

On the Purchase of SMS message bundles the agreement is made between -

1. Telstar Mobile Media Limited (TMM) (registered number 8855132) whose registered office is at 13 Downs Drive, Timperley, Altrincham, WA14 5QT (“Supplier”); and
2. The Company or Individual Purchasing the Service (“Customer”)

It is agreed as follows:

## **1. Definitions and interpretation**

**1.1** In this agreement, the following words and expressions shall (unless the context shall otherwise require) bear the following meanings:

### **"Charges"**

all fixed and/or variable charges due to the Supplier for providing any component(s) of the Services to the Customer, making any component(s) of the Service available to the Customer and/or enabling the Customer to access and use any component(s) of the Service;

### **"Codes"**

means any applicable codes of practice, guidelines, rulings or regulations of any Regulator(s) relating to any communications component(s) of the Service that may be introduced or made from time to time and with which the Customer must comply or to which the Customer has agreed to be bound;

### **"Commencement Date"**

means the date of this agreement;

### **"End-User Data"**

means the mobile telephone numbers of any end-users of the Customer who will be sent messages, voicemails, faxes and/or voice calls (as applicable) as a consequence of the provision of any component(s) of the Service by the Supplier to the Customer;

### **"TMM Order"**

means any order for any component(s) of the Service placed by or on behalf of the Customer pursuant to this agreement, using the appropriate order form supplied by TMM for such purposes from time to time, or any online Transaction otherwise completed by or on behalf of the Customer pursuant to this agreement;

### **"Forecast"**

means any forecast that the Customer has given to the Supplier of the number of Transactions that the Customer expects to conduct at or over any given time;

### **"Minimum Charge"**

means, in respect of the communications component(s) of the Service made available by the Supplier to the Customer, the relevant minimum monthly charge.

### **"Network Operator"**

means any telecommunications network operator;

### **"Regulator"**

means any national telecommunications regulatory authority or other competent body or authority;

**"Restricted Information"**

means any information which is disclosed to either party pursuant to or in connection with this agreement (whether orally or in writing) which is either expressed as confidential or can reasonably be presumed to be confidential given the nature of the information, including (but not limited to): (i) in respect of the Customer, all information in respect of the Customer's business that the Supplier acquires in the course of or in connection with the provision of any Services by the Supplier to the Customer; and (ii) in respect of the Supplier, all information in respect of the Supplier's business, any component(s) of the Service and/or any Network Operator that the Customer acquires in the course of or in connection with the provision and/or making available of any component(s) of the Service by the Supplier to the Customer;

**"Service"**

means the Supplier's service, which: (i) the Supplier only makes available, sells and supplies to commercial customers acting in a business capacity (as opposed to private individuals acting in their capacity as consumers); and (ii) consists of those communications service, communications-related service and/or other service components;

**"Software"**

means the software, programs and other applications underlying any component(s) of the Service;

**"Terms and Conditions"**

means those terms and conditions that are specifically applicable to a particular component of the Service or to particular components of the Service; and

**"Transaction"**

means any SMS, MMS, voice or other format message sent or received; (ii) any voicemail received; (iii) any voice call made or received; (iv) any GSM or GPS device detection; and (v) any other form of communication accessed or engaged in, using the Service.

**1.2** The clause and Schedule headings in this agreement are inserted only for convenience and shall not affect its construction. The Schedules to this agreement form(s) part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules to this agreement.

**1.3** Words denoting a singular number only shall include the plural and vice versa and references to the masculine gender shall include the feminine and neuter genders and vice versa.

**1.4** Reference to any statute or statutory provision includes a reference to the statute or statutory provision as from time to time amended, extended or re-enacted.

**2. Commencement**

**2.1** This agreement shall commence on the Commencement Date and shall continue for any pre-defined minimum period or until terminated by either party as provided for in this agreement.

**2.2** Commencement Date and Minimum Period are defined in the TMM Order.

**3. Orders**

**3.1** Except as otherwise expressly provided in this agreement, all orders for any component(s) of the Service shall be made in writing in the form of an TMM Order and state the description and quantity of the component(s) of the Service ordered and, if different to the period specified in clause 18.2 below, the minimum period for which the Customer wants such component(s) of the Service to be supplied.

**3.2** The Customer hereby warrants that:

**3.2.1** it is entering into this agreement as a commercial customer acting in a business capacity and not as a private individual acting in his/her capacity as a consumer;

**3.2.2** the individual who has signed this agreement for and on behalf of the Customer is duly authorised to do so and to thereby bind the Customer to the terms and conditions of this agreement and the Terms and Conditions; and

**3.2.3** all the details included in any TMM Order placed pursuant to this agreement shall be accurate, complete and up-to-date as at the date that TMM Order is placed and any individual who places any TMM Order for and on behalf of the Customer is duly authorised to do so and to thereby bind the Customer to any resulting contract between the Supplier and the Customer in connection with the component(s) of the Service ordered, consisting of the terms and conditions of this agreement, the relevant Service component-specific Terms and Conditions and that TMM Order.

**3.3** An TMM Order can only be cancelled or withdrawn by the Customer: (i) if the Customer notifies the Supplier in writing and the Supplier acknowledges in writing receipt of such notification (“writing” for both such purposes including e-mails); and (ii) on the condition that the Customer shall indemnify the Supplier in full against all losses (including, but not limited to, loss of profit), damages, liabilities, claims, costs and expenses (including, but not limited to, all legal costs and defence and settlement costs) incurred or suffered directly or indirectly by the Supplier as a result of or in connection with such cancellation or withdrawal.

#### **4. Basis of purchase**

**4.1** Each TMM Order shall be deemed to be placed on the basis that the relevant Service component-specific Terms and Conditions and the terms and conditions of this agreement shall apply to such TMM Order and the sale and supply the relevant component(s) of the Service to be supplied pursuant to that TMM Order. No other terms or conditions contained in, delivered with, endorsed on or referred to in any TMM Order or other document provided by or received from the Customer shall apply to that TMM Order or the sale or supply of any of the component(s) of the Service to be supplied pursuant to that TMM Order.

