

## Contract Terms and Conditions

### PART A – GENERAL TERMS AND CONDITIONS

**1. Definitions** “Additional Services” means any additional telecommunications services agreed to be supplied by Total to the Customer as listed overleaf. “Agreement” means these general terms and conditions, the terms and conditions which apply to the supply of the Services as set out in Part B, and any amendments to the same. “Airtime” means wireless airtime and network capacity procured from the Network Operator. “Charges” means the charges for the Services payable to Total by the Customer. “Commencement Date” means the date of signature of this Agreement by the Customer or, if earlier, the date upon which Services are first provided to the Customer. “Customer” means the customer of Total whose details and registered office appear overleaf. “Disconnection Notice” means a notice from the Customer to Total to disconnect all or the relevant part of the Services which should be in the form made available to the Customer by Total. “End-User Licensed Software” means any software, the licence terms for which are governed by a separate agreement with the licensor of such software typically by means of a “click-wrap” or “shrink-wrap” licence agreement. “Equipment” means the telecommunications or routing equipment for connection to the Services whether supplied by Total or not. “Equipment Termination Fee” has the meaning set out in clause 6.4. “Group” means Total, Total Telecommunications Limited, Total Network Convergence Limited and any other group companies from time to time. “Hardware Account” means an account provided by Total for the purchase of Equipment by the Customer during a Minimum Period as specified in the Sales Order. “Internet” means the global data network comprising interconnected networks using the TCP/IP protocol suite. “Line Rental Charges” means the non-usage dependent part of the Charges. “Minimum Period” has the meaning set out in the relevant terms and conditions under Part B. “Network Operator” means the network operator who operates the wireless network or networks to which the SIM Cards are connected and from whom Airtime is procured by Total for the benefit of the Customer. “Numbers” means the telephone numbers allocated to Total by the Network Operator and in turn allocated by Total to SIM Cards and used by the Customer to access the Services. “Price List” means the descriptions of and the list of prices and tariffs which are charged to customers for the Services. “RPI” means the all-items percentage increase figure of the Index of Retail Prices published by the Office of National Statistics or any official index replacing the same. “Sales Order” means a request by the Customer for Services or a change or variation in respect of the same (but not a disconnection) which should be submitted using the Sales Order form as made available to the Customer by Total and/or that converted into a Sales Order through the Total Helpdesk. “Service Period” means the period commencing on the Commencement Date during which period the Services will be provided by Total to the Customer pursuant to this Agreement. “Services” means the provision by Total to the Customer of Airtime, Equipment, Additional Services, and/or the Value Added Services or any other services which Total may from time to time provide. “SIM Card” means the subscriber identity module supplied by the Network Operator (and which shall at all times remain the property of the Network Operator), which is allocated to the Customer by Total, and which contains the Number. “Software” means any software (excluding End-User Licensed Software) supplied to the Customer by Total, the Network Operator or any other supplier under the terms of or in respect of this Agreement which shall be on the terms of a non-exclusive, non-transferable licence and which software is to be used for the sole purpose of operating the Equipment in order to be able to obtain the Services. “Termination Notice” means the notice to terminate this Agreement which should be submitted using the Termination Notice form made available to the Customer by Total. “Termination Fee” means the fee which may be payable on termination of this Agreement as specified in this Agreement or as reasonably specified by Total from time to time (including, without limitation, any Equipment Termination Fee which may be payable). “Total” means Total Limited (registration number 03583387) whose registered office address is at Telecom House, 296 High Street, Cheltenham, Glos GL50 3HQ. “Total Helpdesk” means the helpdesk for customers operated by Total Telecommunications Limited for and on behalf of Total. “Total System” means the system and software used by Total for the time being to record details of the Customer, inventory, call and billing data and to provide the Services. “Total’s Website” means the website for customers operated by Total Telecommunications Limited for and on behalf of Total. “Value Added Services” means the value added Services such as installation, insurance and repair etc. as may be made available from time to time by Total to the Customer. “Warranty Period” means the period of the manufacturer’s warranty in respect of any Equipment supplied by Total to the Customer under this Agreement.

**2 Providing the Services** **2.1** This Agreement will commence on acceptance by Total of any Sales Order. **2.2** The Customer hereby confirms that:- (i) in the case of an individual he or she is at least 18 years; (ii) the director or person who agreed or completed the Sales Order forming part of this Agreement has the necessary authority to act on behalf of the Customer and bind the Customer to this Agreement; (iii) all details of the Customer which were inserted/provided in respect of the Sales Order by that director or person acting on the Customer's behalf are accurate and up to date; and (iv) by completion of the Sales Order, the Customer agrees to be bound by the terms of this Agreement. **2.3** Total will use its reasonable endeavours to provide the Services by the date(s) agreed with the Customer and make the Services available for the Service Period, subject to the terms of this Agreement.

**3 Orders** **3.1** At any time after the Commencement Date the Customer may by means of a Sales Order request a change or a variation to (i) the Airtime and/or the Additional Services, and/or (ii) the Equipment. In respect of any changes or variations specified in (ii) above, Total reserves the right to charge associated costs at its discretion including, without limitation, any cancellation costs charged by third party suppliers of such equipment. In placing a Sales Order the Customer shall make use of any agreement number allocated to this Agreement by Total. **3.2** All Sales Orders shall be subject only to the terms of this Agreement. Any alternative terms appearing on or referred to in any other communication (whether oral, in writing or by electronic means) by the Customer for the purpose of placing Sales Orders shall be ineffective. **3.3** Total may vary these terms and conditions at any time by posting the changes on Total's Website and, where reasonably practicable, giving the Customer prior notice. Total will only do this if Total has a valid reason, for example to reflect changing arrangements with any third party operator or changing legal, regulatory or business requirements. The Customer hereby agrees that, if the Customer decides to use the Services after any variation(s) to these terms and conditions that have been posted on Total's Website, the Customer will be bound by the Agreement as varied.

**4 Payment** **4.1** Unless Total shall otherwise agree, the Customer shall pay all Charges and any other sums due from the Customer to Total by direct debit within 14 days of the date of Total's invoice for such charges. **4.2** All Charges are subject to Value Added Tax and any other relevant tax, duty or levy, which shall be payable by the Customer in addition at the prevailing rate from time to time as applicable. **4.3** In the event that any Charges and any other sums are not paid by their due date: **4.3.1** Interest may be levied at the rate of 2% above the base lending rate of Lloyds TSB Bank from time to time in force, calculated from the date payment was due until the date of actual payment, together with all costs incurred in the collection of such outstanding amount; and **4.3.2** Total shall be authorised to debit the Customer's nominated bank account, or credit card, pursuant to this Agreement, with the full amount of such Charges, together with sums due under Clause 4.3.1. **4.4** The Customer is solely responsible for all Equipment used by the Customer and which is not owned by Total including insurance and shall remain liable for all Charges during any period of loss, theft, damage or other inability to use the Equipment. **4.5** Total will only consider billing queries regarding Charges from the Customer if made within 1 month of the date of invoice (providing Total with sufficient detail to investigate the matter and determine whether the Customer's dispute is genuine and reasonable). If Total determines (at Total's sole discretion): (a) that the Customer's dispute is not genuine or reasonable, or where notification is not made before such date, the Customer must pay the invoice in full in accordance with clause 4.1 above, plus any interest charged on the full invoiced sum in accordance with clause 4.3.1 above; or (b) that the Customer's dispute is genuine and reasonable, the Customer must pay the undisputed part of the invoice in accordance with clause 4.1 above and Total will both use all reasonable endeavours to resolve the dispute as quickly as possible. If any such dispute is resolved:- (i) such that the Customer still owes Total money, the Customer must pay all sums owed to Total within 14 calendar days of resolution of the dispute, plus interest in accordance with clause 4.3.1 above from the date payment of the disputed invoice was due; or (ii) such that we owe the Customer money, Total will (at its sole discretion) repay or credit on the next invoice sent to the Customer following resolution of the dispute any amount overpaid by the Customer, plus any interest paid thereon under clause 4.3.1 above. Total will each bear its own costs in resolving any dispute under this clause 4.5. **4.6** If required by Total at any time, the Customer shall pay a deposit to be used as security against any Charges due to Total, or which may become so due, which will be returnable to the Customer only when payment has been made to Total of all Charges due under this Agreement, or upon termination, whichever is the later. The Customer shall not be entitled to any interest on any deposit held by Total. **4.7** Total may, in its absolute discretion, provide a Hardware Account for use by the Customer. If provided, the Customer shall be entitled to offset the cost of all Equipment against the balance held by Total in such account from time to time. No other charges,

