

## Terms and Conditions for Provision of Telephone and Data Services

This Agreement applies to the provision to you, the Customer, by us, Sirius Limited, a company incorporated in England and Wales with Company Number 07137973 whose trading address is at Ketts House, Winchester Road, Chandlers Ford, Eastleigh, Hampshire, SO53 2FZ ("Sirius") of those services which have been selected by you ("the Services"). Sirius Ltd Registered office address is at Ketts House, Winchester Road, Chandlers Ford, Eastleigh, Hampshire, SO53 2FZ

### 1. BASIS OF SERVICE PROVISION

- 1.1 Sirius shall provide to the Customer the Service under these terms and conditions as requested and Sirius shall exercise appropriate and reasonable care in the provision, operation and maintenance of the Service
- 1.2 Sirius may at any time without notice need to vary the Service for technical, operational or other reasons at our reasonable discretion.
- 1.3 The Service provides you with line rental and calls Services up to the line box at your property. We are not responsible for equipment at your property. It is your responsibility to ensure that this equipment is in good working order.
- 1.4 If, for technical reasons we are unable to provide you with line rental on the number, then we will provide you with a calls only service.
- 1.5 Any variation to these Conditions is of no effect unless agreed in writing by a director of the Company.
- 1.6 The Company's employees or agents are not authorised to make any representation concerning the Purchased Equipment or Services unless confirmed by the Company in writing, and the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such unconfirmed representation (unless such representation is made fraudulently).
- 1.7 The Customer acknowledges that the Services are being purchased as part of a business to business transaction.

### 2. DELIVERY AND INSTALLATION OF SERVICES

- 2.1 To enable Sirius to exercise its rights and fulfil its obligations under this Agreement including, if appropriate, installation at the Customer's premises of equipment for the provision of the Services ("Equipment"), the Customer shall, at its own expense and, where appropriate, in advance of any installation work:
  - (a) permit or procure permission for Sirius and its duly authorised representatives to have reasonable access to the Customer's premises and telephone system and/or any Equipment provided by Sirius at all reasonable times and shall provide such reasonable assistance as Sirius shall request. Sirius will normally require access during its usual working hours but may, on unreasonable request, require the Customer to provide access at other times;
  - (b) obtain all necessary consents, including consents for any necessary alterations to buildings;
  - (c) provide a suitable environment, accommodation and foundations, including all necessary trunking, conduits and cable trays in accordance with the relevant installation standards;
  - (d) take up or remove any fitted or fixed floor coverings, ceiling tiles, suspended ceiling and partition covers as Sirius or its authorised representatives advise are necessary and carry out afterwards any making good or decorator's work required;
  - (e) provide any electricity and connection points required by Sirius or its authorised representatives; and
  - (f) provide a suitable and safe working environment for Sirius's employees and anyone acting on Sirius's behalf.

### 3. USE OF THE SERVICES

- 3.1 For the avoidance of doubt, the Customer acknowledges that it has access to the public switched telecommunications network using exchange lines provided by British Telecommunications plc.
- 3.2 The Customer undertakes to use the Services in accordance with:
  - (a) such instructions and conditions as may be notified in writing to the Customer by Sirius from time to time;
  - (b) the relevant provisions of the Telecommunications Act 1984 (the "Act") or any other legislation applicable to Sirius; any direction of the Director General of Telecommunications or other competent authority and any licence granted there under which applies to the running of a telecommunications system by the Customer; and
  - (c) such terms and conditions of any licensed telecommunications operator providing the equipment or telephone line as Sirius shall notify the Customer from time to time.
- 3.3 Without limitation to the generality of clause 3.2, the Customer undertakes not to use the Services:
  - (a) for the transmission of material which is defamatory, offensive or of an obscene or menacing character; or
  - (b) in a manner which constitutes a violation or infringement of the rights of any person, firm or company (including, without limitation, rights of copyright and confidentiality); or as a means of communication for purposes other than that for normal business or domestic use; or fraudulently or in connection with a criminal offence
- 3.4 For the avoidance of doubt, the Customer acknowledges that it has sole responsibility for all Charges relating to the use of the Services regardless of whether such use is authorised, unauthorised, fraudulent or otherwise. The Customer must inform Sirius as soon as reasonably practicable if it suspects that fraudulent or unauthorised use of the Services is occurring, although such notification will not limit the Customer's liability to pay the Charges as set out herein.
- 3.5 Sirius will provide to the Customer, upon request, details of its maintenance operation, which should be contacted in the event that there is a fault with the Services.

### 4. DURATION OF THIS AGREEMENT

- 4.1 The Minimum Term of this agreement means the period as notified to the Customer by Sirius on entering into this agreement or 36 months if not otherwise signified on a Sirius order form, thereafter this Agreement, shall continue unless this Agreement is terminated by the Customer giving Sirius not less than six months' written notice; such notice to expire at the end of the Minimum Term or at any time after that date.
- 4.2 This Agreement will come into force on the date on which the Customer orders the Service. The Service is supplied by Sirius subject to the Minimum Term unless this Agreement is otherwise terminated prior to expiry of the Minimum Term in accordance with its terms. The Minimum Term will commence on the first day of supply of the services.
- 4.3 Upon expiry of the Minimum Term this Agreement will not automatically renew or rollover into any secondary or subsequent terms other than the requirement of the customer to give Sirius SIX MONTHS written notice to terminate.

### 5. CHARGES AND PAYMENTS

- 5.1 In Consideration of the Services provided by Sirius, the Customer shall pay all charges for the provision of the Services as notified to the Customer from time to time.
- 5.2 Sirius shall send invoices for the Charges monthly in arrears for calls and monthly in advance for line rental.
- 5.3 The Charges for a given billing period will be calculated by reference to Sirius's tariff structure (which is available for inspection upon request at Sirius's major offices).
- 5.4 Sirius may alter the tariff structure referred to at clause 5.3 by giving notice in writing except that Sirius may reduce the pricing within the tariff structure at any time.
- 5.5 The Charges shall be calculated by reference to data recorded or logged by Sirius and not by reference to any data recorded or logged by the Customer.
- 5.6 Sirius may at any time require the Customer to pay a deposit or provide a guarantee as security for payment of future bills.
- 5.7 All sums due to Sirius shall be payable by the Customer by direct debit within fourteen days of the date of the relevant invoice but Sirius shall have the right to request payment on demand if the Customer fails to make payment of any invoice within fourteen days.
- 5.8 Sirius reserves the right to charge daily interest on outstanding amounts until payment in full is received at a rate equal to 10% per annum above the base lending rate of Natwest plc as current from time to time whether before or after judgment. Interest shall accrue notwithstanding termination for any cause whatsoever and this right to charge interest is without prejudice to Sirius's right to treat non-payment of sums due from the Customer a repudiatory breach of this Agreement.
- 5.9 All Charges are exclusive of Value Added Tax and any other sales tax or duty for which, is applicable, an amount will be added to the Customer's invoice.
- 5.10 Payment of all sums due to Sirius and invoiced pursuant to this Agreement by the Customer shall be made without any set-off or deduction whatsoever.
- 5.11 For the avoidance of doubt, the Customer shall be liable for all and any telecommunication charges payable to any third party arising out of the Customer's use of the Services.
- 5.12 Sirius reserves the right to apply a monthly minimum threshold in respect of outbound calls for each invoiced account to keep the account operating at a viable level. In the event that the actual outbound calls billed amount does not reach the threshold level the Customer agrees to pay the difference between the actual calls billed amount and the threshold.

### 6. TERMINATION

- 6.1 This agreement may be terminated by Sirius having given the Customer not less than one month's prior written notice, or
- 6.2 Without prejudice to any other rights or remedies either party may have either under this Agreement or at law, Sirius may terminate this Agreement immediately by serving notice in writing on the other party
  - (a) In the event that either party is in default in its performance or observance of any of its obligations under this Agreement, or
  - (b) if Sirius at its sole discretion considers a breach of contract to be a remediable breach of contract and the customer fails to remedy the such breach within 7 days; or
  - (c) an interim order is applied for or made, or a voluntary arrangement approved, or if a petition for a bankruptcy order is presented or a bankruptcy order is made against either party, or if a receiver or trustee in bankruptcy is appointed of the other party's estate, or a voluntary arrangement is proposed or approved, or an administration order is made, or a receiver or administrative receiver is appointed over any of the other party's assets or undertakings, or a winding up resolution or petition is passed or presented (otherwise than for the purposes of reconstruction or amalgamation), or if any circumstances arise which entitle the court or a creditor to appoint a receiver, administrative receiver or administrator or to present a winding up petition or make a winding-up order; or
  - (d) in the event of a force majeure event (as described in clause 9) that continues for a period exceeding 3 months.