**4.2** The terms and conditions of this agreement, together with the relevant Service component-specific Terms and Conditions and any accepted TMM Order, will form the contract between the Supplier and the Customer in connection with the relevant component(s) of the Service to be supplied pursuant to that TMM Order.

**4.3** Each TMM Order placed shall be subject to acceptance by the Supplier. No contract shall come into being until the Supplier has given such acceptance to the Customer.

**4.4** If the Supplier delivers any component(s) of the Service called for in an TMM Order prior to the actual acceptance of it by the Supplier, all provisions of this agreement, the relevant Service component-specific Terms and Conditions and that TMM Order shall bind the parties as if the TMM Order had been accepted by the Supplier in writing.

**4.5** In the event of any conflict between any Service component-specific Terms and Conditions and the provisions of this agreement, the Service component-specific Terms and Conditions shall take precedence.

## **5. Principal duties of the Supplier**

**5.1** The Supplier shall, with effect from the Commencement Date, commence the supply of the relevant component(s) of the Service pursuant to TMM Orders, provided that the same have been accepted by the Supplier under clauses 4.3 or 4.4 above and provided that the relevant component(s) of the Service have undergone successful testing in accordance with the following testing process:

**5.1.1** the Supplier will notify the Customer when the relevant component(s) of the Service is or are ready to be tested and the Supplier will give the Customer instructions on how to complete such testing and the time within which such testing must be completed. Unless a different period is agreed between the parties, the Customer shall have 5 working days to complete such testing and report any fault(s) that the Customer finds to the Supplier;

**5.1.2** if the Customer does not report any fault(s) in the relevant component(s) of the Service to the Supplier within the 5-working day period referred to in clause 5.1.1 above (or such other applicable period as is agreed between the parties), the Customer will be deemed to have accepted the relevant component(s) of the Service; and

**5.1.3** if the Customer does report any fault(s) in the relevant component(s) of the Service to the Supplier within the 5-working day period referred to in clause 5.1.1 above (or such other applicable period as is agreed between the parties), the Customer must provide the Supplier with enough information about the fault(s) to enable the Supplier to take remedial action and, provided that the Customer gives the Supplier enough information, the Supplier will investigate the Customer's report and endeavour to fix any fault(s) that the Supplier verifies. Once the Supplier has fixed such faults and/or if the Supplier cannot locate and verify any such fault(s) within a reasonable period (as applicable), the Supplier will require the Customer to conduct the testing process set out in this clause 5.1 again within another 5-working day period or such other period as the Supplier notifies to the Customer.

**5.2** Whilst the Supplier agrees to take all such steps as may reasonably be required to fulfil its obligations under this agreement in the normal course, the Supplier shall not be obliged to give the Customer any priority over any other customer of the Supplier with regard to the supply of any component(s) of the Service.

## **6. Availability and interruption of relevant components of the Service**

**6.1** Relevant components of the Service may be made available by the Supplier and accessed via a web application, via an email gateway, via a software tool, via a web service and/or otherwise, the APIs of which (as applicable) the Customer may embed in the Customer's technology offerings, all as more particularly described on the Supplier's website at [www.telstarmobilemedia.com.com](http://www.telstarmobilemedia.com.com).

**6.2** The Supplier will make the Service available to the Customer using reasonable skill and care, however the Customer hereby acknowledges and agrees that the availability of any communications component(s) of the Service, the Customer's ability to access and/or use any communications component(s) of the Service and the conducting of any given Transaction may depend upon factors beyond the Supplier's reasonable control, including (but not limited to):

**6.2.1** factors affecting the operation of any communications component(s) of the Service and/or preventing Transactions from being successfully conducted such as, by way of example, geographical or topographical shortcomings in the network of any Network Operator, network capacity, physical obstructions or atmospheric conditions; or

**6.2.2** factors preventing end-users from receiving messages, voicemails, voice calls and/or other forms of communication (as applicable) such as, by way of example, the terms and conditions of an end-user's service provider.

**6.3** The Customer hereby acknowledges and agrees that the Supplier cannot, therefore, guarantee:

**6.3.1** that any communications component(s) of the Service will be available to the Customer at all times or free from faults or interruptions;

**6.3.2** the receipt by any intended recipient of any message, voice call and/or other form of communication sent using any relevant communications component(s) of the Service (as applicable);

**6.3.3** the retrieval by any intended recipient of any voicemail and/or other form of communication using any relevant communications component(s) of the Service (as applicable); or

**6.3.4** that any relevant communications component(s) of the Service will enable the location of any given GSM or GPS device to be accurately detected in every case.

**6.4** The Supplier may at its sole discretion alter or improve any communications component(s) of the Service that it provides to the Customer at any time, provided that any such alteration does not materially affect the nature or detract from the functionality of the relevant communications component(s) of the Service.

**6.5** The Customer acknowledges and agrees that it may be necessary from time to time for the Supplier to suspend any communications component(s) of the Service that the Supplier provides to the Customer for routine or emergency maintenance and/or repairs and the Supplier will:

**6.5.1** in relation to any emergency outage or suspension of any communications component(s) of the Service for emergency maintenance and in so far as it is reasonably possible, provide the Customer with a reasonable period of notice prior to any such outage or suspension; or

**6.5.2** in relation to any scheduled outage or suspension of any communications component(s) of the Service for routine maintenance, the Supplier will use its reasonable endeavours to: (i) provide the Customer with at least 48 working hours' notice; (ii) help the Customer to redirect its voice calls during the period of the scheduled outage (as applicable); and (iii) ensure that scheduled outages do not exceed 10 hours per calendar quarter in total.