costs or interest may be offset against sums held in the Hardware Account. Any balance remaining on the Hardware Account will be forfeited upon the expiry of any Minimum Period. Any account or fund previously provided by Total or any other member of the Group shall be deemed to expire on the Commencement Date. For the avoidance of doubt, Total shall (in its absolute discretion) specify the terms on which the Hardware Account shall be operated, including, without limitation, Total's right to determine that only a fixed or pro rata amount of the Hardware Account balance can be offset on a monthly basis against the cost of such Equipment during the Minimum Period. Such additional terms shall be specified in the Sales Order. **4.8** Total may, in its absolute discretion, discount the Line Rental Charges to prices below the recommended retail price during any Minimum Period (as specified in the Sales Order). Following the expiry of such period Total reserves the right to increase such charges to the recommended retail price until such time as the Customer terminates or renews the Agreement.

**5 Credit Limit** The Customer may be allocated a credit limit on or before the Commencement Date or at any subsequent time, which credit limit may be varied by Total from time to time, and in the event of such variation, Total shall be entitled to carry out such credit checks on the Customer as Total reasonably deems necessary.

**6 Equipment** **6.1** The Customer warrants that all Equipment owned by the Customer and to be used for connection to the Services shall be (i) technically compatible with the same and will not harm the Services, and (ii) will be connected to the same in accordance with all relevant instructions, standards and laws. **6.2** Acceptance of Equipment supplied by Total to the Customer shall take place when the Customer takes delivery or possession of the same. Save as is otherwise set out under Part B, title to such equipment will not pass to the Customer until the date on which all invoices relating to such equipment have been paid in full and any Equipment Termination Fee which may apply has been paid and provided that no other sums are overdue to Total from the Customer on any account whatsoever. **6.3** Where the Equipment is supplied by Total and title to such equipment is passed to the Customer, Total will use its reasonable endeavours to transfer to the Customer the benefit of any warranty or guarantee given to Total in respect thereof. All other warranties, conditions and other terms implied by statute or common law (save for conditions as to title) are excluded from this Agreement. **6.4** For the purposes of this clause 6, "Equipment Termination Fee" means the fee which may be payable in the event of any early termination of this Agreement (whether prior to the expiry of the Minimum Period or other fixed period specified in the Sales Order) which occurs during the Warranty Period, and is calculated as follows: (Remaining months of Warranty Period Following early termination / Warranty Period) x SIM free price of Equipment

**7 Intellectual Property** The Customer shall not use or permit anyone else to use, the Total name, logo or trademark without the prior written consent of Total. The Customer also agrees not to infringe any copyright or registered or unregistered trademark belonging to any third party in respect of the use of the Services. The Customer shall indemnify Total against any action, claim, loss, damage, proceedings, expense (including legal costs) suffered or incurred by Total arising from any action which is directly or indirectly related to infringement of any third party's intellectual property rights.

**8 Termination** **8.1** This Agreement may be terminated by either party if the other party is in material breach, and the breach, if capable of remedy, has not been remedied by such party within thirty (30) days of written notice specifying the breach and requiring its remedy. **8.2** A Termination Notice may be given by Total at any time if: **8.2.1** the Customer has persistently failed to pay monies properly due to Total under this Agreement; or **8.2.2** the Customer is otherwise materially or persistently in breach of the Agreement; or **8.2.3** bankruptcy or insolvency proceedings are brought against the Customer, or if an arrangement with creditors is made by the Customer, or a receiver or administrator is appointed over any of the Customer's assets, or the Customer goes into liquidation, or there is a corresponding event under the law of any other country; **8.2.4** the Services become unavailable due to the termination of any of Total's agreements with any provider(s) of the Services or where the such provider(s) is/are not permitted by law to supply the Services; **8.2.5** Total is unable to provide the Services generally or for any other reason; or **8.2.6** Total is directed by a competent authority to cease the provision of the Services. **8.3** A Termination Notice may be given to Total at any time by the Customer if Total increases its prices or tariffs in respect of the Services from the Charges set out overleaf to the Customer's material disadvantage or substantially varies these terms to the Customer's material disadvantage OTHER than where such increases in prices or tariffs or change to these terms arises as a consequence of (i) an increase in line with any increase in the RPI during the Service Period, or (ii) a change or variation in prices, tariffs, terms or otherwise made or requested by the provider(s) of the Services and/or third party manufacturers or suppliers and/or due to a variation in the rate of Value Added Tax. **8.4** In addition to the parties' rights to terminate under this clause 8: **8.4.1**

Total may at any time during the Service Period serve on the Customer a Termination Notice on a minimum 7 days' notice and the Customer shall be liable to any Termination Fee imposed by Total at its sole discretion; or **8.4.2** the Customer may serve on Total a Termination Notice in respect of all or any part of the Services in accordance with the relevant terms and conditions for such Service(s) set out in Part B and the Customer shall be liable to any applicable Termination Fee. **8.5** Upon the giving of a Termination Notice by Total to the Customer this Agreement will come to an end 7 days thereafter, and upon the giving of a Termination Notice by the Customer to Total this Agreement will come to an end 30 days thereafter. **8.6** Upon the expiry of any Termination Notice or otherwise upon the determination of this Agreement Total will disconnect all Equipment from the Services, the Customer will pay to Total any applicable Termination Fee and neither party shall lose any rights accrued under this Agreement prior to it ending. The Customer shall also return all Equipment to Total which it does not own or have legal title to at the date of expiry of any Termination Notice or otherwise upon the determination of this Agreement, in accordance with clause 6.2 above or under Part B. **8.7** In the event that this Agreement is terminated (i) prior to the expiry of any Minimum Period, the Termination Fee shall include all Line Rental Charges for the remainder of such period which shall be charged at the full retail price from time to time, or (ii) following the expiry of any Minimum Period, the Termination Fee shall include any discount which Total has applied to the Line Rental Charges from the date on which the Minimum Period commenced until the date of expiry of any Termination Notice or otherwise upon the determination of this Agreement.

**9 Export Control 9.1** Delivery of any Equipment by Total to the Customer may be subject to export control law and regulations. Total does not represent that any necessary approvals and licences have been obtained or will be granted. **9.2** The Customer agrees to comply with any applicable export or re-export laws, regulations, prohibitions or embargoes of any country, including obtaining written authority from any relevant licensing authority where necessary. **9.3** In the event that the Customer procures Equipment, including 'xda' Equipment or similar computer technology from Total, the Customer agrees that in signing this Agreement the Customer accepts the terms of the following end-user undertaking: the Customer certifies that it will be the end-user of the Equipment and further certifies that it shall use the Equipment only for the purposes of allowing its employees to send, receive, store and process data and voice Services in order to perform their every day contractual duties; that the Equipment will not be used for any purpose connected with chemical, biological or nuclear weapons, or missiles capable of delivering such weapons; that the Equipment will not be re-exported or otherwise re-sold or transferred if it is known or suspected that it is intended or likely to be used for such purposes; and that the Equipment, or any replica of it, will not be used in any nuclear explosive activity or unsafeguarded nuclear fuel cycle activity; and agrees to sign a formal "End-User Undertaking" in a format specified by the United Kingdom Department of Trade and Industry if requested to do so by Total.

