

## SUPPLY OF EQUIPMENT SUPPLEMENTAL TERMS (SERVICE CODE (SC) “S”)

### 1. Introduction

- 1.1 These are the Supplemental Terms on which the Supplier supplies Equipment to the Client (“Supply of Equipment Supplemental Terms”).
- 1.2 These Supply of Equipment Supplemental Terms are governed by and apply in addition to the Master Services Agreement set out [here](#) between the Client and the Supplier as may be varied by the Parties (the “MSA”).
- 1.3 Except as defined in these Supply of Equipment Supplemental Terms, capitalised terms shall have the meanings given to them in the MSA.
- 1.4 In the event of conflict with the terms of these Supply of Equipment Supplemental Terms and the MSA, the provisions in these Supply of Equipment Supplemental Terms shall take precedence and in the event of a conflict with the terms of these Supply of Equipment Supplemental Terms and a Statement of Work, the provisions of the Statement of Work shall take precedence over these Supply of Equipment Supplemental Terms.

### 2. EQUIPMENT

- 2.1 The Equipment is described in the Statement of Work.
- 2.2 Any order for Equipment is subject to availability and the Supplier is entitled to reject an order without liability to the Client should Equipment prove unavailable.
- 2.3 The Supplier reserves the right to amend the specification of the Equipment if required by any applicable statutory or regulatory requirements.
- 2.4 The Supplier shall be under no obligation to update or upgrade any item of Equipment during or at any time after the Minimum Term but should it do so, the Supplier shall be entitled (but not obliged) to extend the Minimum Term as if it commenced on delivery of the new Equipment.

### 3. HARDWARE ACCOUNT

- 3.1 In these Supply of Equipment Supplemental Terms, the “**Hardware Account**” means a notional account set up by the Supplier to record debits charged as owing by the Client to the Supplier in respect of the price of mobile handsets, SIM cards and associated accessories provided to the Client for which payment in full has either not

been made by the Client or required for payment in a Statement of Work or otherwise charged or invoiced by the Supplier.

3.2 Instead of receiving payment up front for mobile handsets, SIM cards and associated accessories, the Supplier may instead agree (but is not obliged) to open a Hardware Account with the Client on condition that the Client completes the Minimum Period of the corresponding airtime contract with its airtime supplier and the Minimum Term of the Agreement.

3.3 If the Supplier has agreed to open a Hardware Account:

(a) if, at the end of the Minimum Period of the corresponding airtime contract or at the end of the Minimum Term of the Agreement, whichever date comes later, the Client has fulfilled all its obligations under the Agreement and under any corresponding airtime agreement, the debit balance standing to the Hardware Account shall be deemed paid in full;

(b) should the Agreement or any corresponding airtime contract terminate before expiry of the Minimum Term of the Agreement or the Minimum Period of the corresponding airtime contract, whichever date comes later, the debit balance standing to the Hardware Account shall remain unpaid and be recoverable by the Supplier in the same way as any other invoiced debt due to it under the terms of this Agreement, including as if due under clause 18.10(b) of the MSA;

(c) if, at the end of the Minimum Period of the corresponding airtime contract or at the end of the Minimum Term of the Agreement, whichever date comes later, the Client is in any breach of its obligations under the Agreement or under any corresponding airtime agreement, the debit balance standing to the Hardware Account shall remain unpaid and shall be recoverable by the Supplier in the same way as any other debt due to it under the terms of this Agreement.

#### 4. DELIVERY OF EQUIPMENT

4.1 The Supplier shall deliver the Equipment to the location set out in the Statement of Work or such other location or locations as the parties may agree ("**Client's Premises**") at any time after the Supplier notifies the Client that the Equipment is ready.

4.2 Delivery of the Equipment shall be completed on the Equipment's arrival at the Client's Premises.

4.3 Any date quoted for delivery of the Equipment is approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Equipment that is caused by an event of Force Majeure or the Client's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Equipment.

4.4 The Supplier shall have no liability for any failure to deliver the Equipment to the extent that such failure is caused by an event of Force Majeure, the Client's failure

to provide the Supplier with adequate delivery instructions for the Equipment or any relevant instruction related to the supply of the Equipment.