- 6.3 Without prejudice to its other rights under this Agreement or at law, Sirius may terminate this Agreement or may cancel the Services immediately by serving written notice on the Customer if:
  - (a) the Customer fails to make any payment when it becomes due to Sirius; or
  - (b) any licence or agreement pursuant to which Sirius provides the Services expire or is revoked; or
  - (c) Sirius believes that the Services are being used in a way that is forbidden by clause 3.3.
- (d) Commits a breach of Contact within the terms and provisions of this agreement

### THE CUSTOMERS ATTENTION IS PARTIALLY DRAWN TO THIS CONDITION

**6.4 In the event that the Customer wishes to terminate the Agreement before the end of the Minimum Term and/or does not wish to serve out its notice obligation in accordance with Clause 4, the Customer shall be obliged to pay to Sirius "liquidated damages". Such liquidated damages shall be equal to the aggregate of all arrears of charges due but not paid at the date of the early termination; plus any interest charges for late payment at the rate stated in clause 5.8; plus a lump sum which shall be the total of the Charges which would have become due in the period from the date of termination till the end of the Minimum Term and (if relevant) the notice period (calculated by reference to the Customer's average invoices in the 3 months prior to the termination date) less a consideration of 30% of the lump sum. Where such termination is within 3 months of the commencement of the Agreement, the Average Monthly Invoices shall mean the sum value of the monthly invoices received divided by the actual number of invoices received. The Customer agrees that the Liquidated Damages shall be recoverable by the Company as a**

**debt due from the Customer and agrees that the Liquidated Damages are a genuine pre-estimate of the loss of profit likely to be suffered by the Company.**

- 6.5 If this Agreement is terminated pursuant to this clause 4 and or 6, all Services shall, without prejudice to the parties' accrued rights and obligations with respect thereto terminate forthwith and the Customer must immediately stop using the Services to the extent that they have been cancelled or the Agreement has been terminated.
- 6.6 Termination of the Services (in whole or in part) shall not affect any pre-existing liability of the Customer under this Agreement or affect any right of Sirius to recover damages in respect of any breach by the Customer of the terms of this Agreement.
- 6.7 The provisions of clause 6 continues to apply despite the termination or expiry of this Agreement.
- 6.8 The customer may cancel Service any time up to 7 days before agreed date of provision. However, if the customer has ordered Services for business use the customer must pay for any work performed or monies expended by Sirius. In this event the customer agrees to pay Sirius an administration charge capped at £350.00 plus vat by way of liquidated damages.

### 7. SUSPENSION OF THE SERVICES

- 7.1 Sirius may at its sole discretion and without prejudice to any rights it may have to terminate this Agreement upon giving notice to the Customer either orally (confirming such notification in writing) or in writing, elect to suspend forthwith provision of the Services until further notice in the event that:
    - (a) Sirius is entitled to terminate this Agreement pursuant to clause 6.3; or
    - (b) Sirius is entitled to suspend provision of any other telecommunications service under the terms of any other agreement between Sirius and the Customer; or
    - (c) Sirius is obliged to comply with an order, instruction or request of Government, an emergency services organisation or other competent administrative or regulatory authority which affects its ability to provide the Service; or
    - (d) maintenance or emergency works (as defined in Schedule 2 of the Act) must be carried out on the Equipment or for operational reasons; or
  - 7.2 In the event a suspension is implemented as a consequence of the breach, fault or omission of the Customer, the Customer shall reimburse Sirius for all reasonable costs and expenses incurred in the implementation of such suspension and/or the commencement of the provision of the Services as appropriate.
  - 7.3 Sirius shall not be liable for any loss, damage or inconvenience suffered by the Customer as a result of any suspension pursuant to clause 7.1.
- ### 8. LIMITATION OF LIABILITY
- 8.1 Neither party is liable to the other party except as expressly set out in this Agreement and has no other obligation or liability whatsoever in contract, tort or otherwise to the other party
  - 8.2 Sirius shall not be liable under or in connection with this Agreement whether in contract, tort or otherwise (including liability in negligence) for any indirect or consequential loss, including but not limited to, corruption or destruction of data, and loss of business, revenue or profit, anticipated savings or for any financial loss whatsoever.
  - 8.3 Nothing in these Terms shall restrict or exclude either party's liability for fraud or for death or personal injury caused by it or its employees' or agents', negligence.
  - 8.4 Insofar as any part of the Services depends on or is supplied by other telecommunications operators, Sirius is not responsible for their reliability or quality unless Sirius is at fault.
  - 8.5 Sirius will not be liable to the Customer for any failure to comply with its obligations under this Agreement to the extent that this liability arises as a result of the failure of the Customer to fulfill its obligations under this Agreement.
  - 8.6 The Customer must ensure that it complies at all times with all laws and obligations, including any licence under the Act which is applicable to the Customer. Sirius will have no liability under this Agreement for failure to comply with its obligations in any case where the Customer does not comply with any such relevant laws or obligations.
  - 8.7 Sirius's liability in contract, tort or otherwise arising out of or in connection with the performance of Sirius's obligations under this Agreement shall be limited to £10,000 for any one incident or series of incidents and £500,000 in aggregate.
  - 8.8 The Customer shall indemnify and keep indemnified Sirius against any claims, losses, damages, costs and other liabilities which Sirius may incur or may be established or brought against it by reason of any claim against Sirius by any third party arising out of or in connection with this Agreement or the use of the Service
  - 8.9 The Customer indemnifies and will keep Sirius fully and effectively indemnified against all and any losses, claims, damages, costs, charges, expenses and other liabilities which Sirius may sustain or incur or which may be brought or established against it by any person and which in any case arise out of or in relation to or by reason of any breach by the Customer of its obligations under this Agreement; and/or the negligence, recklessness or unlawful misconduct of the Customer in the performance of its obligations under this Agreement.
  - 8.10 In order to minimise the risk of any losses in the event that Sirius is unable to provide the Services due to a technical problem in relation to the telecommunications network by which the Services are provided, the Customer must be aware of and follow the procedure for diverting calls over an alternative network as will be notified to the Customer in writing from time to time.
  - 8.11 In the event that Sirius fails to provide the Services and the Customer diverts traffic to another Service Provider, Sirius shall not be responsible for any costs or expenses arising as a result of such diversion of traffic including, without limitation, such Service Providers charges.

### 9. FORCE MAJEURE

Notwithstanding anything herein to the contrary, neither party shall be liable for any delay or failure in performance of any part of this Agreement (other than the payment obligations set out in clause 6) to the extent that such delay or failure is attributable to a force majeure event including, without limitation, any act of God, inclement weather, failure or shortage of power supplies, flood, drought, lightning or fire, strike, lock-out, trade dispute or labour dispute, the act of omission of Government, highways authorities, other telecommunications operators or administrations or other competent authority, war or military operation

### 10. ASSIGNMENT

The Customer shall not (without the prior written consent of Sirius), assign or delegate or otherwise deal with all or any of its rights and obligations under the Agreement. Sirius shall have the right to assign or otherwise delegate all or any of its rights and obligations to any other person upon serving notice on the Customer.

### 11. INFORMATION AND CONFIDENTIALITY

- 11.1 Subject to clause 11.3, the Customer will promptly provide to Sirius (free of charge) any information which Sirius may require to enable it to proceed with the performance of its Obligations under this Agreement including any information which Sirius may reasonably request for the purposes of credit verification and debt collection. The Customer permits Sirius to use such information and to provide it to third parties acting on behalf of Sirius for such purposes.
- 11.2 Subject to clause 11.3, neither the Customer nor Sirius will use, copy, adapt, alter or part with possession of any information of the other which is disclosed or otherwise comes into its possession under or in relation to this Agreement and which is of a confidential nature. This obligation will not apply to information which the recipient can prove was in its possession at the date it was received or obtained or which the recipient obtains from some other person with good legal title to it or which is in or comes into the public domain otherwise than through the default or negligence of the recipient or which is independently developed by or for the recipient or which is disclosed in compliance with a law or an order of the court or a competent regulatory authority.
- 11.3 Both parties shall fully comply with data protection laws in force from time to time insofar as they relate to the Agreement and shall procure that their employees shall observe such laws.