**10 Confidentiality 10.1** The parties will each keep confidential any proprietary information and/or any information obtained from the other in connection with this Agreement (including for the avoidance of doubt details of the Customer's employees) which is reasonably identified by either party as commercially confidential or which is obviously confidential in nature and neither will, without the consent in writing of the other, divulge the same to any third party except such of its employees contractors and agents as may need to know the same for the purposes of the implementation of this Agreement and who agree to be bound by the provisions of this clause. **10.2** The obligations aforesaid shall not apply to any material or information which is (i) in the public domain (other than as a result of a breach of this Agreement), (ii) already known to the receiving party, or (iii) lawfully received from a third party and/or ordered to be disclosed by any court or other tribunal or regulatory authority of competent jurisdiction.

**11 Limitation of Liability 11.1** Neither party shall be liable to the other in respect of any matter arising out of or in connection with this Agreement in contract or tort or otherwise for any loss (whether direct or indirect) of profit, business, revenue, anticipated savings, or any loss or corruption of data, or any indirect or consequential loss or damage whatsoever. **11.2** Total's aggregate liability to the Customer resulting from Total's negligence or otherwise arising in connection with this Agreement shall be limited to the amount paid by the Customer to Total during the year preceding the breach. **11.3** Nothing in this Agreement shall exclude or restrict the liability of either party for fraud, death or personal injury resulting from the negligence of the party concerned or of its employees acting in the course of their employment. **11.4** The express terms of this Agreement are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are hereby excluded to the fullest extent permitted by law. **11.5** Total does not accept liability for the acts, omissions or failures of (i) providers of

telecommunication services to Total in relation to the provision of the Services under this Agreement; or (ii) the Customer **11.6** The Customer shall indemnify Total against any and all losses, damages or costs which Total incurs as a result of any negligent act or omission or reckless or wilful misconduct by the Customer in the performance of its obligations or any breach of its obligations under these terms and conditions.

**12 Matters beyond the parties' reasonable control** Neither party to this Agreement shall be deemed in default or liable to the other party for any matter whatsoever, for any delays in performance or from failure to perform or comply with the terms of this Agreement due to any cause beyond that party's reasonable control including, without limitation, acts of God, acts of Government or other competent regulatory authority, telecommunications network operators, war or national emergency, riots, civil commotion, fire, explosion, flood, epidemic, lock-outs (whether or not by that party), strikes and other industrial disputes (in each case, whether or not relating to that party's workforce), inability or delay in obtaining supplies of Equipment or in the non-availability of Airtime due to the act of a third party.

**13 Assignment** **13.1** The Customer shall not assign or transfer the benefit of this Agreement to any third party without the prior written consent of Total, such consent not to be unreasonably withheld. **13.2** Total may assign or transfer the benefit of this Agreement to any third party and may subcontract the performance of all or part of the same.

**14 Entire Agreement** **14.1** This Agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, representations, proposals, understandings and agreements whether written or oral relating to the subject matter of this Agreement. **14.2** Notwithstanding Clause 14.1 above, neither party shall have any remedy in respect of any untrue statement made to him upon which he may have relied in entering into this Agreement, and a party's only remedy is for breach of contract. However, nothing purports to exclude liability for any fraudulent statement or act.

**15 Invalidity** If any of the provisions of this Agreement is or becomes invalid, illegal or unenforceable, the validity or enforceability of the remaining provisions shall not in any way be affected or impaired. In any such circumstances the parties shall negotiate in good faith in order to agree the terms of a mutual satisfactory provision, achieving as nearly as possible the same commercial effect, to be substituted for the provision which is found to be invalid, illegal or unenforceable.

**16 Waiver** The failure or delay by either party to this Agreement to exercise or enforce any right, power or remedy under this Agreement shall not be deemed to operate as a waiver of any such right, power or remedy; nor shall any single or partial exercise by any party operate so as to bar the exercise or enforcement thereof or of any right, power or remedy on any later occasion.

**17 Data Protection** Total may use and share details of the Customer, its use of the Services and any disclosure, which is within the scope of Total's data protection registrations or required under law to Total associated companies, agents or other telecommunications companies. This information may be used for marketing purposes and to inform the Customer from time to time about other wireless, telecommunications services or associated technologies, discounts, offers and promotions. If the Customer does not want its details to be used in this way then the Customer should contact Total's Data Controller at the address shown on this contract.

**18 No Partnership** Nothing in this Agreement shall create, or be deemed to create, a partnership between the parties.

**19 Third Party Rights** Save as provided by the terms of this Agreement a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from by that Act.

**20 Notices and Communications** Any notice under this Agreement, whether required to be written or otherwise may be given by Total to the Customer by post, personal device or email, to any address, email address or phone number the customer has given to Total to correspond with Total, or by posting it on Total's Website. The Customer must give notices to Total by post or personal service to the address set out on the Sales Order.

**21 Law** This Agreement shall be governed by English Law and subject to the exclusive jurisdiction of the English courts to which both parties hereby submit.

## **PART B – SERVICES TERMS AND CONDITIONS**

Except as otherwise defined herein and except where the context requires otherwise, words and expressions defined in the General Terms and Conditions set out in Part A, shall have the same meanings when used in these terms and conditions.

### **MOBILE SERVICES**

**1. Additional Definitions** “Device” means the wireless device, or Equipment incorporating a SIM Card. “GPRS Bearer” means the General Packet Radio Service provided by the Network Operator which forms part of the Airtime. “GSM Gateway” means a device (not designed or adapted to be capable of being used whilst in motion) for wireless telegraphy designed or adapted to be connected by wireless telegraphy to the Total System or the cellular telecommunications system of another network operator and used solely for the purpose of sending and receiving messages conveyed by means of the Total System or the cellular telecommunications system of another network operator. “Minimum Period” means the term of 12 months from the date of connection of each SIM Card to the Airtime, or such other period as is agreed in writing. “Mobile Equipment” means the items supplied by Total to the Customer under this Agreement and includes any Software (but not End-User Licensed Software) and documentation supplied under this Agreement. “Mobile Web Service” means the service which enables certain Devices to access the Internet using GPRS. “Mobile Extension” means the service which uses certain wireless extension technology in conjunction with a private circuit or virtual private circuit and that enables certain Devices to operate as part of the Customer’s wireless private or virtual private voice network. “SMS Text Messaging Service” means the short message service, which enables text messages to be sent to, and received from, SIM Cards via Devices connected to the Wireless Services. “SMS Land to Mobile Text Messaging Service” means the usage based short message service, for text messages sent to SIM Cards via a software application in conjunction with a private or virtual private circuit linking the Customer’s wireless private or virtual private data network with the Wireless Services. “Wireless Services” means the provision by Total to the Customer of Airtime, Equipment, GPRS Bearer, Mobile Extension, Mobile Web Service, SMS Text Messaging Service, SMS Land to Mobile Text Messaging Service and/or any other Wireless Services, which Total may from time to time provide. “Wireless Service Period” means the period commencing at the Commencement Date during which period the Wireless Services are provided by Total to the Customer pursuant to this Agreement.