**6.6** The Supplier may at its sole discretion suspend the Customer's access to any communications component(s) of the Service and/or cease to allow any Transactions to be conducted by the Customer if:

**6.6.1** the Customer is in material breach of any Service component-specific Terms and Conditions, any provisions of this agreement and/or any Codes, including (but not limited to) those issued by any Regulator(s) for the use of mobile phone technology to provide passive location services;

**6.6.2** the Customer is doing or has done anything unlawful in the course of using or relating to the Customer's use of any communications component(s) of the Service;

**6.6.3** a Network Operator or a Regulator requires it;

**6.6.4** at any time the number of Transactions that the Customer is conducting exceeds any applicable Forecast or, in the absence of any applicable Forecast, the number of Transactions conducted by the Customer at any time causes or is likely to cause congestion to any telecommunications network; or

**6.6.5** the Supplier is entitled to terminate the Customer's access to any communications component(s) of the Service for any reason, in which case the Supplier will give the Customer appropriate notice as soon as is reasonably possible.

## **7. Charges and payment**

**7.1** The Customer agrees to pay the Charges to the Supplier by the payment method and in accordance with the applicable payment plan and terms agreed between the Supplier and the Customer. Where the Supplier has offered the 'volume pricing' and/or 'pre-purchase pricing' option(s) to the Customer, the Customer shall be entitled to select whether it wishes to pay by 'volume pricing' or 'pre-purchase pricing' in advance of using the relevant communications component(s) of the Service. Should the Customer wish at any time to change from 'volume pricing' to 'pre-purchase pricing' or vice-versa, the Customer must apply to the Supplier for agreement in advance of using the relevant communications component(s) of the Service on the different pricing basis. The Supplier may: (i) at any time, adjust the Charges to reflect any changes in the Supplier's cost of supply of any communications component(s) of the Service imposed on the Supplier by or otherwise caused by any Regulator; and (ii) no more than once in any 6-month period, adjust the Charges to reflect any other changes in the Supplier's cost of supply of any communications component(s) of the Service beyond the Supplier's reasonable control and any increases in the Retail Prices Index during such period. The Supplier shall give the Customer not less than one month's notice in writing of any such adjustments.

**7.2** In consideration of the Supplier making the relevant communications component(s) of the Service available to the Customer, the Customer agrees to pay to the Supplier, and the Supplier shall invoice the Customer for, the relevant Minimum Charge for each month during the continuation of this agreement in accordance with the terms of this clause 7. The Minimum Charge is payable irrespective of whether or not Charges amounting to the Minimum Charge accrue in a month.

**7.3** The Customer shall pay all charges due to the Supplier for the supply of Services, in full and cleared funds, by the payment method and in accordance with the applicable payment plan.

**7.4** In the event that the Customer is at any time in breach of clause 7.3 above or commits any other material breach of this agreement, the Supplier shall (without prejudice to any of its other rights or remedies) be entitled to suspend its supply of any or all component(s) of the Service to the Customer until such time as such breach is remedied (if capable of remedy).

**7.5** For the avoidance of doubt (unless otherwise expressly provided for): (i) where the Customer elects to pay by 'volume pricing', the Charges payable by the Customer will be due (where it has been agreed between the parties that the Customer shall make payments for Charges due by direct debit) within 15 days of the date of invoice or (where some other payment method for Charges due has been agreed between the parties) within and in accordance with such other payment plan; and (ii) where the Customer elects to pay by 'pre-purchase pricing', the Charges payable by the Customer will be due prior to credits being added to the Customer's account. In the event that the Customer elects to pay by 'pre-purchase pricing' and does not have sufficient credits for any Transaction(s), the Supplier reserves the right (in its sole but reasonable discretion):

**7.5.1** to suspend any component(s) of the Service under clause 7.4 above until such time as the required payment is made by the Customer, unless otherwise expressly agreed between the parties; or

**7.5.2** to charge the Customer additionally for the further Transaction credits required for such Transaction(s) at the applicable tariff rate (subject to any variation thereof), with any such additional Charges being invoiced to the Customer by the Supplier at the end of the month in which they arise.

**7.6** Each time any given Transaction is conducted, the Customer will incur a corresponding Charge. Alternatively, the Customer may wish to pre-purchase Transaction credits for each month or such other period as is agreed between the Supplier and the Customer, in which case the Supplier will allocate to the Customer a corresponding number of Transaction credits for that period, 1 SMS message Transaction, for example, costing 1 corresponding unit Charge in pence (subject to any variation thereof) and allowing the Customer to send 1 SMS message using the relevant communications component(s) of the Service. Each Transaction that the Customer conducts using any relevant communications component(s) of the Service will therefore reduce the value of the Transaction credits available to the Customer by 1 corresponding unit Charge in pence (subject to any variation thereof).

**7.7** Any pre-purchase Transaction credits purchased by the Customer are only valid for the period in respect of which they have been allocated, such period not to exceed one year, and any pre-purchased Transaction credits that are not used before the end of such period will be forfeited.

**7.8** Where the Supplier has agreed to make any communications component(s) of the Service available to the Customer on a tariff and the Customer has pre-purchased Transaction credits, each Transaction will reduce the Transaction credits available to the Customer by the highest possible Charge. In the event that the Charge per Outbound SMS reduces during a month in accordance with the Supplier's tariff, any overpaid Charges shall be: (i) firstly credited against any invoice for any additional Charges incurred by the Customer in any period over and above the Customer's allocation of pre-purchased Transaction credits, which is raised by the Supplier at the end of the month in which such Charges arise; and (ii) secondly converted into pre-purchased Transaction credits.