### 12. NOTICES

- 12.1 Any notice required or authorised to be given under this Agreement shall be delivered by pre-paid post or by hand to the addressee at the following addresses:
  - (a) To Sirius at the address as shown on the last invoice rendered to the Customer or such other address as Sirius may nominate for this purpose.
  - (b) To the Customer at the address notified to Sirius as the address to which notices or invoices may be sent or the Customer's usual or last known address or its registered office.
- 12.2 Any notice shall be deemed to have been made to the other party if delivered by hand when delivered, if posted by pre-paid post, on the second working day following posting.

### 13. CHANGE TO THE AGREEMENT

- 13.1 If the Customer asks Sirius to make any change or changes to the Service Sirius may ask the Customer to confirm its request in writing. If Sirius agrees to a change, this Agreement will be changed when Sirius confirms the change to the Customer in writing.
- 13.2 Sirius can change the conditions of this Agreement including its charges at any time. Sirius will publish any change in its major offices and on its Website at least 14 days before any changes are due to take place. In respect of a Residential Customer, Sirius will notify the Customer in writing at least 14 days before the changes takes place.
- 13.3 Notwithstanding any other provision of this Agreement, Sirius may change the terms of this Agreement at any time by notice in writing to the Customer. The change will take effect on the date set out in the notice.

### 14. GOVERNING LAW

This Agreement shall be governed by and construed and interpreted in accordance with English Law and the parties hereby submit to the exclusive jurisdiction of the English Courts. Those provisions of a continuing nature under this Agreement shall continue to apply notwithstanding the termination or expiry of this Agreement for any reason whatsoever.

### 15. GENERAL

- 15.1 If any provision of this Agreement is held by a court or any governmental agency or authority to be invalid, void or unenforceable, the remainder of this Agreement shall, to the extent possible, remain legal, valid and enforceable
- 15.2 Each of the parties acknowledges and agrees that in entering into this Agreement, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement. Nothing in this clause shall, however, operate to limit or exclude any liability for fraudulent misrepresentation.
- 15.3 This Agreement (together with any document referred to herein) constitutes the entire agreement between the parties hereto in connection with the subject matter of this Agreement. Neither party has relied upon any representation save for any representation expressly set out in this Agreement (or any document referred to herein).
- 15.4 Any agreement by either party to exercise or enforce any right conferred by this Agreement shall not be deemed to be a waiver of any such right nor to operate so as to bar the exercise or enforcement of any such or other right on any later occasion.

# General Terms and Conditions of Sale

This terms and conditions apply to the provision to you, the Customer, by us, Sirius Limited, a company incorporated in England and Wales with Company Number 07137973 whose trading address is at Ketts House, Winchester Road, Chandlers Ford, Eastleigh, Hampshire SO53 2FZ ("Sirius") of those services which have been selected by you ("the Services")

## DEFINITIONS

In these Conditions of Sale "The Company" shall mean "Sirius Telecom Ltd". "The Customer" shall mean the Customer whose name appears on the quotation form or order form of which these Conditions form a part. "the Goods" mean all or any part of the equipment, apparatus, materials and articles supplied by the Company, "Software" means computer programs of the Company together with related materials for use therewith including (but not limited to) flowcharts, source codes, and logic diagrams directly or indirectly incorporated in or otherwise delivered in conjunction with the Goods: "the Contract" means any contract between the Company and the Customer for the manufacture and/or sale and purchase of Goods.

## 1. APPLICATION

These Conditions apply to all Sales of Goods by the Company to the Customer and shall apply in place of and prevail over any forms or conditions contained or referred to in the Customer's order or in correspondence or elsewhere or implied by trade custom practice or course of dealing unless the Company otherwise expressly agrees in writing and any purported provisions to the contrary are hereby excluded or extinguished.

## 2. QUOTATION, ORDER AND CONTRACT

Quotations issued by the Company shall unless otherwise expressly stated remain valid for 30 days after the date hereof. Quotations issued by the Company are not offers capable of acceptance so as to make a binding contract. All orders placed by the Customer with the Company require written acceptance by the Company and upon such written acceptance a valid and binding contract shall thereupon exist between the Customer and the Company. No variation to the terms of any such contract (hereinafter referred to as "the Contract") shall be valid unless it be made in writing and signed on behalf of both the Company and the Customer by their respective duly authorised representatives.

## 3. DELIVERY

3.1 Delivery dates mentioned in any quotation, acknowledgement of order or elsewhere are approximate only and not of any contractual effect and the Company shall not be under any liability to the Customer in respect of any failure, howsoever caused, to deliver the Goods or to render any services in relation thereto on a particular date or dates nor shall any such failure entitle the Customer either to refuse to accept delivery of the Goods or terminate the Contract.

3.2 Unless otherwise agreed in writing, delivery shall be deemed to have been duly effected by the Company by delivery of the Goods from its works to a carrier for transportation to the Customer's premises indicated on any order.

3.3 If the customer refuses or fails to take delivery of the Goods tendered in accordance with the Contract the Company shall be entitled to store at the risk of the Customer any Goods of which the Customer refuses or fails to take delivery within 7 days after the date notified to the Customer by the Company and the Customer shall, in addition to the purchase price, pay all costs of such storage and any additional costs incurred as a result of such refusal or failure. If within a period of a further 28 days the Customer has not taken delivery of the Goods so notified then the Customer shall be in breach of the Contract for the purpose of Clause 14 hereof and the Company shall, without prejudice to any other, be entitled to dispose of the Goods in such a manner as the Company may determine.

## 4. PRICES

Unless otherwise agreed in writing, prices are ex works excluding VAT. Packing and carriage are charged extra where applicable. The Company reserves the right to vary any quoted price (either by varying the invoiced price and/or by rendering a supplementary invoice or invoices) in order:-

4.1 to take account of increases in cost between the date of quotation and delivery resulting from:

- (i) any modified specifications in relation to the goods considered necessary by the Company subject to the approval of the Customer such approval not to be unreasonably withheld;
- (ii) any increase in the rates of wages payable to labour or in the cost of materials or (where applicable) transport, or of conforming to such laws, orders, regulations and bye-laws as are or may become applicable to the Contract.

4.2 to take account of any variation between the date of quotation and the date of the Company receiving immediately available funds from the Customer's remittances in the rate at which the Company is able to purchase for sterling in the official London inter Bank Foreign Exchange Market for immediate delivery the currency of the country from which the Company obtains the Goods.

## 5. TAXES

5.1 Any tax or duty (however described) now or at anytime payable in relation to the carrying out of the Contract (other than any tax measured by the income of the Company) shall be for the account of the Customer and recoverable by the Company from the Customer accordingly.

## 6. PAYMENT

6.1 Unless otherwise agreed payments shall be made without any deduction of set-off so as to be received by the Company not later than twenty-eight days following despatch of the Goods or notification by the Company to the Customer that the Goods are available "ex works" whichever first occurs. If any payment under this clause is not received by the Company within thirty days of the due date then the Customer shall pay interest thereon at the rate of two percent per month until receipt by the Company of the full amount thereof whether or not after judgement (and any other costs incurred in relation to the recovery of any sums outstanding shall be for the Customer's account.)

6.2 Stipulations as to the time of payment are to be deemed to be of the essence of the contract.

## 7. SPECIFICATIONS AND DRAWINGS

7.1 Except to the extent expressly stipulated in writing by the Company, programs, systems reference and systems design manuals, associated documentation, together with all drawings, illustrations, specifications, descriptions and other information submitted by the Company to the Customer are approximate and are intended only to present a general description of the Goods.

7.2 The Company reserves the right to make such change in design, manufacture or specification of the Goods and/or Software as will, in its opinion, constitute an improvement and to use alternative materials or components which in its opinion, are not inferior to those comprising the Goods as described on the order.

## 8. INSTALLATION

In cases where installation and/or testing of Goods on the Customer's premises is included in the Company's quoted price then the Customer shall grant free access to its premises during normal working hours for the purposes of the Company's employees rendering such services as may be agreed or necessary in relation to such installation and/or testing. In the event that at the request of the Customer employees of the Company work outside normal hours in relation to such installation and/or testing then the Customer shall pay such additional rates as may from time to time be stipulated by the Company. In the event that any special equipment is required in relation to the work contemplated in this Clause, the cost of providing such equipment shall be borne by the Customer.