**2 Sale and Purchase of Mobile Equipment** **2.1** Total agrees and undertakes: **2.1.1** subject to acceptance by Total of a Sales Order, to sell and supply to the Customer the Wireless Services and Mobile Equipment requested in that order under the terms of this Agreement; and **2.1.2** where Total accepts a Sales Order for Mobile Equipment, to arrange for any such Mobile Equipment to be delivered to the Customer. **2.2** Total will use its reasonable endeavours to ensure that all Mobile Equipment when delivered is in full working order and performs in accordance with the manufacturer’s description and specification. **2.3** Total warrants that each item of Mobile Equipment will conform in all material respects to the manufacturer’s specification for a period of 12 months from the date of dispatch of such equipment. If the Customer notifies Total of any defect or fault in the Mobile Equipment whereby it fails to conform in all material respects with such specification, Total shall, at Total’s option, repair or replace the Mobile Equipment. **2.4** Total’s obligation to sell and supply Mobile Equipment shall cease as and from the date of any Termination Notice, although Total may thereafter sell and supply Mobile Equipment to the Customer at its discretion. **2.5** Acceptance of the Mobile Equipment by the Customer shall take place when the Customer takes delivery or possession of the Mobile Equipment. Title to the same will not pass to the Customer until (i) the date on which all invoices relating to such Mobile Equipment have been paid in full and provided that no other sums are overdue to Total from the Customer on any account whatsoever or (ii) where the Customer has a Hardware Account, the date on which the Line Rental Charges per connection specified in the Sales Order for the entire Minimum Period have been paid in full. **2.6** The Customer undertakes not to sell, transfer, lease, charge, assign by way of security or otherwise deal in or, encumber the Mobile Equipment in any way until such time as all sums outstanding in respect of the purchase of such items have been paid in full by the Customer. **2.7** Notwithstanding paragraph 2.5 above, risk in the Mobile Equipment will pass to the Customer upon delivery and the Customer will be liable for any loss or damage of the same as and from the time when the Mobile Equipment is delivered to the delivery location specified in the Sales Order unless the damage is caused by the negligence of Total. **2.8** Total reserves the right to add to, substitute, or to discontinue any item of Mobile Equipment at any time. Total does not guarantee the continuing availability of any particular item of Mobile Equipment and (as the Customer acknowledges) may be dependent upon third parties in this respect.

**3 Provision of Airtime and Wireless Services** **3.1** Total agrees and undertakes that it will as and from the Commencement Date and throughout the Wireless Service Period use its reasonable endeavours to: **3.1.1** procure from the Network Operator Airtime on a 24 hour per day 365 days per year basis; and **3.1.2** procure from the Network Operator Numbers for assignment to SIM Cards and use by the Customer with the Devices; and **3.1.3** connect and activate each SIM Card on to the Wireless Services and to allocate Numbers appropriately to each SIM Card; and **3.1.4** subject to earlier termination of this Agreement, provide the Wireless Services for a period up to and including the Minimum Period of the last Device supplied under this Agreement; and **3.1.5** provide the Mobile Web Service, subject to the Customer: **3.1.5.1** entering into an End-User Licensed Software agreement with the owner of the copyright in the End-User Licensed Software to protect the owner's interest in such software; and **3.1.5.2** agreeing to meet the minimum specifications for handheld PC operating systems and laptop PC operating systems as set out by Total from time to time; and **3.1.5.3** procuring Devices that are approved by Total for use with the Mobile Web Service. Total has a list of Devices (with appropriate software versions) that are approved to access the Mobile Web Wireless Service and these are available on request; **3.1.6** provide the Mobile Extension Wireless Service and/or the GPRS Bearer Wireless Service and/or the SMS Land to Mobile Text Messaging Wireless Service (or any other Wireless Service that Total introduces from time to time that utilises private circuit or virtual private circuit) subject to the Customer procuring a private circuit or virtual private circuit that meets Total's minimum specification from time to time; and **3.1.7** provide any Value Added Wireless Services requested by the Customer. **3.2** Total reserves the right to add to, substitute, or to discontinue any Value Added Service at any time. Total does not guarantee the continuing availability of any particular Value Added Service and (as the Customer acknowledges) may be dependent upon third parties in this respect. **3.3** The Customer agrees not to use the SMS Text Messaging Service for the purpose of marketing or advertising the Customer's or any third party's products or Wireless Services to Device users without the consent of those users. **3.4** The Customer agrees that in using the SMS Text Messaging Service: **3.4.1** each SIM Card is capable of receiving text messages which may originate from a variety of sources; and **3.4.2** Total is acting as a wireless service provider and as such has no knowledge of, involvement with, or liability for the specific content of any text messages sent to the Customer's SIM Cards, which originate from such sources. **3.5** The Customer agrees that in using the SMS Land to Mobile Text Messaging Service: **3.5.1** Total is acting as a wireless service provider and as such has no knowledge of, involvement with, or liability for the specific content of any text messages sent by the Customer using the SMS Land to Mobile Text Messaging Service; and **3.5.2** the Customer will use reasonable endeavours not to use or permit any other person to use the SMS Land to Mobile Text Messaging Service: **3.5.2.1** fraudulently or in connection with a criminal offence; or **3.5.2.2** for the purpose of sending unsolicited text messages; or **3.5.2.3** to send any material which is offensive, abusive, indecent, defamatory, obscene or menacing, a nuisance or a hoax, in breach of any person's intellectual property rights or rights of privacy or is otherwise unlawful; or **3.5.2.4** to cause annoyance, inconvenience or needless anxiety; or **3.5.2.5** other than in accordance with the acceptable use policies of any connected telecommunications networks. **3.6** The Customer shall submit a separate Sales Order for GPRS Bearer to Total, upon acceptance of which Total will commence evaluation of the details submitted in the form of a technical assessment. **3.6.1** Total shall not be obliged to provide GPRS Bearer to the Customer where the Customer is unable or unwilling to make modifications to its infrastructure in order to accommodate GPRS Bearer, in which event Total shall advise the Customer in writing that it is unable to provide GPRS Bearer and such written notice shall terminate the Sales Order. Total shall have no liability to the Customer in respect of such termination. **3.6.2** Following the technical assessment, where Total recommends the Customer to make modifications to its infrastructure in order to accommodate GPRS Bearer then Total will notify the Customer in writing. **3.6.3** If the Customer does not accept all recommendations made pursuant to clause 3.6.2 within 30 days of those recommendations being provided to the Customer by Total, then the Sales Order for GPRS Bearer will terminate and Total shall have no liability to the Customer in respect of such termination. **3.6.4** The Customer may use GPRS Bearer in the configuration devised by Total. Total reserves the right to suspend or terminate GPRS Bearer where the Customer operates GPRS Bearer in a configuration which is not in accordance with the same. **3.7** The Customer shall not be permitted to transfer a SIM Card from the tariff to which that SIM Card was originally connected ("the Original Tariff") except in the following circumstances: **3.7.1** where the Customer wishes to connect that SIM Card to a tariff for which the Line Rental Charges are the same as, or more expensive than, the Original Tariff; or **3.7.2** where the Customer agrees to pay to Total the difference between the Line Rental Charges for the Original Tariff and the Line Rental Charges for the less expensive tariff for the remainder of the Minimum Period for that SIM Card; or **3.7.3** where Total agrees in writing that the SIM Card may be transferred to a tariff with lower Line Rental Charges, subject always to any additional terms which Total may specify and the Customer has accepted; or **3.7.4** at any time after 6 (six) months of the Minimum Period have expired.