**7.9** The Customer shall be solely responsible, by: (i) seeking adequate Transaction credit allocation(s); (ii) negotiating and agreeing an appropriate level of credit with the Supplier; and (iii) checking the Customer's remaining available Transaction credit level by logging into the Customer's account on the Supplier's website at [www.telstarmobilemedia.com](http://www.telstarmobilemedia.com) or by otherwise contacting the Supplier, for ensuring that the Customer has enough Transaction credits and/or sufficient available credit (as applicable) to meet the Customer's requirements from time to time. The Supplier shall not be in any way responsible or liable in the event that the Customer has: (a) insufficient Transaction credits and/or available credit (as applicable) to meet the Customer's requirements; and/or (b) has exceeded the Customer's Transaction credit allocation(s) and/or credit limit, for any period.

**7.10** For the avoidance of doubt, a Charge will be incurred for every Transaction conducted by the Customer regardless of whether the Transaction is successfully transmitted and/or received.

**7.11** If the Customer does not pay any Charges due in accordance with the applicable payment plan:

**7.11.1** the Charges for any further provision of any component(s) of the Service that the Supplier provides or makes available to the Customer shall, from the date such payment becomes overdue: (i) immediately revert to the Supplier's highest advertised price; and (ii) be invoiced by the Supplier,

and be payable, at the Supplier's highest advertised price, for the duration of the period that any such payment remains outstanding and overdue. As soon as all such outstanding and overdue payments have been received by the Supplier in full and cleared funds, the charge for any further provision of any component(s) of the Service shall return to the then applicable prices agreed between the Supplier and the Customer; and

**7.11.2** the Supplier reserves the right in its sole discretion to:

- (a) use any pre-payment or deposit that the Customer has provided to the Supplier as full or part payment of any outstanding and overdue Charges;
- (b) suspend the Customer's access to any component(s) of the Service under clause 7.4 above and/or cease to allow any Transactions to be conducted by the Customer until payment of any and all outstanding and overdue payments are received by the Supplier in full and cleared funds from the Customer; and/or
- (c) charge simple interest on the outstanding and overdue payment(s), calculated at the rate of 4% per annum above the base rate of the Bank of England applying from time to time to run from the due date for the outstanding and overdue payment(s) until receipt by the Supplier of such payment(s) in full and cleared funds whether or not after judgment and without prejudice to any of the Supplier's other rights or remedies.

## **8. Credit status**

**8.1** The Supplier reserves the right to require payment on account of Charges before making any component(s) of the Service available to the Customer.

**8.2** The Supplier reserves the right to at any time (whether prior to making any component(s) of the Service available to the Customer or otherwise) to: (i) undertake credit reference checks on the Customer; and/or (ii) require the Customer to produce bank, credit and/or other business references in appropriate circumstances.

## **9. Marketing**

**9.1** Neither party shall make use of neither the other party's name nor any information acquired through its dealings with the other party for publicity or marketing purposes without the prior written consent of the other party. Without limitation to the foregoing, no press release and/or any blog entry will be made regarding any Service component-specific Terms and Conditions and/or any provisions of this agreement.

## **10. Customer's liabilities and obligations**

**10.1** The Customer acknowledges and agrees that:

**10.1.1** it is solely responsible for all the information, announcements and other content associated with its use of any relevant communications component(s) of the Service and for its arrangements with any third parties to access that content;

**10.1.2** it is solely responsible for:

- (a) preparing and maintaining any and all such content unless the Supplier has specifically agreed otherwise in writing;
- (b) delivering any and all such content to the Supplier in the format that the Supplier requires;



- (c) paying all costs associated with any and all such content;
- (d) obtaining all consents and licences required for use of any and all such content in connection with any relevant communications component(s) of the Service (for example, and without limitation, any performing rights licence required); and
- (e) ensuring any and all such content is accurate, is up-to-date, is not misleading, is not defamatory, does not contain offensive language or material, does not breach any applicable laws, statutes, regulations, standards, content requirements or codes, does not infringe any third party rights, and does not and will not expose the Supplier to the risk of any claim, legal or administrative action or prosecution;

**10.1.3** the Supplier is not in any way required to review or edit any such content. However, if the Supplier chooses to do so: (i) the Supplier can delete any content that the Supplier reasonably believe is (or is likely to be) illegal or otherwise inappropriate or exposes (or is likely to expose) the Supplier to the risk of any claim, legal or administrative action or prosecution; and (ii) the Supplier will inform the Customer before the Supplier does so (where reasonably possible); and

**10.1.4** the Customer shall indemnify the Supplier against any loss, damage, liability, claim and expense (including, but not limited to, all legal costs and defence and settlement costs) that the Supplier incurs or suffers directly or indirectly in connection with any claim that any rights of, or claimed or the subject of an application by, any other person may be, or if granted may be, infringed by any such content or the use of any such content unless that claim is due to the Supplier's negligent or wrongful act or omission.

**10.2** The Customer warrants that it will not:

**10.2.1** use any communications component(s) of the Service or permit any communications component(s) of the Service to be used to send messages, voicemails, voice calls and/or any other forms of communication (as applicable) to any end-user for marketing purposes without that end-user's explicit request for or prior consent to receiving them. If the Customer is sending any message, voicemail, voice call and/or other form of communication (as applicable) for marketing purposes to any of the Customer's end-users, the Customer must give those end-users the right to opt out of receiving any further messages, voicemails, voice calls and/or other forms of communication (as applicable) sent by the Customer for marketing purposes (and the Customer shall promptly process any end user's election to opt out);

**10.2.2** use any communications component(s) of the Service or permit any communications component(s) of the Service to be used to convey messages, voicemails, voice calls and/or any other forms of communication (as applicable) to any end user, the frequency and number of which is excessive in the Supplier's reasonable opinion;

**10.2.3** use any communications component(s) of the Service or permit any communications component(s) of the Service to be used for any improper, fraudulent, immoral or unlawful purpose;

**10.2.4** use any communications component(s) of the Service or permit any communications component(s) of the Service to be used for the transmission of any material which is of a defamatory, offensive, abusive, obscene or menacing character or nature;

**10.2.5** use any communications component(s) of the Service or permit any communications component(s) of the Service to be used in a manner that infringes the intellectual property rights or any other proprietary rights of any third party; or

**10.2.6** use any communications component(s) of the Service or permit any communications component(s) of the Service to be used in a manner that may injure or damage any person or property or cause the quality of any communications component(s) of the Service to be impaired.