## 9. RISK AND PROPERTY

9.1 The risk in the Goods shall pass from the Company to the Customer at the time when the Customer takes or should have taken delivery thereof (whichever is the sooner) in accordance with the provisions of Clause 3 hereof.

9.2 Until such time as the price of the Goods has been paid to the Company in full, title to the Goods will remain vested in the Company and the Customer shall have possession of the Goods as bailee for the Company and shall store the Goods in such a way as to enable them to be identified as the property of the Company provided that if the Customer is purchasing the Goods for resale the Customer may as trustee for the Company sell and deliver the Goods to a third party in the ordinary course of the Customer's business on condition that until such payment as aforesaid the Customer shall hold all proceeds of such sales in trust for the Company and in a separate account. The Customer hereby agrees forthwith on receipt of written notice from the Company so requesting to assign to the Company all rights and claims which the Customer may have against its customers arising from such sales until payment is made in full as aforesaid.

9.3 The Company may without notice or liability, and without prejudice to any other legal remedy repossess any Goods in respect of which payment is overdue and thereafter to resell the same and for this purpose the Customer hereby grants an irrevocable right and licence to the Company's servants and agents to enter upon all or any of the Customer's premises with or without vehicles during normal business hours. This right shall continue to subsist notwithstanding the termination of the Contract for any reason and without prejudice to any accrued rights of the Company thereunder or otherwise

## 10. INCOTERMS 1990

10.1 Incoterms (1990) as revised from time to time shall apply except where inconsistent with any of the provisions contained in these Conditions.

## 11. GUARANTEE AND LIMITATION OF LIABILITY

11.1 If, within 12 months from the date of the notification referred in Clause 3 hereof, the Customer shall give written notice to the Company that any defect exists in the Goods and shall return the defective part or parts of the Goods including accessories and original packaging carriage paid to the Company's works and if the Company is satisfied that any such defect arose solely from faulty materials or workmanship of the Company then the Company shall make good such defect of defects without charge to the Customer and the repaired or replaced part will be delivered to the Customer in the manner provided for by Clause 3 hereof.

11.2 The Company shall be under no liability under this Clause:-

- (i) if any modification or repairs to the Goods are carried out by the Customer or by any third party without the Company's prior written consent; or
- (ii) in respect of Goods not manufactured by the Company, provided that in such cases the Company shall, insofar as it is possible for it to do so, grant to the Customer the benefit of any guarantee given to the Company in respect of such Goods; or
- (iii) if any defect is caused by incorrect or negligent handling, disregard of operating instructions, abnormal use, overloading, unsuitable work, faulty installation or any other default by the Customer, its servants or agents; or
- (iv) in respect of Goods or parts thereof which have been used by the Customer prior to the date of the contract.

11.3 Subject to the foregoing, all conditions, warranties and representations expressed or implied by statute, law or otherwise in relation to the Goods are hereby excluded and the company shall be under no liability to the Customer for any loss, damage or injury direct or indirect resulting from defective materials, faulty workmanship or otherwise unless (subject to paragraph 11.4) such loss is shown to be caused solely by the negligence of the Company but in no circumstances whatsoever will the Company be responsible for any loss of business, profit or any other consequential, indirect or special loss howsoever arising.

11.4 With the exception of liability for death or personal injury caused by the negligence of the Company the Company's total liability to the Customer, howsoever arising, shall in no circumstances whatsoever exceed £2,000,000 in respect of any occurrence or series of occurrences.

## 12. PATENTS AND TRADEMARKS

12.1 The Company gives no warranty or guarantee that the use or sale of the Goods does not infringe the rights of any third party, in any case where the Goods are or are capable of becoming the subject of any industrial or intellectual property rights the Company warrants that it shall transfer to the Customer only such title as it may have to the Goods. The Customer shall indemnify the Company against any and all liabilities, claims and costs incurred by or made against the Company as a direct or indirect result of the carrying out by the Company of any work required to be done on or to the Goods in accordance with the requirements or specifications of the Customer involving any infringement or alleged infringement of any rights of a third party.

## 13. FORCE MAJEURE

13.1 The Company shall not be liable to the Customer for any loss or damage which may be suffered by the Customer as a direct or indirect result of the supply of the Goods by the Company being prevented, hindered, delayed or rendered uneconomic by reason of circumstances or events beyond the Company's reasonable control including, but not limited to, act of God, war, strike, lock out, trade dispute or labour disturbance, accident, break-down of plant or machinery, fire, flood, storm, difficulty or increased expense in obtaining workmen, material or transport, or other circumstances affecting the supply of the Goods or of raw materials therefore by means or the delivery of the Goods by the Company's normal means or the delivery of the Goods by the Company's normal route or means of delivery.

## 14. INTELLECTUAL PROPERTY RIGHTS

14.1 The Company will, at all times, retain the property and copyright and rights in the nature of copyright in all software, designs, drawings or technical descriptions supplied by it in connection with the Quotation or otherwise in connection with the contract.

14.2 The Customer shall and shall ensure also that its employees shall keep confidential and shall not without the Company's prior written permission disclose to any third party any of the Software, drawings, designs or information whether of a technical nature or commercial nature acquired from the Company directly or indirectly pursuant to the Quotation or the Contract and shall use the same only for the purpose of the Contract and the operation of the Goods.

14.3 The Customer will not, without the prior written consent of the Company, copy or enable any other persons to copy the Goods or any part thereof.

14.4 The Company will be free to use any material including plans drawings etc. supplied to it by the Customer in connection with the quotation.

14.5 Notwithstanding any implication to the contrary appearing elsewhere in these Conditions and to avoid any doubt the Software and the copyright and rights in the nature of copyright or other intellectual property rights of whatever nature in the Software are and shall remain at all times the property of the Company and are designated as confidential and shall be used only in conjunction with the Goods.

14.6 In the event that the Company exercises its rights under Clause 14 of these Conditions the Customer will return promptly to the Company all property designated under the Contract as confidential and belonging to the Company.

## 15. DEFAULT BY CUSTOMER

15.1 If the Customer shall fail to observe and perform any of these Conditions of Sale or any other term of the Contract, or shall compound with its Creditors generally, or shall have a Receiver appointed for all or any part of its assets, or shall take or suffer any similar action in consequence of debt, or shall become unable to pay its debts as they fall due, or shall permit, or suffer any distress or execution to be levied or threatened upon any of its assets, or if any judgement against the Customer shall remain unsatisfied for more than 14 days, or if proceedings shall be commenced by any authorised body for liquidation of the Customer otherwise than for the purpose of amalgamation or reconstruction then the Company shall have the right forthwith, without prejudice to any of its other rights to treat the Contract as having been repudiated by the Customer and to claim all loss or damage resulting from such repudiation.

## 16. CREDIT REFERENCES and DATA PROTECTION

16.1 The Company may at any time before delivery of the Goods require the Customer to provide the Company a maximum of two credit references from such persons or persons and at such time or times and in such manner as the Company shall reasonably require and, in the event that such references are not provided or are not deemed satisfactory by the Company, the Company shall be entitled to request payment in full for the Goods 7 days before delivery or treat the Contract as if it had never been entered into and the Company and the Customer shall have no rights or liabilities thereunder. The Company may make a search with a credit reference agency, which will keep a record of that search and may share that information with other businesses. We may also make enquiries about the principal directors of a company with a credit reference agency.

## 17. WAIVER

17.1 Failure by the Company to exercise or enforce any rights hereunder shall not be deemed to be a waiver of such right nor to operate as a bar to the enforcement thereof at any time or times thereafter.

## 18. CUSTOMER RESPONSIBILITIES

18.1 It is the responsibility of the Customer to obtain any licence or consent of any Government or other authority, which might be required for the acquisition, or use of the Goods by the buyer.

## 19. NOTICES

19.1 Any notice required or authorised to be given hereunder may be given either personally or by post addressed to such other party at its address furnished to the other by written notice and shall be deemed to have been served 48 hours after the same is posted and proof that the envelope containing the notice was properly addressed and sent prepaid post shall be sufficient evidence of service.

## 20. LAW

20.1 English law shall govern the construction, validity and performance of the Contract and the Company and the Customer hereby agree to submit to the jurisdiction of the English Courts.