**4 Service Standards** **4.1** Total warrants that it will perform its obligations in this Agreement with reasonable skill and care and that: **4.1.1** the Wireless Services will conform in all material respects to the description of the same in the Price List; and **4.1.2** it will keep complete and accurate records of call and billing data so as to ensure accurate billing; and **4.1.3** it will operate the Total Helpdesk during Total's normal business hours. **4.2** The Customer acknowledges that the provision of Airtime is subject to the geographic tent of Airtime coverage and local geography, topography and/or atmospheric conditions and/or other physical or electromagnetic interference that may from time to time adversely affect the provision of the Airtime in terms of line clarity and call interference. **4.3** Total may, where reasonable, from time to time and without notice suspend the Wireless Services and provision of Customer Wireless Services and at its discretion disconnect a SIM Card in any of the following circumstances provided that it shall use reasonable endeavours to restore the Wireless Services and reconnect the SIM Card as soon as reasonably practicable: **4.3.1** during any technical failure, modification or maintenance of the telecommunications systems by which the Wireless Services are provided or access to the Wireless Services is denied to Total for any reason; and/or **4.3.2** if the Customer fails to comply with the terms of this Agreement after being given written notice of its failure (including, but not limited to, failure to pay any sums due hereunder) until such failure to comply is remedied; and/or **4.3.3** if the Customer allows to be done anything which in Total's reasonable opinion may have the effect of jeopardising the operation of the Wireless Services, or the Wireless Services are being used in a manner prejudicial to the interest of the Customer and/or Total and/or the Network Operator; and/or **4.3.4** because of an emergency or upon instruction by emergency services or any government or appropriate authority (including the Network Operator) or for the Customer's own security. **4.4** Total can at its discretion suspend any SIM Card from making calls and disconnect any SIM Card from the Wireless Services if Total has reasonable cause to suspect fraudulent use of the SIM card or the Device, or either are identified as being lost or stolen. **4.5** During any period of suspension arising from the circumstances detailed in paragraphs 4.3.2 to 4.3.4 inclusive, or paragraph 4.4, the Customer shall remain liable for all Charges levied in accordance with this Agreement.

**5 Disconnection of SIM Cards** **5.1** A Disconnection Notice may be given by the Customer in respect of a SIM Card upon or at any time after the expiry of the Minimum Period. **5.2** Upon giving of a Disconnection Notice Total will disconnect the relevant SIM Card or SIM Cards from the Wireless Services in accordance with the Disconnection Notice upon the expiry of 30 days from the date of the Disconnection Notice. **5.3** The Customer will pay to Total any applicable Termination Fee in respect of the SIM Card(s) disconnected.

**6 Billing Arrangements** **6.1** Total shall following the end of each calendar month on the date agreed from time to time, submit to the Customer one or more invoice(s) which shall itemise charges for the Wireless Services. **6.2** All Charges shall be based upon call and billing data recorded by Total on the Total System. The Customer acknowledges that roaming calls may take longer to be billed than other types of calls.

**7 Customer's Obligations** **7.1** The Customer undertakes with Total that throughout the Wireless Service Period it will: **7.1.1** comply with all statutory requirements in relation to the use of the Devices and/or other Mobile Equipment and the Wireless Services; and **7.1.2** provide Total with such information as Total reasonably request in connection with this Agreement; and **7.1.3** not use the SIM Card and/or Devices and/or other Mobile Equipment and the Wireless Services for any purpose other than that for which it was designed or intended; and **7.1.4** notify Total immediately (and confirm in writing) on becoming aware that any Device or SIM Card has been lost or stolen or that any person is making improper or illegal use of the Device, SIM Card or the Wireless Services. The Customer will be responsible for any Charges incurred as a result of unauthorised use of any Device, or SIM Card, or the information contained within a SIM Card, until Total has received a request from the Customer to suspend the Wireless Services to that Device or SIM Card. **7.2** The Customer undertakes with Total that throughout the Wireless Service Period it will: **7.2.1** pay the standard charges levied by Total from time to time applicable to repair work on Mobile Equipment; and **7.2.2** use the Mobile Equipment and any Software (including any End-User Licensed Software) in accordance with any user guide or other reasonable instruction of any manufacturer or supplier of the same or reasonable instruction of Total and not copy, reverse engineer or modify the Software or the End-User Licensed Software in any way save as permitted by law. **7.2.3** not use the Wireless Service to (i) generate artificially inflated traffic, (ii) not use the Wireless Services in a manner which is inconsistent with a reasonable customer's good faith use of the same, and (iii) not use the Wireless Services fraudulently or in connection with a criminal offence or for the purpose of sending unsolicited text messages or any material which is offensive, abusive, indecent, defamatory, obscene or menacing, a nuisance or a hoax or which

breaches any persons intellectual property rights or rights of privacy or is otherwise unlawful. **7.3** The Customer will take all reasonable steps to ensure that all its Device users invoke password protection on their Devices. Total shall not be liable for any losses whatsoever or howsoever occurring as a result of a Device user failing to invoke adequate password protection. The Customer should note, and inform its users, that text messages as well as emails are retained on certain Devices even when the Device is turned off or the SIM Card is removed from it. **7.4** The Customer agrees that it is procuring the SIM Cards and Devices and Wireless Services solely for its and its employees own use and furthermore that it will not resell or otherwise act as any form of distributor in respect of the SIM Card, the Devices, or the Wireless Services nor establish, install or use a GSM Gateway so that telecommunication services are provided via the GSM Gateway to third parties. **7.5** Where the Customer accepts the terms of a licence in respect of any End-User Licensed Software, then those licence terms shall take precedence over any terms within this Agreement relating to End-User Licensed Software and shall exclusively comprise the Customer's sole rights and remedies in respect of such End-User Licensed Software. **7.6** The Customer recognises that the Wireless Services may be dependent upon End-User Licensed Software and if the Customer does not accept the licence terms relating to any End-User Licensed Software, Total shall have no liability whatsoever for any failure to provide the Wireless Service to the Customer where the Wireless Service depends on the use of End-User Licensed Software. **7.7** In the event that a Device and/or other Mobile Equipment or Software is damaged, destroyed, lost or stolen then the Customer agrees to pay the applicable replacement or repair charges as set out from time to time in the Total Price List and shall be liable to Total in respect of any charges, losses or expenses associated with such damage, destruction, loss or theft. **7.8** The Customer may transfer existing number(s) for use in connection with the Wireless Services. The Customer's existing service provider reserves the right to charge a disconnection fee when moving to another network. For the avoidance of doubt, Total has no control over the amount of any such fees imposed by such service provider.

**8 Ownership** Title to, and all intellectual property rights in the Software, associated documents and all parts thereof will be and remain vested in and be the absolute property of the owner of the copyright in the Software or associated documents as appropriate, which owner shall be entitled to enforce any of the terms of this Agreement relating to the Customer's use of that Software, associated documents and all parts thereof, directly against the Customer.

## **BLACKBERRY SERVICES**

**1. Additional Definitions** "BES Software" means the software known as the BlackBerry Enterprise Server Software and which forms part of the End-User Licensed Software for the purposes of this Agreement. "BlackBerry Equipment" means the items supplied by Total to the Customer under this Agreement and includes any Software (but not End-User Licensed Software) and documentation supplied under this Agreement. "BlackBerry Handheld" means the wireless hand held messaging device, incorporating a SIM Card, to which the Customer's Server forwards emails from the Customer's corporate email server and from which the user can respond to, or initiate emails, via the Internet and the BlackBerry Service, and by means of which the user can also send and receive SMS text messages. "BlackBerry Service" means the service, which enables users to send and receive corporate emails by means of their BlackBerry Handhelds, including the BlackBerry Voice Service. "BlackBerry Support Service" means the Wireless Services provided by Total or by third parties on Total's behalf from time to time including, without limitation, the Total Helpdesk, escalation and repair services. "BlackBerry Voice Service" means the service which enables voice calls to be made and received on the BlackBerry Handheld, using a compatible voice headset or voice compatible device. "First Line Support" means the Customer's IT Helpdesk which shall be the Customer's employees' first point of contact in the event that they have a query or problem with a BlackBerry Handheld or the BlackBerry Service. "Group Tariff" means the service which uses certain wireless extension technology and that enables certain BlackBerry Handhelds to operate as part of the Customer's wireless private or virtual private voice network, using the BlackBerry Voice Service. "Minimum Period" means in respect of each SIM Card the term of 12 months from the Commencement Date or the date of supply of each BlackBerry Handheld (whichever is the later). "Mobile Extension" means the service which uses certain wireless extension technology in conjunction with a private circuit or virtual private circuit and that enables certain BlackBerry Handhelds to operate as part of the Customer's wireless private or virtual private voice network, using the BlackBerry Voice Service. "Server" means the server (a Windows NT server) on which the BES Software will operate. "Server specifications" means the specifications, as supplied by Total from time to time, of the computer which the Customer will use as the Server, including any specific Software requirements necessary for the BlackBerry Service. "SMS Text Messaging Service" means the short message service, which enables text messages to be sent

