

TERMS & CONDITIONS

1. DEFINITIONS

1.1 In this Agreement:

“**Active Connection**” means a SIM Card that is registered to and can be recognised by the Network, whether or not it is using any services (and “**Activated**” and “**Activation**” shall be construed accordingly);

“**Addendum**” means the additional terms and conditions that are referred to as such in this Agreement and which relate to particular parts of this Agreement or particular Services and which are available on the Customer’s secure area on the Arkessa Website;

“**Aggregated Plan**” means a plan where SIM Cards within the same tariff and group can share the total of the allocated Connectivity Services allowance between the group. Unused allowances for Connectivity Services cannot be carried over from one period to the next;

“**Agreement**” means this master services agreement (including all documents referred to on the Cover Sheet), as may be amended from time to time in accordance with its terms;

“**AO**” means Application Originating, a service originating from an application;

“**Arkessa Website**” means any website operated by Arkessa;

“**AT**” means Application Terminating, a service being received by an application;

“**Bootstrap Profile**” means the initial Network Operator Profile installed on an eUICC during manufacture of the SIM Card. The Bootstrap Profile may also be the Fallback Profile;

“**Bundled Plan**” means a plan with an allocated Connectivity Services allowance, which can be consumed by a number of SIM Cards over a set period of time. Unused allowances for Connectivity Services cannot be carried over from one period to the next;

“**Business Day**” means any day which is not a Saturday, Sunday or public holiday in England and Wales;

“**Call-off Date**” means the date by which the Committed Volume will be ordered by the Customer as set out in the Services Schedule;

“**Charges**” means all amounts payable by the Customer under this Agreement, including the Service Charges, Connection Charges, Software Licence Fees, call fees, administration fees and all other fees payable or due to be payable by the Customer to Arkessa in accordance with the rates set out in the Product Price Book or, if not specified therein, at the Standard List Price;

“**Chip SIM**” means a SIM Card that is permanently installed in a device such as by soldering onto a circuit board; a Chip SIM is also referred to as an “**Embedded SIM**”;

“**Commencement Date**” means the date of the last signature on this Agreement;

“**Committed Volume**” means a minimum commitment (including in terms of number of SIM Cards, value of spend or volume of data) which the Customer commits to ordering and/or spending on or before the Call-Off Date or during a specified period of time (e.g. a monthly commitment over a period of time) as set out in the Services Schedule;

“**Confidential Information**” means all information of a confidential nature in the disclosing Party’s possession or control, whether created before or after the date of the Agreement, whatever its format, and whether or not marked “confidential”; and the terms of the Agreement, and negotiations relating to it, but not including information which is or comes into the public domain through no fault of the other Party, was already lawfully in the other Party’s possession or comes into the other Party’s possession without breach of any third party’s confidentiality obligation to the disclosing Party, or is independently developed by or on behalf of the other Party;

“**Configuration Charge**” means the fee payable by the Customer to Arkessa for configuring any part of the goods or services provided by Arkessa and/or connecting any Customer Equipment to enable it to use the Services;

“**Connection**” means the configuration of a SIM Card to attach to and be recognised by the Network in order for an End User to utilise the Connectivity Services; a Connection can be an Active Connection or an Inactive Connection;

“**Connection Charge**” means the Charge for Connection set out in the Product Price Book;

“**Connectivity Services**” means those cellular radio, radio or other electronic communication services to be provided by Arkessa directly or via the Networks, as more particularly described in the Services Schedule; it does not include Professional Services;

“**Customer**” means the business entity described as such on the Cover Sheet of this Agreement;

“**Customer Equipment**” means any device which is used by the Customer to obtain the Services;

“**Data Alerting**” is a product feature which can send an automatic email to notify the Customer of its data usage;

“**Data Capping**” is a product feature which can send an automatic email to notify a Customer when the defined level of data allowance has been reached and prevent subsequent authentications. Data usage may continue until the end of the existing data session.;

“**Disconnect**” means to permanently terminate the Connectivity Services for a SIM Card such that the Network can no longer be accessed (and “**Disconnected**” and “**Disconnection**” shall be construed accordingly); “**Terminating**” a connection has the same meaning as Disconnecting;

“**End User**” means any customer or client of the Customer to whom the Customer is providing a service or equipment;

“**eUICC**” means embedded Universal Identity Circuit Card which is a SIM card technology that provides the secure mechanism to download additional Network Operator Profiles, to swap between Profiles and to delete Profiles;

“**Fallback Profile**” means the eUICC Profile that under certain conditions can become active when connectivity is not available or allowed on the active eUICC Profile or should the update of an eUICC SIM Card fail during the eUICC Localisation process;

“**Fixed Plan**” means a plan with an allocated Connectivity Services allowance per SIM Card set over a specified period of time. Unused allowances for Connectivity Services cannot be allocated to other SIM Cards nor carried over from one period to the next;