## 5. QUALITY OF EQUIPMENT

- 5.1 Any samples, drawings, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues, brochures or website are produced for the sole purpose of giving an approximate idea of the Equipment described in them. They shall not form part of the Agreement or have any contractual force.
- 5.2 The Supplier provides no warranty or guarantee in respect of Equipment manufactured by a third party. Where the Equipment is being supplied by a Third Party Supplier, they will be supplied subject to any terms and conditions of sale and returns policy relating thereto by the relevant manufacturer and/or Third Party Supplier and the Client shall be entitled only to such warranty or other benefit as the Supplier has received from the manufacturer and is permitted to pass onto the Client.
- 5.3 All Equipment is supplied with the benefit of the Client's statutory rights and the manufacturer's warranty (if applicable).
- 5.4 If a defect with the Equipment is notified to the Supplier within 28 days' of delivery, which defect is verified as pertaining to the Equipment, the Supplier will use reasonable endeavours to procure repair or replacement of the Equipment by the manufacturer provided always that:
  - (a) the Supplier is given a reasonable opportunity of examining such Equipment; and
  - (b) the Client (if asked to do so by the Supplier) returns such Equipment to the Supplier's place of business at the Client's cost.
- 5.5 The Supplier shall have no obligation to procure repair or replacement if:
  - (a) the Client makes any further use of such Equipment after giving a notice in accordance with paragraph 5.4; or
  - (b) the defect arises because the Client failed to follow the Supplier's oral or written instructions as to the accommodation, installation, commissioning, use or maintenance of the Equipment; or
  - (c) the Client alters or repairs such Equipment without the written consent of the Supplier; or
  - (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
  - (e) the Equipment differs from its description as a result of changes made to ensure it complies with applicable statutory or regulatory standards.

- 5.6 Except as provided in paragraph 5.4, the Supplier shall have no liability to the Client in respect of the Equipment's failure to comply with the manufacturer's warranty.
- 5.7 Subject to paragraph 5.3, the Supplier warrants that, for such period as is offered by the manufacturer (if any) ("Warranty Period"), the Equipment shall:
- (a) conform in all material respects with the relevant section of the Statement of Work;
  - (b) be free from material defects in design, material and workmanship; and
  - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 5.8 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Agreement.
- 5.9 The terms of these Supply of Equipment Supplemental Terms shall apply to any repaired or replacement Equipment supplied by the Supplier under paragraph 5.4 .
- 5.10 The Supplier reserves the right to bar service to any mobile Equipment supplied under this Agreement to which the Supplier retains title where in the Supplier's reasonable opinion that mobile Equipment is not being used in a manner which the Supplier would expect including but not limited to where the mobile Equipment is:
- (a) used in conjunction with a SIM Card connected to a tariff other than one which the Client has ordered in connection with a corresponding airtime contract or under this Agreement (as the case may be);
  - (b) used in conjunction with a SIM Card allocated to any account arising other than in connection with a corresponding airtime contract or under this Agreement;
  - (c) used solely or predominantly on a roaming basis; or
  - (d) the SIM Card supplied in conjunction with such mobile Equipment is not used on the Network within 45 days from the date of delivery by the Supplier, or during any other period of 30 consecutive days;  
unless the Supplier and the Client have agreed otherwise.
- 5.11 At the Client's expense, the Client shall return to the Supplier any mobile Equipment that has been barred pursuant to paragraph 5.10 and to which the Supplier retains title. In the event that the Client fails to return any such mobile Equipment within two (2) weeks of written notice from the Supplier to do so, then the Client agrees to pay the Supplier the list price for such mobile Equipment.
- 5.12 The Client shall ensure that its mobile Equipment is up to date with the latest available version of the manufacturer's software. Any failure by the Client to ensure

their mobile Equipment software is maintained on the latest version may result in performance issues which the Supplier shall not be liable for.