**10.3** The Customer will at all times in using any communications component(s) of the Service:

**10.3.1** send only messages, voicemails, voice calls and/or other forms of communication (as applicable) that comply with all applicable laws, regulations and Codes and that contain nothing which is likely to cause offence in view of the generally prevailing standards of decency and propriety from time to time;

**10.3.2** comply with all reasonable directions and instructions issued by the Supplier from time to time in relation to any communications component(s) of the Service;

**10.3.3** comply with and observe at all times all applicable laws, regulations and Codes and any directions, recommendations and decisions of any Regulator; and

**10.3.4** not act in any manner likely to bring the Supplier, any component(s) of the Service or any Network Operator into disrepute.

**10.4** The Customer will, upon request by the Supplier, any Network Operator and/or any Regulator, provide the Supplier, the Network Operator and/or the Regulator (as applicable) with any information relating to the Customer's use of any communications component(s) of the Service that the requesting party or parties reasonably require(s). The Customer is responsible for ensuring that any information relating to the Customer's end-users, including (but not limited to) the Customer's End-User Data, is accurate and complete.

**10.5** The Customer will not state or imply any approval by the Supplier of any particular message, voicemail, voice call and/or other form of communication (as applicable) that the Customer sends using any communications component(s) of the Service or refer to the Supplier in any way without the Supplier's prior written approval.

**10.6** Where requested by the Supplier, the Customer will promptly provide the Supplier with a representative Forecast of all of the Customer's Service component needs for the requested period, including (but not limited to) all reasonable details required for the Supplier to plan network capacity requirements.

**10.7** The Supplier may at its sole discretion: (i) cease to convey, and the Customer will promptly cease to transmit at the Supplier's request, any message, voicemail, voice call and/or other form of communication (as applicable); or (ii) cease to enable, and the Customer will promptly cease to carry out at the Supplier's request, any GSM or GPS device location detection (as applicable), which the Supplier reasonably considers to be in breach of any Service component-specific Terms and Conditions and/or any provisions of this agreement.

**10.8** The Customer will not: (i) acquire any title or other proprietary right to any intellectual property, including (but not limited to) any patents, know-how, trademarks, design rights, database rights or copyright, relating to any component(s) of the Service; and/or (ii) cause or knowingly permit anything to be done which may in any way damage or endanger any such intellectual property (which is and shall remain the Supplier's at all times). The Customer will notify the Supplier of any suspected infringement of the Supplier's intellectual property of which the Customer becomes aware and will take all reasonable action as the Supplier may direct in relation to that

suspected infringement, where such infringement directly and specifically relates to any component(s) of the Service.

**10.9** The Customer warrants that it will not:

**10.9.1** modify or create derivative works of the Software;

**10.9.2** sublicense, lease, rent, assign, distribute, repackage, rebrand, or otherwise transfer or disclose the Software, any portion thereof or any documentation to any third party; or

**10.9.3** cause, assist or permit any third party (including, but not limited to, any end-user) to do any of the foregoing. For the avoidance of doubt, the restrictions in this clause 10.9 do not prohibit the Customer from embedding in the Customer's own technology offerings any of the APIs that the Supplier makes available to the Customer for the purposes of accessing or using any component(s) of the Service.

**10.10** The Customer warrants that: (i) the Customer is the sole owner or licensor or all rights in the Customer's End-User Data; or (ii) the Customer has obtained all necessary rights, licences and consents from all relevant third parties to enable the Customer, the Supplier and the Supplier's sub-contractors to use the End-User Data for the purposes of any Service component-specific Terms and Conditions and/or any provisions of this agreement. The Customer warrants that, where the Customer is engaging in any Transaction where the Customer is setting the originator of such Transaction to something other than the number the Supplier uses and/or holds to send the Transaction, the Customer has or shall have obtained before doing so all necessary permissions in writing to enable such Transaction to take place and shall (upon the Supplier's request and at the Customer's cost) provide the Supplier with all necessary evidence capable of objective substantiation that all such permissions have been obtained. The Customer shall indemnify the Supplier in full against all losses (including, but not limited to, loss of profit), damages, liabilities, claims, costs and expenses (including, but not limited to, all legal costs and defence and settlement costs) incurred or suffered directly or indirectly by the Supplier as a result of or in connection with any breach of any warranty given in and/or any other provision(s) of any Service component-specific Terms and Conditions and/or this agreement.

## **11. Supplier's liability**

**11.1** Nothing in any TMM Order and the resulting contract between the Supplier and the Customer in connection with the relevant component(s) of the Service to be supplied pursuant to that TMM Order, any Service component-specific Terms and Conditions and/or any provisions of this agreement will in any way exclude or limit either party's liability for death or personal injury caused by its negligence, for fraud or fraudulent misrepresentation or concealment, for breach of any data protection obligations set out therein or for any other liability that cannot be excluded or limited at law.

**11.2** The Supplier will not be in any way liable to the Customer for any liabilities, losses, damages, costs and/or expenses incurred or suffered by the Customer as a result of the Customer's use of any component(s) of the Service, except to the extent that such liabilities, losses, damages, costs and/or expenses directly result from the Supplier's breach of any Service component-specific Terms and Conditions and/or any provisions of this agreement or the Supplier's negligence or wilful misconduct.

**11.3** The Supplier will not be in any way liable for: (i) the content of any messages, voicemails, voice calls and/or other forms of communication (as applicable) sent or transmitted using any

relevant communications component(s) of the Service or for any use of any relevant communications component(s) of the Service by the Customer to detect the location of any GSM or GPS device(s); or (ii) any failure to make any component(s) of the Service available to the Customer to the extent that such failure results from a technical or other failure on the part of any Network Operator or any other event which is beyond the Supplier's reasonable control.