“**Hardware**” means any hardware that the Customer has agreed to purchase as set out in an Order; for clarity, Hardware does not include SIM Cards;

“**Inactive Bootstrap**” means a Bootstrap Profile that is not the active Profile;

“**Inactive Connection**” means a SIM Card that has been provided to the Customer but has not been Activated;

“**Intellectual Property Rights**” means (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, know-how and trade secrets; (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction, and (c) all other rights having equivalent or similar effect in any country or jurisdiction;

“**Localisation**” means the process by which a Profile is downloaded or enabled on a eUICC;

“**Migration**” means the movement of a subscription from the Customer to another party, or from another party to the Customer;

“**Minimum Agreement Term**” means the period set out as such on the Cover Sheet to this Agreement and beginning on the Commencement Date;

“**Minimum Order Term**” means the period (if any) set out as such in the Services Schedule and beginning on the Order Acceptance Date;

“**Minimum SIM Term**” means the minimum period for which a SIM Card will be charged for Connectivity Services. The period for each SIM Card is set out in the Services Schedule, according to the price plan applied;

“**MO**” means Mobile Originating, a service being made from the device that holds the SIM Card;

“**MT**” means Mobile Terminating, a service being received by the device that holds the SIM Card;

“**Network**” means an electronic communications network whether by means of a cellular radio system or any other electronic technology operated by a Network Operator;

“**Network Operator**” means any company which operates a Network for mobile communication purposes for the provision of the Connectivity Services;

“**Order**” means a request made by the Customer for Arkessa to supply Services, SIM Cards or Hardware that are set out in the Services Schedule;

“**Order Acceptance Date**” is defined in Clause 2;

“**Party** and/or **Parties**” means Arkessa and/or the Customer;

“**Portal**” refers to online portals made available by Arkessa to the Customer to provide facilities to manage the Connectivity Services, for example (but not limited to) Emport or Global Enterprise Connect;

“**Product Price Book**” means the part of the Services Schedule setting out the Charges;

“**Professional Services**” means any of the professional services set out in the Services Schedule that Arkessa has agreed to provide to the Customer;

“**Profile**” means the combination of a file structure, data and applications to be provisioned onto or present on an eUICC defined by a Network Operator or MVNO service provider;

“**Roaming**” means a service which allows the Customer to use a SIM Card on multiple domestic and/or international Networks;

“**Service Charges**” means the monthly or other periodic fee payable to Arkessa by the Customer for the Services;

“**Services**” means the Connectivity Services, the Professional Services and any other services provided by Arkessa under this Agreement;

“**Services Schedule**” means the document (or set of documents) agreed by Arkessa and the Customer that contains (a) a list of all the goods and services that Customer may order from Arkessa, (b) the Product Price Book and (c) any other commercial terms agreed by the Parties (such as Committed Volumes); the Parties may from time to time agree additional documents that will form part of the Services Schedule (for instance to update the Product Price Book or add new Services);

“**SIM Card**” means any Subscriber Identity Module which (a) has been supplied to the Customer by Arkessa or (b) has been purchased by the Customer from a third party (which includes Arkessa’s sales partners) but for which Arkessa provides the Profiles to enable Connectivity Services; SIM Card includes an eUICC and a Chip SIM;

“**SM-DP**” means Subscription Manager Data Preparation, as described in the GSMA Remote Provisioning Architecture for Embedded UICC Technical Specification;

“**SM-SR**” means Subscription Manager Secure Routing, as described in the GSMA Remote Provisioning Architecture for Embedded UICC Technical Specification;

“**Software**” means any software made available to the Customer by or on behalf of Arkessa including software used to access Portals and virtual private networks in connection with the Services;

“**Software Licence**” means the terms and conditions on which the Customer is permitted to use the Software;

“**Software Licence Fee**” means the fee payable by the Customer to Arkessa for the Customer’s use of the Software;

“**Standard List Price(s)**” means Arkessa’s standard list of charges for goods and services, as amended by Arkessa from time to time; the Standard List Price is available on request from Arkessa;

“**Subscription Management Services**” means Profile download, enabling, disabling and deletion of the eUICC installed in the Customer Equipment;

“**Subscription Package**” describes the services available to the Customer and the associated Charges;

“**Suspend**” means the temporary deactivation of Connectivity Services for a SIM Card and the terms “**Suspended**” and “**Suspension**” shall be construed accordingly; “**Deactivation**” means the same as Suspending;

“**Systems**” means any systems of Arkessa or a Network Operator to which the Customer has access;

“**Working Hours**” means the hours between 9.00am and 5.00pm UTC on any Business Day.