to, and received from, SIM Cards via devices connected to the Wireless Services. "Wireless Service Period" means the period commencing on the Commencement Date during which period the Wireless Services will be provided by Total to the Customer pursuant to this Agreement. "Wireless Services" means the provision by Total to the Customer of Airtime, Equipment, BlackBerry Service, Group Tariff, Mobile Extensions, SMS Text Messaging Service and/or any other Wireless Services, which Total may from time to time provide.

**2 Sale and Purchase of Equipment** **2.1** Total agrees and undertakes: **2.1.1** subject to acceptance by Total of a Sales Order, to sell and supply to the Customer the Wireless Services and BlackBerry Equipment requested in that order under the terms of this Agreement; and **2.1.2** where Total accepts a Sales Order for BlackBerry Equipment, to arrange for any such BlackBerry Equipment to be delivered to the Customer. **2.2** Total will use its reasonable endeavours to ensure that all BlackBerry Equipment when delivered is in full working order and performs in accordance with the manufacturer's description and specification. **2.3** Total warrants that each item of BlackBerry Equipment will conform in all material respects to the manufacturer's specification for a period of 12 months from the date of dispatch of such equipment. If the Customer notifies Total of any defect or fault in the BlackBerry Equipment whereby it fails to conform in all material respects with such specification, Total shall, at Total's option, repair or replace the BlackBerry Equipment. **2.4** Total's obligation to sell and supply BlackBerry Equipment shall cease as and from the date of any Termination Notice, although Total may thereafter sell and supply BlackBerry Equipment to the Customer at its discretion. **2.5** Acceptance of the BlackBerry Equipment by the Customer shall take place when the Customer takes delivery or possession of the BlackBerry Equipment. Title to the same will not pass to the Customer until (i) the date on which all invoices relating to such BlackBerry Equipment have been paid in full and provided that no other sums are overdue to Total from the Customer on any account whatsoever or (ii) where the Customer has a Hardware Account, the date on which the Line Rental Charges per connection specified in the Sales Order for the entire Minimum Period have been paid in full. **2.6** The Customer undertakes not to sell, transfer, lease, charge, assign by way of security or otherwise deal in or, encumber the BlackBerry Equipment in any way until such time as all sums outstanding in respect of the purchase of such items and all other sums due and owing have been paid in full by the Customer. **2.7** Notwithstanding paragraph 2.5 above, risk in the BlackBerry Equipment will pass to the Customer upon delivery and the Customer will be liable for any loss or damage of the same as and from the time when the BlackBerry Equipment is delivered to the delivery location specified in the Sales Order unless the damage is caused by the negligence of Total. **2.8** Total reserves the right to add to, substitute, or to discontinue any item of BlackBerry Equipment at any time. Total does not guarantee the continuing availability of any particular item of BlackBerry Equipment and (as the Customer acknowledges) may be dependent upon third parties in this respect.

**3 Provision of Airtime and Wireless Services** **3.1** Total agrees and undertakes that it will as and from the Commencement Date and throughout the Wireless Service Period use its reasonable endeavours to: **3.1.1** procure from the Network Operator Airtime on a 24 hour per day 365 days per year basis; and **3.1.2** procure from the Network Operator Numbers for assignment to SIM Cards and use by the Customer with the BlackBerry Handhelds; and **3.1.3** connect and activate each SIM Card on to the Wireless Services and allocate Numbers appropriately to each SIM Card; and **3.1.4** subject to earlier termination of this Agreement, provide the BlackBerry Service and the BlackBerry Support Service; and **3.1.5** provide the Group Tariff service (if so requested by the Customer) provided always that (i) the minimum number of SIM Cards to be connected to the Group Tariff service shall not be less than five (5); and (ii) the Customer's own BlackBerry Equipment, network, switch and software is suitable for the Group Tariff service; and (iii) the Customer provides all reasonable assistance and information promptly to Total to enable it to provide and configure the Group Tariff service; and **3.1.6** provide any Value Added Wireless Services requested by the Customer. **3.2** Total reserves the right to add to, substitute, or to discontinue any Value Added Service at any time. Total does not guarantee the continuing availability of any particular Value Added Service and (as the Customer acknowledges) may be dependent upon third parties in this respect. **3.3** The Customer agrees not to use the SMS Text Messaging Service for the purpose of marketing or advertising the Customer's or any third party's products or Wireless Services to BlackBerry Handheld users without the consent of those users. **3.4** The Customer agrees that in using the SMS Text Messaging Service: **3.4.1** each SIM Card is capable of receiving text messages which may originate from a variety of sources; and **3.4.2** Total is acting as a wireless service provider and as such has no knowledge of, involvement with, or liability for the specific content of any text messages sent to the Customer's SIM Cards, which originate from such sources. **3.5** Provision of BES Software patches, and upgrades to the BES Software are subject to additional charges from time to time and will be invoiced together with all other Charges in accordance with Clause 4 of Part A of this Agreement. Any modifications, improvements, enhancements, updates,

upgrades, new releases or new versions of End-User Licensed Software are subject to the provisions of paragraph 7.11. **3.6** Some elements of the BlackBerry Support Service may be carried out by third parties on Total's behalf from time to time. In such instances the support provided shall be subject to the terms and conditions imposed by such third parties from time to time.

**4 Service Standards** **4.1** Total warrants that it will perform its obligations in this Agreement with reasonable skill and care. **4.2** The Customer acknowledges that the provision of Airtime is subject to the geographic tent of Airtime coverage and local geography, topography and/or atmospheric conditions and/or other physical or electromagnetic interference that may from time to time adversely affect the provision of the Airtime in terms of line clarity and call interference. **4.3** Total may, where reasonable, from time to time and without notice suspend the Wireless Services and provision of customer Wireless Services and at its discretion disconnect a SIM Card in any of the following circumstances provided that it shall use reasonable endeavours to restore the Wireless Services and reconnect the SIM Card as soon as reasonably practicable: **4.3.1** during any technical failure, modification or maintenance of the telecommunications systems by which the Wireless Services are provided or access to the Wireless Services is denied to Total for any reason; and/or **4.3.2** if the Customer fails to comply with the terms of this Agreement after being given written notice of its failure (including, but not limited to, failure to pay any sums due hereunder) until such failure to comply is remedied; and/or **4.3.3** if the Customer allows to be done anything which in Total's reasonable opinion may have the effect of jeopardising the operation of the Wireless Services, or the Wireless Services are being used in a manner prejudicial to the interests of the Customer and/or Total; and/or **4.3.4** because of an emergency or upon instruction by emergency services or any government or appropriate authority (including the Network Operator) or for the Customer's own security. **4.4** Total may at its discretion suspend any SIM Card from making calls and disconnect any SIM Card from the Wireless Services if Total has reasonable cause to suspect fraudulent use of the SIM card or the BlackBerry Handheld, or either are identified as being lost or stolen. **4.5** During any period of suspension arising from the circumstances detailed in paragraphs 4.3.2 to 4.3.4 inclusive, or paragraph 4.4, the Customer shall remain liable for all Charges levied in accordance with this Agreement.