**11.4** Subject to clause 11.1 above and clause 11.5 below (and except as otherwise expressly provided in any Service component-specific Terms and Conditions), the Supplier's total liability to the Customer, whether in contract, tort, negligence or otherwise, arising under or in connection with any accepted TMM Order and the resulting contract between the Supplier and the Customer in connection with the relevant component(s) of the Service to be supplied pursuant to that TMM Order, any Service component-specific Terms and Conditions and/or any provisions of this agreement shall be limited to five (5) times the total Charges paid by the Customer under or in connection with this agreement in the preceding 12-month period or, where the Customer is pre-purchasing Transaction credits, five (5) times the total value of Transaction credits pre-purchased by the Customer under or in connection with this agreement (excluding any additional Charges paid) in the preceding 12-month period.

**11.5** Subject to clause 11.1 above, the Supplier will not in any circumstances be liable, whether in contract, tort, negligence or otherwise, for any indirect or consequential losses, including (but not limited to) any loss of profits, business, contracts, revenue, turnover, goodwill, reputation or anticipated savings, whether or not they were foreseen or foreseeable.

**11.6** Each party hereby acknowledges and agrees that neither the Supplier nor the Customer has contracted on the basis of or in reliance upon any representation (save for any representation made fraudulently), warranty or other term except as otherwise expressly provided in any Service component-specific Terms and Conditions and/or this agreement and, as such, all conditions, warranties and other terms implied by statute, common law or otherwise are hereby excluded to the greatest extent permitted by law.

**11.7** The Supplier shall at all times in respect of the subject matter of any Service component-specific Terms and Conditions and/or this agreement comply with all applicable laws, statutes and regulations and all applicable rules having equivalent effect.

## **12. Disclaimer of warranties**

**12.1** Notwithstanding anything to the contrary in any Service component-specific Terms and Conditions and/or this agreement, the Customer hereby acknowledges and agrees that:

**12.1.1** the Customer's use of any communications component(s) of the Service is entirely at the Customer's own discretion and risk. All communications components of the Service are provided on an "as is" and "as available" basis. The Supplier and its licensors expressly disclaim all warranties of any kind, whether express or implied, including (but not limited to) the implied warranties of satisfactory quality and fitness for a particular purpose and any warranty of third party intellectual property rights non-infringement;

**12.1.2** the Supplier and its licensors make no warranty that: (i) any communications component(s) of the Service will meet the Customer's requirements; (ii) any communications component(s) of the Service will be uninterrupted, timely, secure or error-free; (iii) the results that may be obtained from the use of any communications component(s) of the Service will be accurate or reliable; (iv) the quality of any information or other material obtained by the Customer through access to or use of

any communications component(s) of the Service will meet the Customer's expectations; or (v) that any errors in the Software will be corrected;

**12.1.3** any material downloaded or otherwise obtained through any communications component(s) of the Service is done entirely at the Customer's own discretion and risk, and the Customer will be solely responsible for any damage to the Customer's computer systems or any loss of data that results from any such downloading or obtaining of any such material; and

**12.1.4** no advice or information, whether oral or written, obtained by the Customer from the Supplier or through or from any component(s) of the Service shall create any warranty not expressly stated in any Service component-specific Terms and Conditions and/or the provisions of this agreement.

### **13. Additional Service components**

**13.1** If, at any time during the applicable initial minimum period under clause 18.2 below, the Customer requests that the Supplier provides and/or makes available any additional component(s) as part of the Service or removes any component(s) from the Service and the Supplier agrees to such addition or removal, the applicable initial minimum period shall restart from the date such addition or removal takes effect and, from that date: (i) references in any Service component-specific Terms and Conditions and/or the provisions of this agreement to the "Service" shall mean all or any component part(s) of the Service as altered; and (ii) the Charges shall be correspondingly altered.

### **14. Confidentiality**

**14.1** Except as provided by clauses 14.3 and 14.4 below, each party shall at all times during the continuation of this agreement and after its termination:

**14.1.1** keep all Restricted Information confidential and accordingly not disclose any Restricted Information to any other person; and

**14.1.2** not use any Restricted Information for any purpose other than the performance of its obligations under: (i) any Service component-specific Terms and Conditions and/or the provisions of this agreement; or (ii) the TMM Order pursuant to or in connection with which that Restricted Information was originally disclosed.

**14.2** Clause 14.1 above shall not apply to any Restricted Information which either party can show:

**14.2.1** was known to it before the Restricted Information was imparted by the party disclosing the Restricted Information;

**14.2.2** is in or subsequently comes into the public domain (through no fault on the part of the party receiving the Restricted Information); or

**14.2.3** is received by the party receiving Restricted Information without restriction on disclosure or use from a third party lawfully entitled to make the disclosure without such restrictions.

**14.3** Any Restricted Information may be disclosed by either party to:

**14.3.1** any governmental or other authority or regulatory body needing to know the same;

**14.3.2** any employees, consultants, agents and subcontractors to such extent only as is necessary for the purposes contemplated by this agreement, any Service component-specific Terms and Conditions and/or the TMM Order concerned;

**14.3.3** its professional advisors as reasonably required for the performance of their professional services; or

**14.3.4** as is required by law.

**14.4** Any disclosure pursuant to clause 14.3 above shall be conditional on the disclosing party using its best endeavours to ensure that the person to whom the disclosure is made keeps the Restricted Information confidential and does not use the same except for the purposes for which the disclosure is made.

**14.5** This clause 14 shall survive termination or expiry of this agreement.

## **15. Data protection**

**15.1** Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 15 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

**15.2** The parties acknowledge that for the purposes of the Data Protection Legislation, the Supplier is the Data Processor and the Customer is the Data Controller.

**15.3** Without prejudice to the generality of clause 15.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this agreement.