2. ORDERS

2.1 The Customer may submit Orders to Arkessa from time to time. Orders must be submitted by email using the Arkessa order form or through any Portal provided by Arkessa. Arkessa is not under any obligation to accept an Order. An Order (or any part of it) will be deemed accepted on the “**Order Acceptance Date**”, which is (a) in the case of any Order (or part of an Order) for SIM Cards or Hardware the date on which the goods are dispatched by Arkessa or the relevant vendor, or (b) in the case of any Order (or part of an Order) for Services the date on which the Service is made available for use by the Customer or Arkessa begins to provide the Service as the case may be.

2.2 Arkessa will only accept Orders that relate to goods and services specified in the then-applicable Services Schedule. Arkessa may from time to time notify the Customer (giving reasonable notice where possible) that certain goods or services are no longer available for further Orders. An Order cannot in any way amend the Terms and Conditions, Services Schedule or any Addendum.

2.3 Arkessa may require the Customer to provide Arkessa with monthly non-binding written forecasts of its monthly requirements for the subsequent twelve (12) month period.

2.4 Fulfillment of Orders is subject to any lead times which are communicated to the Customer in writing from time to time. Lead times depend on the Network Operators, SIM Card vendors, Hardware vendors, quantities ordered and any forecasts provided by the Customer.

2.5 No new Orders may be submitted once notice to terminate the Agreement has been given by either Party.

3. CONNECTIVITY SERVICES

3.1 Arkessa shall provide the Connectivity Services set out in each Order to the Customer from the relevant Order Acceptance Date for the Minimum Order Term. Arkessa will use reasonable endeavours to ensure that the Connectivity Services are made available to the Customer in the locations and for the duration set out in an Order but the Customer agrees and acknowledges that the ability to use the Connectivity Services depends on the availability of suitable Network Operators and the operation of the Networks, which are outside of Arkessa’s control.

3.2 Arkessa will use reasonable skill and care to provide the Connectivity Services. The Customer acknowledges that the Connectivity Services are not fault free and may be impaired by factors outside of Arkessa’s control such as (but not limited to) excessive Network traffic, radio interference, geographical, topographical, atmospheric, or other conditions (including buildings, underpasses and other causes of interference). It is the responsibility of the Customer to ensure that it has appropriate contingency plans in place to address such factors.

- 3.3 Arkessa's ability to provide the Connectivity Services relies on any information provided by the Customer being complete and accurate. The Customer must promptly inform Arkessa of any inaccuracy or changes in such information. The Customer will reimburse to Arkessa any costs reasonably incurred by Arkessa in reliance on such incomplete or inaccurate information.
- 3.4 The Connectivity Services may be used by the Customer to transmit or receive data to and from various destinations including but not limited to databases, web sites and/or networks. Arkessa accepts no responsibility for any content that the Customer transmits or receives.
- 3.5 Arkessa cannot guarantee that all communications will be completely secure. The Customer accepts that there is a risk that its communications may be lawfully or unlawfully intercepted, or hacked or accessed by those other than the intended recipient. It is the Customer's responsibility to take such precautions as it considers appropriate for itself and End Users to protect data from data breaches, cyber-attacks, fraud, viruses and other interference and interception of its communications.
- 3.6 The Customer acknowledges that Arkessa does not make any representations or give any warranties as to the suitability of the Connectivity Services or SIM Cards for the Customer's purposes or for the Customer's use of the Connectivity Services or SIM Cards vis-à-vis its End-Users.

4. CONNECTIVITY SERVICE AVAILABILITY

- 4.1 Some or all of the Connectivity Services may become temporarily unavailable from time to time where required for the purposes of upgrade, modification or maintenance, or to deal with emergencies or security incidents. Arkessa will use reasonable endeavours to keep Connectivity Service disruption to a minimum. In the event of prolonged or persistent disruption, and where reasonably possible to do so, Arkessa will transfer the Customer to another Network.
- 4.2 The Customer accepts that Roaming relies on networks over which Arkessa has no control. Arkessa does not offer any guarantee about the availability, quality or prices of Roaming services. Arkessa reserves the right to make modifications to the list of Roaming partners for any reason and in line with changes of legal, commercial and/or technical parameters, including, but not limited to, the entering into of new Roaming agreements or the termination of existing Roaming agreements by Network Operators.
- 4.3 Arkessa may, by giving the Customer reasonable prior notice where practicable, Suspend some or all of the Connectivity Services:
- (a) if Arkessa has reasonable grounds to believe that the Customer has not complied with this Agreement;
 - (b) if the Customer fails to comply with Arkessa's "Acceptable Use Policy";
 - (c) if Arkessa has the right to terminate the Agreement under Clause 11;
 - (d) in the event of an emergency, upgrade or maintenance of the Network;
 - (e) if a Network Operator suspends the relevant part of its services to Arkessa.
- 4.4 Suspension of the Connectivity Services shall not affect this continuation of this Agreement or the Customer's obligation to pay the Charges which shall continue to be due and payable during any Suspension.
- 4.5 Arkessa may charge the Customer a reasonable administration fee for any reconnection of the Connectivity Services following a Suspension in accordance with the Standard List Price.