# SIRUS TELECOM LIMITED, MOBILE AIRTIME SERVICES & EQUIPMENT TERMS AND CONDITIONS OF AGREEMENT

1. **DEFINITIONS** - In these Terms and Conditions, the following expressions shall have the following meanings:
- (A) "Sirius" Sirius Telecom Ltd. Company registration number 7137968, registered office: 7 Bournemouth Road, Chandlers Ford, Eastleigh, Hampshire, SO53 3DA.
- (B) "Agreement" This Agreement, all sides completed, and all other associated schedules in writing.
- (C) "Bar" The act of barring the Subscriber from making or receiving calls on the Subscriber Apparatus.
- (D) "Charges" Call charge, access charge, connection charge, minimum airtime charge, value added service charge means the charges as described and at the rates (appropriate to the chosen tariff) as set out in the Schedule of Tariffs to be published by Sirius from time to time.
- (E) "Connection" "Connected" The connection of the equipment or SIM card to the selected tariffs and Systems.
- (G) "IMEI" The International Mobile Equipment Identity number incorporated into the Subscriber Apparatus.
- (H) "Migration" Means the transfer of a mobile number to any alternative service provider on the same network.
- (I) "Party/Parties" Means Sirius Telecom Ltd and the Subscriber either separately or together.
- (J) "Payment Date" The date determined by Sirius on which Sirius invoices fall due for payment.
- (K) "Portability" Means the transfer of a mobile number or Service to any alternative service provider and service operator.
- (L) "Service(s)" The provision of airtime, together with those services identified in this Agreement, by means of the Systems offered by Sirius Telecom Ltd.
- (M) "Service Operators" Means the mobile networks and associated agents.
- (N) "SIM Card" A module which contains Subscriber Information and which, when used with GSM/UMTS equipment, enables access to the GSM/UMTS Services.
- (O) "Subscriber" The account holder responsible first for meeting the Charges.
- (P) "Subscriber Apparatus" Means the approved equipment and SIM Card connected to the System.
- (Q) "System(s)" The public telecommunications systems that Sirius makes available to the Subscriber.
- (R) "Upgrade" Any supply of a new handset or mobile device.

## 2. ACCEPTANCE OF APPLICATION

- 2.1 In connection with this account application Sirius will carry out credit and fraud prevention checks with a licensed credit reference and fraud prevention agency & this agency will retain a copy of the search. Information from the application and payment details of the account will be recorded and may be shared with other organisations to help make credit and insurance decisions about you and members of your company and for debt collection and fraud prevention purposes.
- 2.2 Sirius will only accept the application when the Subscriber passes a credit check to Sirius's satisfaction. This Agreement, together with the terms contained overleaf, constitutes the entire contract between the Subscriber and Sirius, and the terms of this Agreement shall apply to the exclusion of all others whether implied or proposed by the Subscriber orally or in writing unless expressly accepted in writing by Sirius.
- 2.3 Sirius offers mobile services to businesses and, upon accepting this application, assumes that all businesses have ten or more employees and subsidies and benefits are issued on the basis of this.

## 3. TERM

- 3.1 This Agreement will commence from the date any services requested on the Agreement overleaf are implemented and take effect and will be for a minimum of two years in any event unless stated any different overleaf.
- 3.2 Subject to Clause 10 below this shall continue for a period of twenty-four (24) months from each date of individual connection or upgrade or tariff change, unless a different term is selected under the "Initial Minimum Contract Term" provision overleaf.
- This Agreement shall continue thereafter until terminated by either party giving not less than sixty (60) days prior written notice, such notice not to be served prior to the expiry of the said initial minimum contract term.
- 3.3 This Agreement is a Master Agreement, and the provisions of Clause 3.1 and 3.2 are applicable to all mobile numbers and/or handsets Connected to Sirius and will also apply to subsequent Connections or Upgrades from the individual Connection or Upgrade date.
- 3.4 All Tariff changes will be subject to availability and a minimum spend.

## 4. CREDIT ACCOUNT

- 4.1 An account will be opened and a credit limit inclusive of VAT will be notified to the Subscriber and this credit limit should not be exceeded. Any increase in the credit limit must be requested in writing and will be subject to approval by Sirius, which may entail further credit checks. Sirius cannot accept responsibility for Subscriber overpays due to any reason including but not limited to billing cycles or delays in when the Subscriber passes a credit check to Sirius's satisfaction. This Agreement, together with the terms contained overleaf, constitutes the entire contract between the Subscriber and Sirius, and the terms of this Agreement shall apply to the exclusion of all others whether implied or proposed by the Subscriber orally or in writing unless expressly accepted in writing by Sirius.
- 4.2 Credit limits are subject to periodic review at Sirius discretion. Sirius may require that a deposit be placed with Sirius in cases where the Subscriber incurs monthly charges in excess of the credit limit and the Subscriber authorises Sirius to debit their credit card, where details provided, at Sirius's discretion for this excess amount overdue, or any amount over the credit limit set.

## 5. CONNECTION TO THE SYSTEM AND PROVISION OF THE SERVICE

- 5.1 Subject to these Terms and Conditions, Sirius will connect and maintain the connection of the Subscriber Apparatus to the System and, subject to the technical coverage of the System, from time to time and other limiting factors not under Sirius's control, Sirius will endeavour to make the Services available to the Subscriber throughout the term of this Agreement.
- 5.2 Sirius shall be entitled, at its absolute discretion to transfer the Subscriber to another Service Operator, provided this incurs no additional costs to the Subscriber. Wherever practicable, fourteen (14) days written notice shall be given of such changes prior to their being made.
- 5.3 The Subscriber recognises and acknowledges that the Services depend on the availability of the Systems, which may from time to time, by their very nature, be adversely affected by physical features, atmospheric conditions, and other causes of interference may fail or require maintenance without notice.
- 5.4 The Services are provided with premium rate and international calls made whilst in the UK and overseas enabled unless the Subscriber has requested Sirius to bar these calls. If enabled, the Subscriber should be aware that they will be charged for calls received whilst abroad (including voicemail) and that calls made and received whilst overseas may be charged in 30 or 60 second increments at rates set by the overseas network(s) together with any additional handling & network charges. Premium rate calls can be charged at rates over £1.57 pence per minute. Any such calls/text/data are not included in any bundle of inclusive calls/text/data which may be part of the tariff and billing delays of up to six months may occur for these charges which may be subject to an advance deposit as requested from time to time.
- 5.5 Sirius shall bear no liability to the Subscriber whatsoever in connection with any Service provided by an overseas network, third party or Premium Rate provider.

## 6. PAYMENT

- 6.1 The Subscriber will pay any agreed initial charges, the monthly access charge any other fixed monthly charges, on or before the Payment Date.
- 6.2 The Subscriber will pay all network charges (used in excess of any call charges that may be comprised in the minimum airtime charge) and without rebate or discount, including charges in such Charges including charges incurred from other networks, virtual networks, premium rate and overseas cellular and network operators (without discount) and also any handling charges set out in the schedule of tariffs, monthly in arrears, on or before the Payment Date. UK calls are billed per second and rounded up to the nearest penny. The networks may apply a minimum call charge, details of which can be found in the tariff terms and conditions on their websites.
- 6.3 The schedule of tariffs are made available within Sirius's quoted proposal document or price book.
- 6.4 The Subscriber will pay the cost of any subsequent reconnection made necessary by suspension of the Services carried out by Sirius due to non payment of charges or suspension of the System or disconnection.
- 6.5 The Subscriber will pay all sums to Sirius by Direct Debit or by such other method as Sirius shall allow on or prior to the Payment Date. The acceptance of payment by any method other than Direct Debit by Sirius may incur a monthly administration fee of £3.00 + VAT.
- 6.6 All payments other than by Direct Debit must be received within fourteen (14) days of Sirius's invoice date.
- 6.7 The Subscriber may be required to pay a fee of £20.00 + VAT per incident for cancelled, dishonoured or failed Direct Debits or cheques.
- 6.8 Any sums due to Sirius from the Subscriber which are unpaid for more than fourteen (14) days after the Payment Date shall bear interest at the rate of three per cent (3%) above the base rate of NatWest Bank PLC calculated from the date payment was due to the date of actual payment becoming cleared funds.
- 6.9 Value Added Tax (VAT) and other taxes from time to time in force where appropriate shall be payable on all Charges referred to under this Clause 6.
- 6.10 The Subscriber will promptly advise Sirius in writing of any change of address or bank details.
- 6.11 The Subscriber authorises Sirius to charge the Debit/Credit Card, where details provided, with an amount equal to the outstanding balance on the Subscriber's credit account, where the Subscriber has failed to pay Sirius by the Payment Date.
- 6.12 The Subscriber shall be liable to pay a Service Charge of three percent (3%) where Sirius is debiting the Subscriber's Credit Card Account with any outstanding balance.
- 6.13 The Subscriber is solely responsible for the Subscriber Apparatus and/or SIM Card and shall remain liable for all call charges including any incurred during a period of theft, damage or loss until such theft, damage or loss is reported to the Service Operator and Sirius, and will remain liable for the monthly access charge until the Agreement has ended.
- 6.14 Sirius will only consider billing queries from the Subscriber if made within twenty-eight (28) days of the date of invoice. Raising such queries does not relieve the Subscriber of the obligation to pay all invoices when due without deduction, offset or withhold, but if an amount is subsequently found to be not payable, Sirius agrees to refund the Subscriber for the overpaid charges.