**15.4** To the extent that the Supplier acts as a data processor on behalf of the Customer, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:

**15.4.1** process that Personal Data only for the Purpose and on the instructions of the Customer unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier to otherwise process Personal Data. Where the Supplier is relying on laws of a member of the European Union or European Union Law (Applicable Law) as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;

**15.4.2** ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development;

**15.4.3** take reasonable steps to ensure that all personnel who have access to and/or process Personal Data are legally obliged to keep the Personal Data confidential; and

**15.4.4** not transfer any Personal Data outside of the European Economic Area unless such a transfer is on the instruction of the Customer and solely for the Purpose

**15.4.5** assist the Customer in responding to any reasonable request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

**15.4.6** notify the Customer without undue delay (and in any event within 24 hours) on becoming aware of a Personal Data breach;

**15.4.7** at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by law to store the Personal Data; and

**15.4.8** maintain records and information to demonstrate its compliance with this clause 15

**15.5** The Customer consents to the Supplier appointing the below categories of third party processors for the purpose of providing the Services

**15.5.1** Network Operators for the sole purpose of terminating the communication to the end user handset.

**15.5.2** Data Centre Operators for the purpose of storing the personal data and hosting the service.

**15.6** The Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor a written agreement incorporating terms which are substantially similar to those set out in this agreement. The Supplier shall remain liable for the acts or omissions of any third-party processor appointed by it pursuant to clauses 15.5

**15.7** For the avoidance of doubt the Supplier will make no further use of any End-User Data without the Customer's specific authorisation.

## **16. Employees**

**16.1** The Supplier never allocates any of its employees solely to the management of the Customer's account or to the provision or making available of any component(s) of the Service by the Supplier to the Customer and, accordingly, the parties hereby acknowledge and agree that: (i) there is no grouping of the Supplier's employees; and (ii) the Transfer of Undertakings (Protection of Employment) Regulations 2006 do not apply to the provision or making available of any component(s) of the Service by the Supplier to the Customer.

## **17. Freedom of information**

**17.1** The Supplier acknowledges that certain public bodies are subject to applicable freedom of information legislation and/or regulations made thereunder. Accordingly, in the event that the Customer is such a public body, then the Supplier will (at the Customer's expense) use its reasonable endeavours to assist and co-operate with the Customer in enabling the Customer to comply with any information disclosure requirements pursuant to such legislation and/or regulations.

**17.2** The Supplier will, at its sole discretion and without liability, determine whether any information requested by the Customer pursuant to clause 17.1 above is confidential, commercially sensitive and/or otherwise exempt from disclosure under applicable freedom of information legislation and/or regulations made thereunder.

## **18. Termination**

**18.1** This agreement is subject to the rights of termination specified in clauses 2.1, 18.4, 18.5 and 19.2 below. For the avoidance of doubt, termination of this agreement shall also have the effect of immediately terminating all: (i) TMM Orders accepted by the Supplier for which the relevant component(s) of the Service have not been supplied in full at the time of such termination taking

effect; and (ii) all resulting contracts between the Supplier and the Customer in connection with the relevant component(s) of the Service to be supplied pursuant to those TMM Orders.

**18.2** Unless otherwise agreed in writing between the parties and subject to earlier termination in accordance with the terms of this agreement, any accepted TMM Order and the resulting contract between the Supplier and the Customer in connection with the relevant component(s) of the Service to be supplied pursuant to that TMM Order shall be for an initial minimum 12-month period, upon expiry of which the TMM Order and resulting contract will continue automatically unless and until the Supplier gives the Customer 30 days' written notice to the contrary or either party otherwise terminates this agreement or the TMM Order and resulting contract in accordance with the terms of this agreement. For the avoidance of doubt, if the Customer does not specify in any TMM Order any minimum period for which the Customer wants the relevant component(s) of the Service to be supplied, that TMM Order shall be for an initial minimum 12-month period and this clause 18.2 shall apply.

**18.3** If:

**18.3.1** at any time the Customer wishes to terminate any accepted TMM Order and the resulting contract between the Supplier and the Customer in connection with the relevant component(s) of the Service to be supplied pursuant to that TMM Order, the Customer must either: (i) give the Supplier written notice to that effect within the 7-working day period from and including the date of commencement of the provision of the relevant component(s) of the Service, such notice to take effect immediately; or (ii) give the Supplier no less than 90 days' written notice, such notice to take effect no sooner than the date of expiry of the applicable minimum period (subject to any variation thereof);

**18.3.2** the Customer wishes to terminate any accepted TMM Order and the resulting contract between the Supplier and the Customer in connection with the relevant component(s) of the Service to be supplied pursuant to that TMM Order with effect from any date preceding the date of expiry of the applicable minimum period (subject to any variation thereof) and is unable to do so for cause or any other reason under any Service component-specific Terms and Conditions and/or the provisions of this agreement:

(a) the Customer must pay the Supplier the Charges due for each month (or part thereof) remaining of the applicable minimum period post-termination, such Charges to be calculated in accordance with the relevant Service component-specific Terms and Conditions and/or the provisions of this agreement and the Customer hereby acknowledges and agrees that such Charges are a genuine pre-estimate of the loss the Supplier is likely to suffer as a result of such termination; and

(b) any pre-payment or deposit of Charges that the Customer has made to the Supplier will not be credited or refunded.

For the avoidance of any doubt, the termination of any accepted TMM Order and the resulting contract between the Supplier and the Customer in connection with the relevant component(s) of the Service to be supplied pursuant to that TMM Order shall not affect the obligations of each party under any other TMM Orders accepted by the Supplier for which the relevant component(s) of the Service has or have not been supplied in full or any of the resulting contracts between the Supplier and the Customer in connection with the relevant component(s) of the Service to be supplied pursuant to those other TMM Orders.



**18.4** The Supplier shall be entitled to terminate this agreement, with immediate effect by written notice to the Customer, if any relevant law, statute or regulation is implemented or modified with the effect that it is no longer commercially viable or possible for the Supplier to make the relevant component(s) of the Service available.