5. SIM CARDS

- 5.1 For SIM Cards that are supplied by Arkessa:
- (a) title to the SIM Cards shall remain with Arkessa or the Network Operator at all times and in no event shall pass to the Customer;
 - (b) Arkessa does not manufacture the SIM Cards. Arkessa does not give any warranties in relation to the SIM Cards but Arkessa shall, to the extent reasonably possible, pass to the Customer the benefit of any warranty given to Arkessa by the relevant SIM Card vendor; and
 - (c) the Customer accepts that SIM Cards have a limited life span and may need to be replaced by the Customer from time to time. Arkessa does not guarantee the lifespan of SIM Cards.
- 5.2 Arkessa is not obliged to connect to the Network any SIM Card that was not purchased from Arkessa.
- 5.3 The following delivery terms apply to any SIM Cards supplied by Arkessa:
- (a) SIM Cards sent to an address within the UK or EU will be supplied DAP (Customer's address) (INCOTERMS 2020) except that all risk of damage to, or loss of, such SIM Cards shall pass to the Customer when the SIM Cards have been dispatched; and
 - (b) SIM cards sent to an address outside the UK and EU will be supplied FCA (SIM Card manufacturer's factory) (INCOTERMS 2020).
- 5.4 Arkessa may fulfill an Order for SIM Cards in one or more deliveries. If delivery of SIM Cards is postponed by the Customer or its End User (or for any reason other than Arkessa's default) then Arkessa shall be entitled to have the SIM Cards stored at the Customer's risk and expense; for the purpose of invoicing the Charges the SIM Cards shall be deemed delivered at the time they were placed in storage.
- 5.5 In relation to Orders for Chip SIMs:
- (a) the Customer must notify Arkessa within five (5) Business Days of delivery if the deliveries do not conform to the Order (for instance in terms of the quantity or type of product ordered); and
 - (b) it is the Customer's responsibility to test the Chip SIMs for defects prior to their installation into a device.
- 5.6 If a SIM Card is defective then the Customer's sole remedy and Arkessa's entire liability is, at Arkessa's sole discretion, either (i) for Arkessa to provide a replacement SIM Card or (ii) for Arkessa to refund the price paid for the defective SIM Card.
- 5.7 The SIM Cards are not specifically designed for use in any safety critical application or environment where failure of the SIM Card could result in the death or injury of any person, including without limitation medical, aeronautic or aerospace, transportation and energy generation or transmission applications or environments (together, "Safety Critical Uses"). The Customer's use of the SIM Cards for Safety Critical Uses shall be at the Customer's sole risk, even if Arkessa is aware of or has been informed in writing of such usage. The Customer shall be solely responsible for all regulatory, safety and security related requirements for Safety Critical Uses. The Customer shall indemnify Arkessa against all claims, demands, actions, liability, costs and expenses (including reasonable legal fees) arising from such Safety Critical Uses.

6. CUSTOMER RESPONSIBILITIES

- 6.1 The Customer must at all times comply with Arkessa's acceptable use policy which is available on the Customer's secure area on the Arkessa Website.
- 6.2 If the Customer is given access to a Portal then the terms and conditions set out in Addendum "Terms and Conditions for Use of Portals" apply.
- 6.3 If the Customer does not order the Committed Volume by the Call-off Date (or during the relevant specified period), Arkessa shall be entitled to invoice and the Customer shall be required to pay an amount equal to the shortfall between the Charges actually incurred in respect of the Committed Volume and the Charges that would be due for the whole Committed Volume.
- 6.4 The Customer must not transfer any SIM Card (or the Connectivity Services for that SIM Card) to any third party (other than End Users) including by way of sublicense, lease, rent or loan. The Customer shall take adequate precautions to prevent damage to or unauthorised use or theft of the SIM Cards and inform Arkessa immediately if a SIM Card is lost, stolen, damaged, destroyed or is being used (or is reasonably likely to be used) in an unauthorised manner. The Customer will remain liable for all charges incurred (including unauthorised charges) until the matter is reported to Arkessa and the Connectivity Services for that SIM Card have been suspended. The terms of the Agreement for any affected SIM Card, including the Minimum SIM Term, will remain in place. If the SIM Card was originally supplied by Arkessa then (other than for Chip SIMs) Arkessa will supply a replacement SIM Card. Arkessa may charge the Customer for re-Activating and/or charge a reasonable fee for the replacement of the SIM Card. If a replacement SIM Card is not required then normal cancellation charges will be applied in accordance with the terms of the Agreement. If a Customer device containing a Chip SIM is lost, stolen, damaged or destroyed then Arkessa will use reasonable endeavours to transfer the Connectivity Services related to that Chip SIM to another of the Customer's Chip SIMs.
- 6.5 The Customer must obtain all licences, consents and other regulatory approvals that are required to permit the Customer to make use of the Connectivity Services.