## 7. PUBLIC EMERGENCY CALLS

- No charge will be made for Emergency calls similar to British Telecom's 999 service made on the Subscriber Apparatus.

## 8. OBLIGATIONS OF THE SUBSCRIBER

- 8.1 The Subscriber acknowledges that the System is operated under License and by agreement with the Service Operators and that the provisions of the said Licenses and agreements apply to the use of the Service. The Subscriber hereby undertakes:
- 8.1.1 Not to use or permit the use of the System for any unlawful, immoral or improper purpose including the use of unlawful GSM/UMTS gateways or any purpose not recommended by the equipment manufacturer or the Service Operators or Sirius;
- 8.1.2 To comply with any reasonable instructions issued by Sirius relating to the System, the equipment or the Service and to use only the Subscriber Apparatus approved by the Service Operators and the British Approvals Board of Telecommunications;
- 8.1.3 Not to reverse, or permit anyone else to reverse, the charges on any telephone call;
- 8.1.4 Not to act, or omit to act, in any way which may injure or damage any persons, property or the System or cause the quality of the Service to be impaired;
- 8.1.5 Not to directly or indirectly be involved, or knowingly, recklessly or negligently permit any other person to be involved, in any fraud, illegal or immoral activity and shall notify Sirius immediately upon becoming aware of any such activity.

- 8.2 Should Sirius incur additional claims, damages, losses (including loss of profit, other economic loss or legal fees) due to Subscriber breach of this Agreement the Subscriber could be liable for these.

- 8.3 The Subscriber will promptly advise the Service Operator and Sirius, by phone and in writing in the event of loss or theft of the Subscriber Apparatus and/or the SIM Card.

- 8.4 The tariff chosen at the acceptance of this Agreement will remain the minimum tariff selected for the initial contract term and the terms and conditions of the selected tariff apply.

- 8.5 The rates/tariffs/equipment subsidies that Sirius makes available to the Subscriber are subject to the length of contract chosen and its terms and are based upon the predicted or anticipated revenue over the contract term including notice period. The Subscriber is therefore expected to honour the contract, revenue and its terms. In the event that the Subscriber fails to do so, Sirius reserves the right to invoice the predicted or anticipated revenue, at full retail price without discount, over the full contract term including notice period and to recover any benefits received and losses incurred, and should the contract proceed to full term a cancellation charge.

- 8.6 The Subscriber acknowledges that Sirius will accept, and act on behalf of, any instruction received from the Subscriber, and accept and act on behalf of any additional orders, regardless of authority and/or position, unless otherwise pre-advised to Sirius in writing with the Subscribers bespoke ordering procedures.

## 9. LIMITATION OF LIABILITY

- 9.1 Nothing in this Agreement shall limit or restrict or be deemed or construed so as to limit or restrict the liability of Sirius or the Subscriber for death or personal injury to any person caused by its negligence.

- 9.2 Subject always to the provisions of Clause 9.1 above, the total liability hereunder of Sirius in contract, tort or otherwise (including negligence) shall, in respect of all claims under this Agreement, not exceed the total amounts paid to Sirius by the

- Subscriber under this Agreement for the 12 months immediately prior to the period in which the claim or claims are made, or £5,000 whichever is the lower amount.

- 9.3 Subject to the provisions of clause 9.1 (above), Sirius shall not be liable hereunder, in contract, tort or otherwise (including negligence) for any indirect or consequential losses whatsoever or otherwise howsoever arising including without limitation, loss of profits, revenues, business, contracts, anticipated savings or any other indirect or consequential losses whatsoever and in this Clause 9.3, "anticipated savings" means any saving that the Subscriber anticipated making as a consequence (whether directly or indirectly) of entering into this Agreement.

- 9.4 Where the Subscriber deals as a consumer, nothing in this Agreement shall affect the Subscriber's statutory rights.

## 10. TERMINATION AND SUSPENSION OF THE SERVICE

- 10.1 Sirius shall have the right to terminate or suspend the Service or any other claims or remedies which it may have against the Subscriber, forthwith terminate or suspend the Service and this Agreement without liability upon the occurrence of any of the following events:

- 10.1.1 If payment of the Charges is not made on the due Payment Date;

- 10.1.2 If the Subscriber commits a breach of this Agreement (and where that breach is capable of remedy, does not correct this breach within 7 days of Sirius requesting the Subscriber in writing to correct such breach) or if any information given to Sirius by the Subscriber is false or misleading;

- 10.1.3 If the Subscriber makes offers to make arrangements with creditors or commits any act of bankruptcy, or if any petition or receiving order in bankruptcy is made against the Subscriber, or (in the case of a Subscriber being a Limited Company) the Subscriber is unable to pay its debts as they fall due within the meaning of the Companies Act 1985; or

- 10.1.4 If a petition or resolution to wind up the Subscriber is passed or presented (otherwise than for reconstruction or amalgamation); or

- 10.1.5 If any administrative receiver or receiver/manager is appointed over any of the Subscriber's assets, property or undertaking, or if any such power of appointment arises.

- 10.2 Sirius may, from time to time, without notice or liability on its part (notwithstanding the foregoing provisions of this clause and at its absolute discretion) suspend or discontinue the Service in any of the following circumstances:

- 10.2.1 If the Subscriber fails to comply with any of the terms contained herein; or

- 10.2.2 If the Subscriber does, or allows to be done, anything which in the Service Operator's or Sirius's reasonable opinion may have the effect of jeopardising the operation of the Service; or

- 10.2.3 If the Subscriber permits the use of the Service or uses the Service for illegal purposes including the use of illegal GSM/UMTS Gateways (or the Service Operator or Sirius believes the same), Sirius, without any liability whatsoever, reserves the right at its absolute discretion to immediately suspend the Service. In such a case the Subscriber will be liable for the charges incurred during that month. For the remainder of the contract term the Subscriber will be liable for the tariff initially agreed at full retail price without discount, subject to Clause 8.5 above; or

- 10.2.4 If, in Sirius's or the Service Operator's absolute discretion, the call charges incurred in any given period show unreasonable or excessive usage of services or unusual calling patterns such as a disproportionate percentage of incoming calls or zero usage per number of 10 minutes or less of outbound voice calls or charges including data of less than £1.00 per month, or cause network congestion; or

- 10.2.5 If Sirius has a reasonable basis for believing that the Subscriber or the Service Operator or Sirius is required to terminate this Agreement by a competent regulatory authority and/or Service Operator; or

- 10.2.6 If the Subscriber exceeds the credit limits set.

- 10.3 Termination, suspension, disconnection or barring under this Clause 10 shall be without prejudice to Sirius's rights accrued up to and beyond the date of termination, suspension, disconnection or barring.

- 10.4 In the event of termination of the Service and this Agreement by Sirius in accordance with the provisions of Clauses 10.1 and 10.2, the Subscriber shall, within fourteen (14) days of receipt of the notice of termination, pay to Sirius all outstanding charges (including, where termination is for any of the reasons specified in Clauses 10.1 and 10.2, the amount due as set out in Clause 8.5 above or which would have been payable for the remainder of the term of this Agreement had the Subscriber given notice of termination at the earliest date possible in accordance with Clause 3).

- 10.5 Upon termination of this Agreement if the Subscriber made a deposit, Sirius will only return any surplus to the Subscriber after deduction of all unpaid charges. Any request for repayment must be made in writing.