**5 Disconnection of SIM Cards** **5.1** A Disconnection Notice may be given by the Customer in respect of a SIM Card upon or at any time after the expiry of the Minimum Period. **5.2** Upon giving of a Disconnection Notice Total will disconnect the relevant SIM Card or SIM Cards from the Wireless Services in accordance with the Disconnection Notice upon the expiry of 30 days from the date of the Disconnection Notice. **5.3** The Customer will pay to Total any applicable Termination Fee in respect of the SIM Card(s) disconnected.

**6 Billing Arrangements** **6.1** Total shall following the end of each calendar month on the date agreed from time to time, submit to the Customer one or more invoice(s) which shall itemise Charges for the Wireless Services. **6.2** All Charges shall be based upon call and billing data recorded by Total on the Total System. The Customer acknowledges that roaming calls may take longer to be billed than other types of calls.

**7 Customer's Obligations** **7.1** The Customer undertakes with Total that throughout the Wireless Service Period it will: **7.1.1** comply with all applicable laws and statutory requirements in relation to the use of the BlackBerry Handhelds and/or other BlackBerry Equipment and the Wireless Services. The Customer shall be responsible, as licensee of the End-User Licensed Software for any encryption of information between the Customer's BES Software and the BlackBerry Handheld devices. The Customer shall accept responsibility for the provision, when properly required, of unencrypted information to the relevant authorities in accordance with European community legislation and/or regulations and United Kingdom legislation. In the event that changes in legislation impose a requirement on Total to provide such unencrypted information, the Customer shall provide Total, promptly or in accordance with any statutory timescales, with the unencrypted information in order for Total to forward it to the relevant authority; **7.1.2** notify Total immediately (and to confirm in writing within 48 hours) on becoming aware that any BlackBerry Handheld device or SIM Card has been lost, damaged or stolen or that any person is making improper or illegal use of the BlackBerry Handheld, SIM Card or the Wireless Services. The Customer will be responsible for any Charges incurred as a result of unauthorised use of any BlackBerry Handheld, or SIM Card, or the information contained within a SIM Card, until Total has received a request from the Customer to suspend the Wireless Services to that BlackBerry Handheld or SIM Card. **7.1.3** not use the Wireless Service to (i) generate artificially inflated traffic, (ii) not use the Wireless Services in a manner which is inconsistent with a reasonable customer's good faith use of the same, and (iii) not use the Wireless Services fraudulently

or in connection with a criminal offence or for the purpose of sending unsolicited text messages or any material which is offensive, abusive, indecent, defamatory, obscene or menacing, a nuisance or a hoax or which breaches any persons intellectual property rights or rights of privacy or is otherwise unlawful. **7.2** The Customer undertakes with Total that throughout the Wireless Service Period it will use the BlackBerry Equipment and any Software (including any End-User Licensed Software) in accordance with any user guide or other reasonable instruction of any manufacturer or supplier of the same or reasonable instruction of Total and not copy, reverse engineer or modify the Software or the End-User Licensed Software in any way save as permitted by law. **7.3** The Customer shall be responsible for: (a) procuring and commissioning the Server in accordance with the Server specifications; and (b) installing the BES Software; and (c) Provision of suitably qualified IT personnel who have a full working knowledge of the Customer's corporate email system and firewalls; and (d) configuration of the BES Software for each BlackBerry Handheld; and (e) ensuring that any of its staff who will provide First Line Support have received appropriate training; and (f) provision of First Line Support for BlackBerry Handheld users; and (g) provision of any necessary training for BlackBerry Handheld users; and (h) Integration of the Customer's email accounts with the BlackBerry Service, including but not limited to resolving any issues arising from the interface with the Customer's email internet service provider and/or Customer's IT infrastructure and policy. **7.4** The BES Software shall be loaded onto the Server by the Customer and is intended to support a maximum of 2000 BlackBerry Handheld users. However in certain circumstances, dependent upon the Customer's IT infrastructure, the Customer may require multiple Servers each with BES Software and fewer than 2000 BlackBerry Handheld users attached to an individual Server. The Customer agrees to introduce additional Servers to ensure that the number of BlackBerry Handheld users attached to an individual Server does not exceed 2000. Total shall have no liability whatsoever in respect of the Customer's inability to properly communicate with any BlackBerry Handheld resulting from the Customer exceeding 2000 BlackBerry Handheld users on a single Server. **7.5** The Customer shall ensure that: (a) there is sufficient bandwidth between the Customer's network and the Internet to permit emails from the Server or Servers to be successfully transmitted from the Customer's corporate network to the Internet; and (b) it takes due regard of any written technical advice provided by Total in respect of transmission of emails to the Internet; and (c) its corporate email system presents the information to the Server in the appropriate format. **7.6** The Customer recognises that if it uses software packages or applications other than those approved by Total for use with a BlackBerry Handheld device or the Server, Total shall have no liability whatsoever for any failure of the BlackBerry Service resulting from the use of such software packages or applications by the Customer. **7.7** The Customer agrees that it will deactivate any lost, stolen or replaced BlackBerry Handhelds from the Server. **7.8** The Customer shall use the returns process as detailed by Total to the Customer from time to time for returns of all damaged/faulty BlackBerry Handhelds and/or other BlackBerry Equipment. **7.9** The Customer shall take all reasonable steps to ensure that all its BlackBerry Handheld users invoke password protection on their BlackBerry Handhelds. Total shall not be liable for any losses whatsoever or howsoever occurring as a result of a BlackBerry Handheld user failing to invoke adequate password protection. The Customer should note, and shall inform its users, that text messages as well as emails are retained on a BlackBerry Handheld even when it is turned off or the SIM Card is removed from it. **7.10** The Customer agrees that it is procuring the SIM Cards, BlackBerry Handhelds and the BlackBerry Service solely for its own use and furthermore that it will not resell or otherwise act as any form of distributor in respect of the SIM Cards, BlackBerry Handhelds, the BES Software or the BlackBerry Service. **7.11** The Customer agrees to enter into any agreement reasonably required by the owner of the copyright in, or the licensor of, any End-User Licensed Software and/or associated documentation, to protect the owner's interest in that End-User Licensed Software and/or associated documentation. **7.12** In the event that a BlackBerry Handheld and/or other BlackBerry Equipment or Software is damaged, destroyed, lost or stolen then the Customer agrees to pay the applicable replacement or repair charges to Total, as determined by Total from time to time. **7.13** The Customer may transfer existing number(s) for use in connection with the BlackBerry Service. The Customer's existing service provider reserves the right to a disconnection fee when moving to another network. For the avoidance of doubt, Total has no control over the amount of any such fees imposed by such service provider.

**8 Intellectual Property Rights** Title to, and all intellectual property rights in the Software, associated documents and all parts thereof will be and remain vested in and be the absolute property of the owner of the copyright in the Software.

## **INDIRECT ACCESS/LEAST COST ROUTING SERVICES**

**1 Additional Definitions** “Centrex” means a central office exchange service whereby the Customer’s telephone facilities are owned and operated centrally by a telecommunications provider. “CLI” means calling line identity. “Indirect Access Service” means the carrier pre-selection service provided by the System Operator. “Indirect Access Service Period” means the period from the Commencement Date until the date of termination of the Indirect Access Service Period. “Indirect Access Support Service” means Total’s helpdesk for customers. “Minimum Period” means the minimum period stated in the Sales Order during which Total shall provide the Indirect Access Service and the Indirect Access Support Service to the Customer. “PBX” means a private branch exchange or network used by the Customer for making and receiving telephone calls which are external to such exchange. “System Operator” means the network operator or such other operator designated by Total from time to time.