7. CHANGES TO THE SERVICES & REGULATORY CHANGES

- 7.1 Arkessa reserve the right to:
- (a) vary the Charges; or
 - (b) make any amendments to this Agreement that are required as a result of any legislation, statutory instrument, government regulation or authorisation; or
 - (c) withdraw any promotional tariffs and offers; or
 - (d) withdraw tariffs that are no longer available from a Network Operator and switch the affected Connectivity Services to an alternative tariff,
- by giving the Customer not less than fifteen (15) Business Days' notice and if the Customer fails to exercise its right to terminate this Agreement pursuant to Clause 11 within fifteen (15) Business Days of being given notice of the change then the Customer will be deemed to have accepted the change.

8. HARDWARE SALES AND LEASES

- 8.1 The additional terms and conditions for the sale by Arkessa of any Hardware are set out in Addendum "Terms and Conditions for Hardware Sales".

- 8.2 The additional terms and conditions for the lease by Arkessa of any Hardware are set out in Addendum "Terms and Conditions for Hardware Sales".

9. PROFESSIONAL SERVICES

- 9.1 The additional terms and conditions for the provision by Arkessa of Professional Services are set out in Addendum "Terms and Conditions for Professional Services".

10. CHARGES AND PAYMENT

- 10.1 Unless stated otherwise in the Services Schedule, Arkessa shall invoice the Customer for the Service Charges monthly in advance and all other Charges monthly in arrears. The Customer shall pay all invoices in full within thirty (30) calendar days of receipt of Arkessa's invoice and without any deduction, set-off or counterclaim.
- 10.2 The Charges applicable to an Order will be as set out in the Product Price Book in effect on the Order Acceptance Date; that Product Price Book will remain in effect for that Order for the duration of that Order. The parties may agree updated Product Price Books from time to time which will apply to any future Orders.
- 10.3 Arkessa reserves the right to charge any additional consumption charges received in a later billing period than that in which the usage occurred due to late receipt of billing data from any Network Operator.
- 10.4 If Arkessa incurs additional costs in performing the Services as a result of any failure by the Customer (or an End User) to meet its obligations hereunder Arkessa shall be entitled to recover such additional costs from the Customer.
- 10.5 Arkessa reserves the right to charge interest on any overdue payment which shall accrue daily at the rate of 4% above the base rate of HSBC Bank plc from time to time from the date that an invoice becomes due until the date that the overdue amount is paid in full (both dates inclusive, and whether before or after judgment).
- 10.6 Should the Customer in good faith dispute any of the Charges it must notify Arkessa of such disputed amount within fourteen (14) calendar days of receipt of the relevant invoice. The Parties shall discuss such dispute under the Escalation Procedure set out in Clause 16. If no dispute is raised within fourteen (14) calendar days the invoice will be deemed accepted by the Customer. Where all or part of a disputed amount is found to have been incorrectly invoiced Arkessa will promptly make any necessary credit to the Customer's account.
- 10.7 Arkessa may at the Customer's request advise the Customer of its account balance from time to time. The Customer acknowledges this is an estimate based on information provided from the Network Operators and which Arkessa has not verified. Arkessa shall not be bound by, and shall not be liable for, any estimate that it provides. The Customer shall pay all Charges as they fall due even if they exceed such estimate.
- 10.8 All amounts due under the Agreement are exclusive of VAT and any other applicable taxes which the Customer shall pay in addition at the rate prevailing on the due date of payment.
- 10.9 The Parties agree that timely payment of the Charges is of the essence. If the Customer has not paid any invoice when due Arkessa shall be entitled (in its sole discretion) to Suspend any or all of the Customer's Connectivity Services, terminate this Agreement and/or charge the Customer Arkessa's costs for collecting overdue amounts.
- 10.10 Notwithstanding any of the above, Arkessa may set-off Charges against any liability owed to the Customer under this Agreement or any other agreement in force between the Parties from time to time.

- 10.11 In the event of cancellation by the Customer of (a) Connectivity Services for any SIM Card that has not reached its Minimum SIM Term or (b) any other Service which the Services Schedule indicates has a Minimum Order Term, the Customer shall immediately pay to Arkessa all Service Charges due for the remainder of the Minimum SIM Term or Minimum Order Term, as well as any other outstanding Charges already incurred relating to that SIM Card or Service up to and including the date of cancellation.
- 10.12 If a SIM Card has passed its Minimum SIM Term then the Customer may cancel the Connectivity Services for the SIM Card by providing thirty (30) calendar days' notice to Arkessa. If a Service has passed its Minimum Order Term then the Customer may (unless the Services Schedule states otherwise) cancel the Service by providing thirty (30) calendar days' notice to Arkessa.
- 10.13 The Customer is responsible for all Charges associated with eUICC Localisation activities that are used in conjunction with the Portals. This includes any usage fees associated to failed attempts or retries of download, enable, delete and any other activities required for the purpose of keeping eUICCs in service and synchronised with the subscription management platform unless otherwise agreed in writing.

