. The APP transmits the data to a secure data centre hosting the Pay As You Track software which is accessible via Pay As You Track website

“Force Majeure”: Except with respect to obligations to pay the Subscription Fees or other charges, “Force Majeure” means anything outside the reasonable control of a party, including but not limited to, acts of God, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, war, rebellion, insurrection, sabotage, epidemic, quarantine restriction, labour dispute, labour shortage, power shortage (including without limitation where access to the Internet is denied for whatever reason, server crashes, deletion, corruption, loss or removal of data), transportation embargo, failure or delay in transportation, any act or omission (including laws, regulations, disapprovals or failures to approve) of any government or government agency.

“PAYT”: Pay As You Track Limited, a company incorporated and registered in England and Wales with company number 9071470 whose registered office is at Flowery Fields Cottage, Biddulph Common Road ST8 7SR

“Services”: computer software programs, Smartphone APP’s, firmware and configurations and, if appropriate, updates thereto

“Subscription Fee/s”: is the fee/s payable in advance on subscription to the PAYT website and may change from time to time

1. SERVICES SUPPLIED

- 1.1 The Services will be supplied by CHALLENGER through its arrangements with PAYT.
- 1.2 CHALLENGER or PAYT as applicable will, without liability to the Customer, disable the Customer’s password, account and access to all or part of the Services and be under no obligations to provide any or all of the Services should the Subscription Fees not be paid.
- 1.3 PAYT warrants to CHALLENGER that it has and will maintain all necessary licenses, consents and permissions necessary for the performance of its obligations under its terms and conditions (as summarised in this Schedule), and that it will not knowingly infringe the rights of any third party in any jurisdiction or be in breach of any obligations it may have to a third party.
- 1.4 PAYT undertakes to CHALLENGER to comply with its obligations under the Data Protection Act 1998. PAYT shall not deem information to be confidential where it is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

1.5 PAYT shall own all rights, title and interest in and to all of the data.

1.6 PAYT shall comply with its Privacy Policy as published on its website(s) which may be amended from time to time at the sole discretion of PAYT

2. USE OF SERVICE(S)

2.1 Subject to the provisions of clause 3 of this Schedule being complied with (and Schedule 8), the Customer may:

2.1.1 Download the free APP onto one or more smartphones, or purchase and install one or more tracking device(s) from PAYT;

2.1.2 Set up an account for access to the software in accordance with the terms of the agreement CHALLENGER has with PAYT;

2.1.3 Complete details required for payment of the subscription fees to be paid in advance, payment to continue automatically until such time as terminated by the Customer;

2.1.4 Access and use the software for the purpose of tracking.

2.2 The Customer shall not attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit or distribute all or any portion of the software and/or documentation in any form or media or by any means

2.3 CHALLENGER or PAYT as applicable may immediately remove access to the Services should the Customer use or permit the use of the Services otherwise than in accordance with this Schedule.

3. CHARGES

3.1 These shall be the payment of the fees to CHALLENGER, including the Subscription Fees.

3.2 PAYT shall be entitled to increase its Subscription Fees at its discretion.

3.3 The account holder is responsible for any and all charges incurred with its mobile provider and/or the internet service provider as a result of using the APP.

4. CONTRACT TERM

4.1 There is no Minimum Term of the Contract.

5. EXCLUSIONS

5.1 Neither PAYT nor CHALLENGER warrants:

5.1.1 The Customer's use of the Services will be uninterrupted or error-free;

- 5.1.2 That the Services, documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements
- 5.2 Neither CHALLENGER nor PAYT is responsible for any delays, delivery failures, or any other or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 5.3 PAYT and/or its licensors own all intellectual property rights in the software and documentation. Use of the software does not grant any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licenses in respect of the software.
- 5.4 Neither CHALLENGER nor PAYT endorses or approves any third-party website nor the content of any of the third-party website made available via the services.
- 5.5 In the event of any breach of the warranties under clause 1.3 of this Schedule neither CHALLENGER nor PAYT shall have any liability or obligations to the Customer other than to reimburse the Subscription Fees for the Services.
- 5.6 CHALLENGER or PAYT's obligation (as applicable) to provide the Services will be suspended in the event that CHALLENGER or PAYT (as applicable) is wholly or partially precluded from providing the Services by Force Majeure.

SCHEDULE 8 – PAY AS YOU TRACK MOBILE APPLICATION

In this Schedule, the following definitions (as well as those found at clause 1 of the main body of these Conditions) apply:

“APP”: an application developed by PAYT intended to enable a smartphone to collect GPS locational data for the purpose of vehicle tracking. The APP transmits the data to a secure data centre hosting the Pay As You Track software which is accessible via Pay As You Track website

“PAYT”: Pay As You Track Limited, a company incorporated and registered in England and Wales with company number 9071470 whose registered office is at Flowery Fields Cottage, Biddulph Common Road ST8 7SR

1. SERVICES SUPPLIED

1.1 This Schedule applies to the use of the APP and by installing the APP the Customer agrees to be bound by this Schedule.

1.2 PAYT may vary the clauses in this Schedule from time to time, such variations will be posted on the Pay As You Track website(s) and shall take effect immediately.

2. USE OF SERVICE(S)

2.1 The Customer may not modify, copy, publish, sell, transfer the rights to or otherwise use the APP for any purpose other than hereby stated and in accordance with Schedule 7.

2.2 All trademarks, copyright, database rights and other intellectual property of any nature in the APP together with the underlying software code are owned by or licensed to PAYT. Users will not acquire any rights and/or interest in the APP through use.

3. CHARGES

3.1 The APP is free to download, subscription charges are as published on PAYT’s website(s).

3.2 The account holder is responsible for any and all charges incurred with its mobile provider and/or internet service provider as a result of using the APP.

4. EXCLUSIONS

4.1 The Customer acknowledges that given the nature of the APP, neither CHALLENGER nor PAYT can guarantee that the services will be uninterrupted or error free.

4.2 The Customer acknowledges that neither CHALLENGER no PAYT (as applicable) give any warranty or representation that the service will meet the Customer’s requirements.

4.3 Neither CHALLENGER nor PAYT accept any responsibility for unavailability of the APP, any difficulty in downloading, installing or accession information or any communication

system failure that may result in the APP being unavailable. At its discretion PAYT may occasionally release new versions of the APP in order to provide improvements

- 4.4 In no event will CHALLENGER or PAYT be liable for any direct or indirect loss or damage arising out of a Customer's use or access to the APP.