## 6. TITLE AND RISK

- 6.1 If the Supplier fails to deliver the Equipment by the relevant delivery date after being given a reasonable opportunity to remedy such delay, except to the extent that such delay is due by a third party for which the Supplier shall have no liability, its liability shall be limited to the costs and expenses incurred by the Client in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Equipment. The Supplier shall have no liability for any failure to deliver the Equipment to the extent that such failure is caused by:
- (a) a delay from the manufacturer, third party supplier or other third party;
  - (b) an event of Force Majeure; or
  - (c) the Client's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Equipment.
- 6.2 If ten (10) Business Days after the day on which the Supplier attempted to make delivery of the Equipment the Client has not taken delivery of that Equipment, the Supplier may resell or otherwise dispose of part or all of the Equipment and, after deducting reasonable storage and selling costs, account to the Client for any excess over the price of the Equipment, or charge the Client for any shortfall below the price of the Equipment.
- 6.3 In respect of the supply of Equipment including hardware, Software and Supplier Materials:
- (a) the Supplier shall expect full payment in cleared funds before delivery;
  - (b) the price for Equipment shall be the price set out in the Statement of Work or, if no price is quoted, the price set out in the Supplier's published price list

as at the date of delivery. The price of the Equipment is exclusive of all costs and charges of packaging, insurance, transport of the Equipment;

- (c) the Supplier reserves the right to increase the price of the Equipment, by giving notice to the Client at any time before delivery, to reflect any increase in the cost of the Equipment to the Supplier that is due to:
  - (d) any factor beyond the control of the Supplier (including foreign exchange fluctuations, inflation, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - (e) any request by the Client to change the delivery date(s), quantities or types of Equipment ordered, or the specification of the Equipment; or
  - (f) any delay caused by any instructions of the Client in respect of the Equipment or failure of the Client to give the Supplier adequate or accurate information or instructions in respect of the Equipment.
- 6.4 The Client shall not make any replacement, modification, adjustment or connection to the Equipment save as agreed by the Supplier in writing.
- 6.5 Ownership and title in the Supplier Materials and in rented Equipment shall remain with the Supplier at all times during the term of the relevant Agreement. Client shall not charge, mortgage or otherwise deal with the same and shall use all reasonable efforts to prevent third parties from asserting rights in relation to the Supplier Materials and/or the rented Equipment.
- 6.6 The Client shall ensure that all Equipment is used with a Service in accordance with the Agreement and in accordance with all relevant published instructions and any safety and security procedures notified to the Client.
- 6.7 The risk of loss or damage in the Equipment shall pass to the Client on completion of delivery.
- 6.8 In respect of Equipment ordered by the Client for purchase not rent, ownership and title to the Equipment shall not pass to the Client until either:
- (a) the Supplier receives payment in full (in cash or cleared funds) in respect of anything owed to it by the Client from time to time under any agreement for supply of any goods or services in respect of which payment has become due, including but not limited to payment for the Equipment, Services, interest and costs payable under this Agreement, in which case title to the Equipment shall pass at the time of payment of all such sums; or
  - (b) in case an Hardware Account has been agreed, the Supplier is deemed to receive payment in full under paragraph 3.3(a) above and any debit balance standing to the Hardware Account is deemed paid in full.
- 6.9 Until title to the Equipment has passed to the Client, the Client shall:
- (a) hold the Equipment on a fiduciary basis as Supplier's bailee;

- (b) accommodate and use the Equipment at the Client's Premises in strict accordance with these Supply of Equipment Supplementary Terms, the MSA as well as the Supplier's reasonable instructions;
  - (c) not re-locate, remove, add to, modify, decompile, reconfigure, repair, interfere with, service or otherwise affect the Equipment;
  - (d) maintain the Equipment in satisfactory condition and keep it insured against all risks for its full price on the Supplier's behalf from the date of delivery;
  - (e) notify the Supplier immediately if it becomes subject to any of the events listed in Clause 18.6 (a) to (j) (inclusive) of the MSA; and
  - (f) give the Supplier such information relating to the Equipment as the Supplier may require from time to time.
- 6.10 If before title to the Equipment passes to the Client the Client becomes subject to any of the events listed in Clause 18.6 (a) to (j) (inclusive) of the MSA then, without limiting any other right or remedy the Supplier may have:
- (a) the Client's right (if any) to resell Equipment or use them in the ordinary course of its business ceases immediately; and
  - (b) the Supplier may at any time:
    - (i) require the Client to deliver up all Equipment in its possession which has not been resold; and
    - (ii) if the Client fails to do so promptly, enter any Client's Premises or of any third party where the Equipment is stored in order to recover it.
- 6.11 IT IS PROVIDED ALWAYS THAT should any payment not be made by the Client to the Supplier in accordance with the MSA, the Supplier reserves the right (and shall be allowed access by the Client) to remove any Equipment or Supplier Materials supplied or fitted by Supplier and the cost of any damage caused by such removal will not be borne by Supplier.