- 10.6 After disconnection, suspension or barring of the equipment from the System and/or consequent upon the termination of this Agreement, the Subscriber shall pay on demand all Charges outstanding at the time of disconnection, suspension or barring including any reasonable disconnection or barring fee that Sirius may wish to charge in its sole discretion.

- 10.7 The Subscriber will remain liable for all call charges incurred prior to termination regardless of when they are invoiced.

- 10.8 Should termination take place part way through a month, no credit will be given for the post termination part of the month's access charge(s).

- 10.9 The Subscriber will remain liable for all call charges incurred prior to termination regardless of when they are invoiced.

- 10.10 Termination, porting, or migration of mobile numbers is subject to a charge of £30.00 + VAT per number.

- 10.11 If the Subscriber is unable to use all of the Services for a continuous period of more than three days due to any technical failure (including power cuts, improvement, modification or maintenance of the Service or the Systems) and if the Service Operator offers this to Sirius, on application the subscriber may receive a credit for their line rental which will represent that part of the line rental for the period of suspension.

## 11. FORCE MAJEURE

- Sirius shall not be liable for any breach of this Agreement, nor any damage resulting therefrom whether direct, indirect, consequential, financial or otherwise, if and to the extent that such breach arises as a result of any Act of God, acts or omissions by any Government, other Administrative Body or Service Operators, sabotage, riot, explosion, acts of terrorism, controls, restrictions, prohibitions or other Acts of any Local or National Government (including any requirement connected to the Licensing Arrangements) or industrial disputes of any kind or any act beyond the direct control of Sirius.

## 12. ASSIGNMENT

- This Agreement shall not be assignable by the Subscriber without written consent of Sirius, which will not be unreasonably withheld. Sirius may at any time assign this Agreement to any third party it considers suitable.

## 13. VARIATION

- Sirius shall be entitled, from time to time and at its absolute discretion, to:

- 13.1 Make such variations to the tariff as it deems appropriate, so long as such changes are not disadvantageous to the Subscriber.

- 13.2 Make such modifications to the Service and make, or agree to, such changes to the System as it may reasonably consider necessary, without notice or liability on its part, provided that such changes do not result in such changes prior to their being made;

- 13.3 Make such alterations to this Agreement and its terms and conditions as the Service Operators may reasonably require Sirius to make or as are necessary as a result of changes to Sirius's license from the Service Operators or otherwise as a consequence of any regulatory or legal requirement.

## 14. DATA PROTECTION

- 14.1 The information the Subscriber provides will be used by Sirius to supply the Services and will not be otherwise disclosed without the Subscriber's prior written permission, except as set out in Clause 14.5 below, or if required by law.

- 14.2 Sirius does not use the Subscriber's information in any way for other purposes for marketing purposes, however Sirius may invite the Subscriber to take part in market research and inform the Subscriber of Sirius's goods and services which may be of interest unless the Subscriber informs Sirius that they do not wish to receive this information.

- 14.3 The Subscriber has the right to ask for a copy of the data held about them by making application in writing to the Customer Services Manager at Sirius's registered office address. There may be a charge for this service.

- 14.4 The Subscriber agrees that Sirius may disclose any information in connection with the Subscriber's accounts to anyone who correctly quotes their password or who has satisfied Sirius that they are the Subscriber or the Subscriber's authorised contact.

- 14.5 Sirius may disclose information about the Subscriber's account to its agents.

## 15. CONFIDENTIALITY

- Neither Party will disclose to any third party without the prior written consent of the other Party any confidential information which is received from the other Party as a result of this Agreement. Both Parties agree that any confidential information received from the other Party will only be used for the purposes of providing or receiving the Services. For the purposes of this Clause 15, confidential information includes business plans, concepts, methodologies and structures, product specifications, technical information, new product information, methods of product delivery, and any other technical and commercial information, inventions or ideas (whether patentable or not) of either Party which is not in the public domain.

## 16. MISCELLANEOUS

- 16.1 The Subscriber agrees to the disclosure to any radio or telecommunications operating company of its name, address & details of the Service and Subscriber Apparatus provided to it pursuant to this Agreement.

- 16.2 Any notice hereunder sent by either party to the other party shall be deemed served within forty-eight (48) hours.

- 16.3 Should Sirius elect to disconnect and/or reconnect the Subscriber Apparatus from or to the System pursuant to Clause 10 above, then Sirius having regard to the circumstances at the time of disconnection or reconnection may elect to charge a fee of up to £30.00 + VAT for such disconnection or reconnection.

- 16.4 Should Sirius elect to bar and/or unbar the equipment from the System pursuant to Clause 10 above, Sirius may, in its absolute discretion, charge an unbarring fee of up to £25.00 + VAT for such barring or unbarring.

- 16.5 Additional services may be added to this Agreement subject to the Subscriber's written confirmation and acceptance by Sirius.

- 16.6 Where Subscriber Apparatus is provided to the Subscriber by Sirius, then notwithstanding delivery and acceptance of the Subscriber Apparatus, title in the Subscriber Apparatus shall not pass to the Subscriber until completion of the contract, including notice period. If the contract is terminated early, for whatever reason, the Subscriber Apparatus remains the property of Sirius.

- 16.7 Following any non completion of the contract, Sirius reserves the right to request the safe return of such Subscriber Apparatus undamaged and in good repair (except for reasonable wear and tear) from the Subscriber to Sirius at the Subscriber's expense. Failure to comply with such request shall incur a full replacement charge plus VAT as quoted in Sirius's published SIM free price list for any mobile device, data-card or modem, of up to £300 + VAT, unless the equipment falls under the pricing stipulated in clause 16.7.1 in which case the charge is higher, plus £30.00 + VAT for any SIM card (as per Clause 16.17 below).

- 16.7.1 In the case of Blackberry, PDA or SMART phones, the full replacement charge of up to £850 + VAT will be incurred.

- 16.7.2 Equipment must be returned to Sirius, in line with Clause 16.6 above, within 14 days of any disconnection, Porting or Migration.

- 16.8 Risk of damage to or loss of the Subscriber Apparatus shall pass to the Subscriber upon receipt of the Apparatus by the Subscriber.

- 16.9 The Subscriber shall be liable for the repair of equipment connected under this Agreement which becomes faulty or damaged and is outside the manufacturer's warranty. All Subscriber obligations under this Agreement shall remain in force during any period where equipment is undergoing repair.

- 16.10 No delay, neglect or forbearance on the part of Sirius in enforcing any provision of this Agreement shall be deemed to be a waiver or precedent or in any way prejudice Sirius's rights under this Agreement.

- 16.11 The Subscriber shall not obtain any Intellectual Property Rights in relation to the System, the Service or the Subscriber Apparatus as a result of this Agreement or the use of the System, Service or Subscriber Apparatus.

- 16.12 Where there is a conflict between this Agreement and any other terms and/or conditions mentioned in or printed on any correspondence exchanged between the parties, this Agreement shall prevail unless expressly agreed otherwise and in writing.

- 16.13 If any non-fundamental provision of this Agreement shall be held to be void, illegal, unenforceable or conflict with any Statute, that clause or provision shall be severed from this Agreement; the validity and enforceability of the remaining clause(s) and provision(s) shall not be affected thereby.

- 16.14 References in this Agreement to persons shall include, but not be limited to, bodies Corporate, Unincorporated Associations and Partnerships. References to the singular shall include the plural and vice versa.

- 16.15 This Agreement shall be governed by and construed in accordance with English Law.

- 16.16 Clause headings are for ease of reference only and do not govern or affect the construction or interpretation of this Agreement.

- 16.17 All SIM Cards supplied to the Subscriber, for use on the Service Operators Systems, shall at all times remain the property of the Service Operator, and shall be returned to Sirius upon termination of the Agreement. Failure to return any SIM card shall incur a charge of £30.00 + VAT for each card.

- 16.18 Portability and Migration requests of mobile numbers made during the minimum contract term does not relieve the Subscriber from contractual obligations to pay any early termination charges due under this Agreement, and in relation to the remainder of the contract term, following termination.

- 16.19 The Subscriber is responsible for any services and their associated costs that may be accessed via the Service Operator or Sirius and the terms and conditions that relate to those services.