11. DURATION AND TERMINATION

- 11.1 This Agreement shall commence on the Commencement Date and shall continue for the Minimum Agreement Term unless terminated earlier in accordance with this Clause 11. On expiry of the Minimum Agreement Term this Agreement shall continue until terminated by either Party in accordance with Clause 11.4.
- 11.2 In respect of Orders for Services other than Connectivity Services (which is dealt with in Clause 3.1), each Order shall commence on the Order Acceptance Date and shall continue for the Minimum Order Term unless terminated earlier in accordance with this Clause 11. On expiry of the Minimum Order Term the Order shall continue until terminated by either Party in accordance with Clause 11.4.
- 11.3 When a SIM Card has completed its Minimum SIM Term, the Connectivity Services for that SIM Card may be terminated by the Customer on giving thirty (30) calendar days' notice to Arkessa. If Arkessa has agreed to provide the Connectivity Services on a trial basis then Arkessa may disconnect the SIM Card without notice at the end of the trial period.
- 11.4 **Termination at will:** The Customer and Arkessa may terminate this Agreement (or any Order) by giving at least three (3) months' notice in writing to the other Party at any time. In the event of termination by the Customer under this Clause 11.4, the Customer shall immediately pay to Arkessa: (i) all Charges in respect of the Committed Volume that have not yet been paid for by the Customer, (ii) all Charges due for the remainder of the Minimum SIM Term for each SIM Card and (iii) any other minimum charges to which the Customer is committed for the remainder of the relevant commitment.
- 11.5 **Termination by Arkessa:** Arkessa shall have the right to immediately terminate this Agreement in whole or in part and without liability, by notice in writing to the Customer if:
- (a) any agreement (or any part of it) with a Network Operator (or other third party) giving Arkessa access to any part of the technical infrastructure required to provide the Services is suspended or terminated;
 - (b) the Services have been Suspended by Arkessa on more than one occasion; or
 - (c) subject to any bona fide dispute in respect of any invoice, the Customer fails to pay any Charges when due under this Agreement.

- 11.6 **Termination for Cause:** Either Party shall have the right to terminate this Agreement at any time in any of the following circumstances by prior written notice to the other Party:

- (a) if the other Party commits a material breach of any of the provisions of this Agreement and, in the case of a remediable breach, has failed to remedy the breach within fourteen (14) calendar days of being notified of such breach by the Party seeking to terminate; or
- (b) if the other Party is unable to pay its debts, ceases or threatens to cease to carry on the whole or a substantial part of its business, makes or offers to make any arrangement or composition with its creditors, any petition is presented or made against that other Party or any resolution or petition to wind up that other Party (being a limited company) is issued or passed or presented otherwise than for reconstruction or amalgamation, an administrator or a receiver of that other Party's undertaking property or assets or any part thereof is appointed or anything analogous to the foregoing occurs in relation to the other Party in any other relevant jurisdiction.

- 11.7 The Customer may terminate this Agreement on not less than fifteen (15) Business Days' notice if Arkessa exercises its rights under Clause 7.1 and the Customer does not agree the changes proposed pursuant to that Clause. An increase in the Charges in line with the appropriate Index of Retail Prices (as published by the Office for National Statistics) shall not give the Customer the right to terminate pursuant to this Clause. Upon receipt of the Customer's notice to terminate Arkessa may withdraw such variations to the Agreement in which case it shall notify the Customer and the Parties shall discuss in good faith the continuation of the Agreement in its then-current form.

12. CONSEQUENCES OF TERMINATING

- 12.1 Without prejudice to Clause 11.4, upon termination of this Agreement for whatever reason all Charges (including those in respect of Committed Volumes) shall become immediately due and payable by the Customer to Arkessa.
- 12.2 Except if the Agreement is terminated under Clause 11.5 or 11.6, if notice to terminate the whole Agreement is given then any then-existing Orders will continue until the expiry of the relevant Minimum Order Terms for those Orders, and the Agreement will then terminate once the last of those Orders has expired.

13. INTELLECTUAL PROPERTY

- 13.1 The Customer acknowledges that all Intellectual Property Rights in the Services, Software, SIM Cards, Hardware and Systems are owned by Arkessa or its licensors and (except as expressly set out in this Agreement) the Customer acquires no right, title or interest in the same.
- 13.2 The Customer shall not, and shall not permit any End User or other person to, remove or replace any intellectual property notice on any SIM Cards or Hardware.
- 13.3 If Arkessa has made any Software available to the Customer then the Customer shall comply with any Software Licence applicable to that Software.
- 13.4 With the prior written consent of Arkessa, the Customer shall have the right to promote the Services under the "Arkessa" trade mark subject to the Customer complying with such guidelines and directions issued by Arkessa from time to time in connection with such trade mark and subject to the Customer entering into such agreements as may from time to time be required by Arkessa in order to protect the rights of Arkessa in the "Arkessa" trade mark and any other Intellectual Property Rights owned and/or licensed by Arkessa. The Customer shall not use or apply to register

any name or trade mark or other Intellectual Property Rights similar to any Arkessa trade mark.