**18.5** Either party may terminate this agreement or the relevant accepted TMM Order and resulting contract between the Supplier and the Customer in connection with the relevant component(s) of the Service to be supplied pursuant to that TMM Order, with immediate effect by written notice to the other party, if:

**18.5.1** the other party commits a material breach of this agreement or that TMM Order and resulting contract respectively, and fails to remedy the breach within 14 days starting on the day after receipt of notice from the non-breaching party giving details of the breach and requiring the breach to be remedied;

**18.5.2** the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction. For the avoidance of doubt, the parties hereby acknowledge and agree that none of the component(s) of the Service to be supplied pursuant to any accepted TMM Order and resulting contract shall amount to essential supplies for the purposes of section 233 of the Insolvency Act 1986, since no such Service component(s) is or are necessary for enabling the ongoing infrastructure of the Customer's business should the Customer suffer any of the insolvency events set out in this clause 18.5.2; or

**18.5.3** the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

**18.6** Termination of this agreement or the relevant accepted TMM Order and resulting contract between the Supplier and the Customer in connection with the relevant component(s) of the Service to be supplied pursuant to that TMM Order for whatever reason shall not affect either:

**18.6.1** the accrued rights and liabilities of the parties arising in any way out of this agreement or the TMM Order and resulting contract respectively as at the date of termination; or

**18.6.2** provisions that are expressed or can be implied to survive this agreement or the TMM Order and resulting contract respectively, which shall remain in full force and effect.

**18.7** On termination of this agreement:

**18.7.1** the Supplier will immediately cease supplying all components of the Service to the Customer and the Customer will immediately cease accessing and using all such component(s) of the Service; and

**18.6.2** all monies then owing to the Supplier under this agreement will become immediately due and payable. For the avoidance of any doubt, if the Supplier terminates this agreement under clause 18.5.1, clause 18.5.2 or clause 18.5.3 above:

(a) the Customer must pay the Supplier the Charges due for each month (or part thereof) remaining of the applicable minimum period post-termination in respect of each accepted TMM Order and resulting contract between the Supplier and the Customer in connection with the relevant

component(s) of the Service to be supplied pursuant to that TMM Order in relation to which the relevant component(s) of the Service have not been delivered or supplied in full, such Charges to be calculated in accordance with the relevant Service component-specific Terms and Conditions and/or the provisions of this agreement and the Customer hereby acknowledges and agrees that such Charges are a genuine pre-estimate of the loss the Supplier is likely to suffer as a result of such termination; and

(b) any pre-payment or deposit of Charges that the Customer has made to the Supplier will not be credited or refunded.

## **19. General**

**19.1** Nothing in this agreement shall create, or be deemed to create, a partnership, joint venture or the relationship of principal and agent or employer and employee between the parties.

**19.2** Neither party shall be deemed to be in breach of this agreement, an accepted TMM Order and the resulting contract between the Supplier and the Customer in connection with the relevant component(s) of the Service to be supplied pursuant to that TMM Order or both, or otherwise liable to the other for any delay in performance or any non-performance of its obligations thereunder, if and to the extent that the delay or non-performance is due to any event or circumstances beyond that party's reasonable control and, if such event or circumstances continue(s) for a continuous period of more than 3 months, either party may terminate this agreement, the TMM Order and resulting contract or both respectively by written notice to the other party.

**19.3** The Supplier may assign this agreement, or any part of it, to any person, firm or company.

**19.4** The Customer shall not be entitled to assign this agreement, or any part of it, without the prior written consent of the Supplier.

**19.5** No failure, delay or partial exercise on the part of either party in exercising any right, power or privilege under this agreement shall operate as a waiver of it, nor shall it preclude any other or further exercise of it.

**19.6** If any provision of this agreement is held to be void or declared illegal, invalid or unenforceable for any reason whatsoever, that provision shall be divisible from this agreement and shall be deemed deleted from this agreement and the validity of the remaining provisions shall not be affected.

**19.7** Any notice, demand or other communication (except any TMM Orders and acceptances thereof) given or made under or in connection with the matters contemplated by this agreement shall be in writing and shall be delivered personally or by first class post to the address of the relevant party at the head of this agreement and: (i) in the case of the Supplier, marked for the attention of the Sales Department; and (ii) in the case of the Customer, marked for the attention of the commercial contact or billing contact.

**19.8** Any notice given pursuant to clause 19.7 above shall be deemed to have been duly given or made as follows: (i) if personally delivered, upon delivery at the address of the relevant party; and (ii) if sent by first class post, two working days after the date of posting.

**19.9** This agreement, the Service component-specific Terms and Conditions and each accepted TMM Order embodies and sets forth the entire agreement and understanding of the parties and supersedes all prior oral or written agreements, understandings or arrangements relating to the subject matter of the resulting contract between the Supplier and the Customer in connection with

the relevant component(s) of the Service to be supplied pursuant to that TMM Order, and neither party shall be entitled to rely on any agreement, understanding or arrangement not expressly set forth in this agreement, the Service component-specific Terms and Conditions and the TMM Order (save for any representation made fraudulently).

**19.10** This agreement, the Service component-specific Terms and Conditions and all accepted TMM Orders and resulting contracts between the Supplier and the Customer in connection with the relevant component(s) of the Service to be supplied pursuant to those TMM Orders shall be governed by and construed in accordance with the laws of England and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of England.

**19.11** No person other than the parties to this agreement shall have any rights under it, nor shall it be enforceable by any person other than the parties to it.

**19.12** No variation of this agreement, the Service component-specific Terms and Conditions or any accepted TMM Order and resulting contract between the Supplier and the Customer in connection with the relevant component(s) of the Services to be supplied pursuant to that TMM Order shall be valid unless it is in writing and signed by duly authorised representatives for and on behalf of each of the parties.