# Terms and Conditions for Provision of Maintenance Services

This Agreement applies to the provision to you, the Customer, by us, Sirus Telecom Limited, a company incorporated in England and Wales with Company Number 7137968 whose trading address is at 27b Hursley Road, Chandlers Ford, Eastleigh, Hampshire SO53 2FS ("Sirus") of those services which have been selected by you ("the Services")

## 1 Definitions:

In this agreement "the company" means "Sirus Telecom Ltd" (Sirus). "the customer" means the customer named on the order form. "the equipment" means the equipment described in the quotation / order form equipment schedule together with all internal cabling up to the network demarcation point. "Agreement term" means a period of five years from commencement of the agreement. "Commencement date" means the date when your Service is entered into Sirus's computerised records.

## 2 The Customer Agrees:

2.1 To promptly pay the support care charge as prescribed on the order form in all circumstances. If the customer is at any time in arrears in whole or in part then the company shall be entitled to suspend all services hereunder until the full annual payment has been made

2.2 If the equipment is to be connected to any apparatus of British Telecom or of any other network provider the customer must comply with such providers requirements and arrange for any additional equipment at the customers own expense.

2.3 To Notify the company immediately of any fault in the equipment or of any repair which may be necessary, and to provide the company at all reasonable times with access to the equipment and allow the company to carry out service of the equipment under the terms of the agreement.

2.4 Not to maintain service, repair, adjust or tamper with the equipment or wiring, nor to allow any person to do any such thing without the company's prior written consent.

2.5 Should the customer wish to employ persons other than the company to carry out service on the equipment then the customer must give the company 14 days written notice naming the person it wishes to carry out the works. Should any such works be affected the company reserves the right of inspection of the said works. Should the works be of any unsatisfactory standard the company reserves the right at the customer's expense to affect such repairs as necessary to correct such deficiencies in the works.

2.6 To pay the company's charges for reprogramming and/or service visits as a result of a programming error affected by the company or its agent.

2.7 Not to assign the benefit of this agreement without previous written consent from the company.

## 3 The Company Agrees:

3.1 To service the equipment at the agreed installation Address in efficient working order and during the continuance of this agreement to execute by it's servants, agents or contractors without charge all repairs and replacements to the equipment necessitated by fair wear and tear and/or, where provided by the company or it's agents, faulty workmanship and/or faulty materials, provided the customer shall have duly notified the company of such fault or necessary repair in accordance with clause 1(c) hereof.

3.2 Any such service is to be provided according to the level of service specified on the order form. Provided however that the company shall not be obliged to service the equipment if charges are overdue in accordance with clause 2 (a)

3.3 At the expense of the customer to provide service where the failure of the equipment is due to mis-operation or failure of the network providers equipment and/or host systems and /or electricity supply service and/or electrical surge or fluctuation due to storms or adverse weather conditions or if any person not authorised by the company to do so shall have tampered with the equipment.

3.4 At the request and expense of the customer to move the equipment to alternative premises where in the opinion of the company suitable service and reception facilities exist provided the equipment does not thereby pass out of the possession or control of the customer.

## 4 Service Levels:

Sirus Total Mon – Fri 9.00am to 5.30pm Ex Bank Holidays

Sirus Plus Seven day service 9.00am – 5.00 pm

Sirus Complete 24 hour, Seven day cover

## 5 Termination:

5.1 The duration of the contract "the agreement term" shall be for the initial period of 60 months and thereafter will automatically renew for a new 12 month extended term upon each anniversary of the commencement date unless not less than 6 months written notice of termination so as to expire no later than the anniversary date of the commencement of this Agreement is notified to the company..

5.2 This agreement may be terminated with effect from the end of the agreement term or any subsequent anniversary thereof by giving notice to the company of at least six months before the anniversary of the agreement commencement date.

## THE CUSTOMERS ATTENTION IS PARTIALLY DRAWN TO THIS CONDITION

**5.3 In the event that the Customer wishes to terminate the Agreement before the end of the Agreement Term and/or does not wish to serve out its notice obligation in accordance with Clause 5, the Customer shall be obliged to pay to Sirus "liquidated damages". Such liquidated damages shall be equal to the aggregate of all arrears of charges due but not paid at the date of the early termination; plus any interest charges for late payment plus a lump sum which shall be the total of the Charges which would have become due in the period from the date of termination till the end of the Agreement Term less a consideration of 25% of the lump sum. The Customer agrees that the Liquidated Damages shall be recoverable by the Company as a debt due from the Customer and agrees that the Liquidated Damages are a genuine pre-estimate of the loss of profit likely to be suffered by the Company.**

## 6 Variation of Support Charge:

6.1 The company may vary the support charge payable hereunder provided that no such variation shall take effect within a year of the previous increase. The increase in support charges shall not be greater than the rate of inflation as determined by the retail price index.

6.2 Any additional equipment supplied but not shown on the original order will attract support charges at the company's prevailing rate from the date of its supply and is subject to the terms of this agreement.

## 7 Prohibition of Oral Variations

7.1 The terms and conditions in this agreement are the sole terms and conditions of the agreement between the company and the customer. No variation or modification of these terms and conditions (including specifically but without prejudice to the generality of the foregoing a variation of the fixed initial period) and no agreement made or purported to be made the company and the customer inconsistent with these terms and conditions shall be valid or of any effect unless made in writing and signed by a Director or the appointed Officer of the company. No representation relating to or in any way connected with the equipment shall be deemed to be made on behalf of the company nor shall and such representation bind the company unless such representation is made in writing and signed by a Director or the appointed Officer of the company.

## 8 Exclusions:

8.1 The company shall not be held liable for any delay in the execution of any work of installation, repair, replacement, alteration or removal of or to the equipment howsoever caused.

8.2 The company shall not be liable for making good defects in the electricity supply or other network provider's service and connections and/or host systems. Service calls for these purposes will be charged to the customer at the company's standard rates.

8.3 The company shall not be liable for repair of damage resulting from accident transportation, neglect or misuse, failures of electrical power, surge of electrical power, electrical storms or causes other than ordinary use. Service calls for these purposes will be charged at the company's standard rates.

8.4 The company shall in no circumstance be liable for any failure or defective working of the equipment due to any fault or change in the electricity supply and/or other network provider's equipment and/or host systems.

8.5 In no circumstances shall the company be liable for any loss of profit, business or production or any other liability, loss or damage whether direct, indirect or consequential howsoever caused.

8.6 The company shall not be held liable for making good defects to the customer's telephone stations or other peripheral apparatus unless specified in the order. Services calls for these purposes will be charged to the customer at the company's standard rates.

8.7 The company shall not be liable under section 2(a) unless specified. In any event overhauled any underground cabling will not be covered and visits for these purpose will be charged to the customer at the company' standard rates.

8.8 This agreement does not provide for the undertaking of any inspection required under the electricity at work act regulations or any other legislation that may require a service call for reasons other than for a reported fault in accordance with clause 1c

8.9 The company shall not be liable under section 2 (a) where in its reasonable opinion parts or equipment have reached the end of their serviceable life, being no longer capable of economical repair, and require replacement.

8.10 The company shall not be liable for the repair or replacement of any items considered to be consumables by the company or manufacturer.

## 9. Assignment:

9.1 The Customer shall not assign or delegate or otherwise deal with any of its rights and obligations under this Agreement without the company's prior written consent given by a duly authorised representative, such consent not to be unreasonably withheld. The company shall have the right to assign or otherwise delegate all or any of its rights and obligations to any other person upon serving notice on the Customer.

## 10. Generally:

10.1 The Company's right here under shall not be affected by granting any time or indulgence to the Customer.

10.2 All charges under this Contract are subject to Value Added Tax. This Contract is not a V.A.T invoice. V.A.T invoices will be sent to the Customer for all payments under this Contract.

10.3 The Company reserves the right to charge interest at the rate of 8% above Natwest Bank plc per month on overdue payments.

## 11. Change to the Agreement:

Notwithstanding any other provision of this Agreement, The Company may change the terms of this Agreement at any time by notice in writing to the Customer. The change will take effect on the date set out in the notice.

## 12. Governing Law:

12.1 This Agreement shall be governed by and construed in accordance with English law and English shall be the appropriate language and translation of this Agreement.

12.2 The parties hereto hereby irrevocably submit to the exclusive. Jurisdiction of English courts for the purpose of hearing and determining and dispute arising out of this Agreement and for the purpose of enforcement of any judgement against their respective assets

## 13. Entire Agreement:

This Agreement (together with any document referred to herein) constitutes the entire agreement between the parties here to in connection with the subject matter of this Agreement. Neither party has relied upon any representation save for any representation expressly Set out in this Agreement (or any document referred to herein).