13.5 With the prior written consent of the Customer, Arkessa shall have the right to promote its relationship with the Customer and use the Customer trademark in connection with the same, subject to Arkessa complying with such guidelines and directions issued by the Customer from time to time in connection with such use of the trademark.

13.6 The Customer shall indemnify Arkessa against all claims, demands, actions, liability, costs and expenses (including reasonable legal fees) arising from any infringement by the Customer or an End User of Arkessa's (or its licensors') Intellectual Property Rights.

14. CONFIDENTIALITY

14.1 Each Party shall safeguard the other Party's Confidential Information as it would its own confidential information, and shall use, copy and disclose that Confidential Information only in connection with the proper performance of the Agreement.

14.2 Nothing in the Agreement shall be construed so as to prevent one Party from disclosing the other's Confidential Information where required to do so by a court or other competent authority.

14.3 Each Party shall tell the other immediately if it discovers that this Clause has been breached and shall, on request, return to the other all of the other Party's Confidential Information which is in a physical form and destroy any other records containing Confidential Information. The obligations in this Clause shall continue without limit in time.

15. LIMITATION OF LIABILITY

15.1 Nothing in this Agreement limits or excludes a Party's liability for:

- (a) death or personal injury resulting from negligence;
- (b) fraud or fraudulent misrepresentation; or
- (c) any liability that cannot be excluded or limited by law.

15.2 Subject to Clause 15.1, Arkessa (and its affiliates, suppliers and sub-contractors) shall not be liable for any of the following types of loss or damage even if, in each case, Arkessa has been advised of the possibility of such loss or damage:

- (a) loss of revenue, profits, business, goodwill;
- (b) loss of, or corruption of, data or information;
- (c) special, indirect or consequential loss; or
- (d) loss arising from any act or omission of a Network Operator or any other provider of electronic communications services.

15.3 Subject to Clause 15.1, the total liability of Arkessa (and its affiliates, suppliers and sub-contractors) in contract, tort (including negligence) or howsoever else arising under or in connection with this Agreement shall be limited:

- (a) in relation to Professional Services provided in any twelve (12) month period, to the Charges in that twelve (12) month period for the Professional Services to which the liability relates;
- (b) in relation to the supply of Hardware, to the Charges for the Hardware to which the liability relates;
- (c) in relation to the Connectivity Services provided in any twelve (12) month period, to the Charges received by Arkessa in that twelve (12) month

period for the Connectivity Services to which the liability relates; and

- (d) in relation to any other liability not covered by (a) to (c) above, shall be limited in any twelve (12) month period to the Charges received by Arkessa in that twelve (12) month period to which the liability relates.

15.4 Save as set out herein, all warranties, conditions and other terms implied by statute or common law are excluded to the fullest extent permitted by law.

15.5 The Customer acknowledges that this Agreement creates no legal relationship between the Customer and the Network Operators. To the fullest extent permitted by law all liability of the Network Operators in contract, tort (including negligence) or howsoever else arising under or in connection with this Agreement is excluded.

16. ESCALATION PROCEDURE

16.1 If there is a dispute in relation to the Agreement, the Parties shall attempt to negotiate and settle the dispute amicably. If it is not possible to settle the dispute amicably then the following escalation process shall be followed:

- (a) the matter shall in the first instance be referred to Arkessa's Customer Account Manager and a Customer employee of corresponding seniority;
- (b) if the matter is not resolved at that level within twenty (20) Business Days of the matter having first been referred, then the matter may be referred to Arkessa's Chief Financial Officer and a Customer employee of corresponding seniority;
- (c) if the matter is not resolved at that level within twenty (20) Business Days of such referral, then the matter may be referred to Arkessa's Chief Executive Officer and a Customer employee of corresponding seniority;
- (d) if the matter is not resolved at that level within twenty (20) Business Days of such referral to it then the matter may be referred to the courts.

16.2 The parties shall not refer any dispute to the courts unless and until the escalation process set out above has been followed, except where it is necessary to do so to preserve a Party's rights or remedies.

17. DATA PROTECTION

17.1 Each Party will comply with the requirements set out in Addendum "Processing Personal Data".

17.2 The Customer will ensure that it has in place all consents and notices required by any applicable privacy or data protection law to permit (i) the transfer of any data to Arkessa for the purposes set out in this Agreement and (ii) the use by the Customer of any data (including location data) that is made available to the Customer under this Agreement. The Customer will indemnify Arkessa against all claims, demands, actions, liability, costs and expenses (including reasonable legal fees) that Arkessa suffers as a consequence of the Customer's breach of this Clause 17.2.

18. GENERAL

18.1 **Entire Agreement.** The Agreement is the entire agreement between the Parties, and replaces all previous agreements and understandings between them, relating to its subject matter. No terms of any Customer purchase order, printed or standard conditions, nor other document submitted by the Customer will have contractual effect. The Parties agree that no representations, warranties, undertakings or promises have been expressly or impliedly given in respect of the subject matter of the Agreement other than those

- which are expressly stated in the Agreement. Neither Party shall have any remedy in respect of any statement not set out in the Agreement upon which it relied in entering into the Agreement, unless the statement was made fraudulently.
- 18.2 **Counterparts.** The Agreement may be executed in any number of counterparts, which shall each constitute an original and together constitute one agreement. If the Agreement is executed in counterpart, it shall not be effective unless each Party has executed at least one counterpart. A counterpart may be signed and delivered electronically (including using exchange of PDF documents by email).
- 18.3 **Force Majeure.** Neither Party will be liable to the other for any failure to perform its obligations because of something beyond its reasonable control such as, without limitation, lightning, flood, exceptionally severe weather, discontinuation of electricity supply, fire, explosion, war, terrorism, military operations, national or local emergency, civil disorder, industrial disputes (whether or not involving its employees), acts of local or central Government or other competent authorities and any failure by any Network Operator.
- 18.4 **Assignment.** Arkessa may assign or novate its rights and obligations under this Agreement at any time on written notice. The Customer cannot assign or purport to assign any rights or obligations under this Agreement without Arkessa's prior written consent. The transfer or novation of an Everything Everywhere SIM Card between the Customer's estate and the estate of a third party will be charged at £25 per subscription unless agreed otherwise on a case by case basis. For transfers or novations out of a Customer's estate, early termination fees may apply.
- 18.5 **No waiver.** Failure by either Party to enforce rights under this Agreement shall not prevent a Party from taking further action or constitute any waiver of any of its respective rights hereunder.
- 18.6 **Variations.** Except as expressly set out, this Agreement can only be varied or amended by mutual written agreement of both Parties.
- 18.7 **Cumulative remedies.** The rights and remedies expressly conferred by the Agreement are cumulative and additional to any other rights or remedies a Party may have.
- 18.8 **Invalidity.** If any provision of this Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Agreement, and the validity and enforceability of the other provisions of the Agreement shall not be affected.
- 18.9 **Third Party Rights.** The parties do not intend any third party to have the right to enforce any provision of the Agreement under the Contracts (Rights of Third parties) Act 1999 or otherwise, except where such third party is an assignee of rights under the Agreement. The Parties may terminate or vary the Agreement without the consent of any third party.
- 18.10 **Bribery.** Each Party shall comply with all applicable laws, regulations, and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("**Anti-Corruption Laws**"). Each Party has and shall maintain in place its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Anti-Corruption Laws and each Party agrees to enforce them where appropriate. Each Party agrees it will not do or omit to do or permit anything to be done which is an offence or which may be deemed to be an offence under the Anti-Corruption Laws and it will notify the other immediately upon becoming aware or upon becoming reasonably suspicious that an activity related to this Agreement has contravened or may contravene the Anti-Corruption Laws.
- 18.11 **Export Control.** Each Party shall comply with all relevant export control laws and regulations and all relevant economic, trade and financial sanctions laws, regulations, embargoes or restrictive measures administered by the United Kingdom, the European Union, the United States of America and any other applicable countries ("**Export Control Laws**"). Each Party shall not knowingly do anything which may cause the other Party or members of its group to breach any Export Control Laws and shall provide such assistance, documentation and information to the other Party as that Party may reasonably require in order to comply with this clause.
- 18.12 **Relationship.** Nothing in this Agreement is intended to, or shall operate to, create a partnership between the Parties, or to authorise either Party to act as agent for the other, and neither Party shall have authority to act in the name of or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 18.13 **Notices.** All notices delivered under this Agreement must be in writing. Electronic mail is an acceptable form of notice. Written notifications sent via post must have an accompanying proof of delivery/receipt.
- 18.14 **Law and Jurisdiction.** The Agreement and any non-contractual obligations arising in connection with it are governed by and construed in accordance with English law. The English courts have exclusive jurisdiction to determine any dispute arising in connection with the Agreement, including disputes relating to any non-contractual obligations. Each Party irrevocably waives any objection which it may now or later have to proceedings being brought in the English courts (on the grounds that the English courts are not a convenient forum or otherwise). Nothing in the Agreement shall prevent a Party from applying to the courts of any other country for injunctive or other interim relief.