**2 Supply of Services** Total agrees and undertakes, subject to acceptance by Total of a Sales Order, that it will as and from the Commencement Date, use its reasonable endeavours to provide the Indirect Access Service and Indirect Access Support Service.

**3 Service Standards** **3.1** Total warrants that it will perform its obligations in this Agreement with reasonable skill and care. Total cannot however guarantee that the Indirect Access Service will be free of faults or interruptions or be secure to the extent that the Indirect Access Service may be affected by things Total cannot control including without limitation network capacity, physical obstructions or atmospheric conditions. **3.2** Total may, where reasonable, from time to time and without notice or any liability whatsoever, suspend the Indirect Access Service and at its discretion disconnect the same in any of the following circumstances: **3.2.1** during any technical failure, modification or maintenance of the telecommunications systems by which the Indirect Access Services are provided or access to the same is denied to Total for any reason; and/or **3.2.2** if the Customer fails to comply with the terms of this Agreement after being given written notice of such failure (including, but not limited to, failure to pay any sums due hereunder or the fraudulent use of the Indirect Access Service) until such failure to comply is remedied; and/or **3.2.3** if the Customer allows to be done anything which in Total’s reasonable opinion may have the effect of jeopardising the operation of the Indirect Access Service, or the Indirect Access Service is used in a manner prejudicial to the interests of the Customer and/or Total; and/or **3.2.4** because of an emergency or upon instruction by emergency services or any government or appropriate authority (including the System Operator) or for the Customer’s own security. **3.3** During any period of suspension arising from the circumstances detailed in paragraphs 3.2.1 to 3.2.4 inclusive, the Customer shall remain liable for all Charges levied in accordance with this Agreement and the Customer shall reimburse Total for all reasonable costs and expenses incurred by the implementation of such suspension and/or the commencement of the provision of the Indirect Access Services but only where such suspension was implemented as a result of a breach, fault or omission of the Customer.

**4 Billing Arrangements** **4.1** Total shall following the end of each calendar month on the date agreed from time to time, submit to the Customer one or more invoice(s) which shall itemise the Charges for the Indirect Access Service. **4.2** All Charges shall be based upon call and billing data recorded by Total on the Total System.

**5 Customer Obligations** **5.1** The Customer shall, prior to and throughout the Indirect Access Service Period: **5.1.1** maintain a British Telecommunications plc (“BT”) exchange line; **5.1.2** programme and maintain its PBX to ensure that it recognises that all outgoing calls are routed via the System Operator’s network, using BT’s exchange lines; and **5.1.3** notify Total of any change to, or software upgrade of its exchange line with BT. **5.2** Where the Customer operates under a Centrex, the Customer must notify BT of its order for the Indirect Access Service and request that the same is provided on its exchange lines for the relevant CLIs. **5.3** The Customer undertakes with Total that throughout the Indirect Access Service Period it will use its reasonable endeavours to: **5.3.1** comply with all statutory requirements in relation to the use of the Indirect Access Service. The Customer shall reimburse Total in respect of any costs, liabilities or expenses incurred by Total for any failure to so comply; **5.3.2** comply with the reasonable directions of Total or the System Operator from time to time; **5.3.3** provide Total with such information as Total reasonably request in connection with this Agreement; **5.3.4** notify Total immediately (and to confirm in writing) on becoming aware that any person is making improper, fraudulent or illegal use of the Indirect Access Services. The Customer will be responsible for any Charges incurred as a result of unauthorised use of the Indirect Access Services; and **5.3.5** maintain its telecommunications apparatus at all times during the Indirect Access Service Period in good working order. **5.4** The Customer shall permit Total reasonable access to its

premises in order for Total or its agents to undertake any work necessary in order to enable the Customer to access the Indirect Access Service.

**6 Termination** **6.1** A Disconnection Notice may be given by the Customer in respect of the Indirect Access Service upon or at any time after the expiry of the Minimum Period. **6.2** Upon giving of a Disconnection Notice Total will disconnect the Indirect Access Services and, if applicable, stop providing any Indirect Access Support Services in accordance with the Disconnection Notice upon the expiry of 30 days from the date of the Disconnection Notice. **6.3** The Customer will pay to Total any applicable Termination Fee in respect of the disconnection of the Indirect Access Services **6.4** In the event that the Customer serves a Disconnection Notice during the Minimum Period, the Customer shall be liable to pay the Minimum Value for the remainder of the Minimum Period. "Minimum Value" for the purposes of this paragraph 6.4 shall mean the sums forecast by Total to be incurred by the Customer during the remainder of the Minimum Period (having regard to the premium average billing from Total for the Indirect Access Services in the six months prior to termination (or such shorter period if the Indirect Access Services have been supplied to the Customer for a lesser period)) less 15% for early receipt of such sums by Total. **6.5** All sums payable under this paragraph 6 shall be invoiced in one amount and be due and payable within 7 days of the date of such invoice.

## **ANALOGUE AND DIGITAL LINE SERVICES**

**1 Additional Definitions** "Access Service" means procuring the following services from the Line Operator: (i) analogue direct exchange lines and calls, being: (a) Residential Single Lines; (b) Business Single Lines; (c) Business Multi Lines; and (ii) digital ISDN services, being: (a) the Basic Service; and (b) the ISDN30 Service. "Access Service Period" means the period from the Commencement Date until the date of disconnection of the Access Service(s). "Access Support Service" means the exchange line fault placement, testing and tracking service operated by Total from time to time in conjunction with the Line Operator and details of which are available on request from Total. "Basic Service" means a basic level ISDN service for single residential and business users. "Business Line" means a single exchange line charged at the business tariff as set out in the Price List. "CLI" means the calling line identity. "ISDN" means integrated services digital network. "ISDN30 Service" means a high speed ISDN service for multiple users (up to a maximum of 30). "ISDN30 Termination Fee" means the Charges for the period from the date of disconnection of the ISDN30 Service to the end of the Minimum Period. "ISDN Services" means the Basic Service and the ISDN30 Service. "Line Operator" means British Telecommunications plc. "Minimum Period" means the minimum period (including any ISDN Minimum Period) specified in the Sales Order. "Nuisance Calls" means an unwanted call which causes annoyance to the Customer and/or is of an offensive, spiteful, abusive, indecent, defamatory, obscene, or menacing nature. "Number" means the telephone number allocated to Total by the Line Operator and in turn allocated by Total to the relevant Customer exchange line(s). "Phone Book" means the phone book published by the Line Operator from time to time. "Power Dialler" means a device that provides the rapid automatic dialling of telephone numbers and is also known as automatic calling equipment. "Residential Line" means a single exchange line charged at the residential tariff as set out in the Price List.

**2 Supply of Services** **2.1** Total agrees and undertakes that, subject to acceptance by Total of a Sales Order, it will as and from the Commencement Date use its reasonable endeavours to provide (i) the Access Service requested by the Customer, and (ii) the Access Support Service for the Minimum Period and thereafter until terminated by either party in accordance with this Agreement. **2.2** The Customer may give a Disconnection Notice to take effect upon or at any time after the expiry of the Minimum Period. The Customer will pay to Total any applicable Termination Fee in connection with such disconnection. **2.3** In the event that the Customer serves a Disconnection Notice during the Minimum Period, the Customer shall be liable to pay the Minimum Value for the remainder of the Minimum Period. "Minimum Value" for the purposes of this paragraph 2.3 shall mean the sums forecast by Total to be incurred by the Customer during the remainder of the Minimum less 15% for early receipt of such sums by Total. All sums payable under this paragraph 2 shall be invoiced in one amount and be due and payable within 7 days of the date of such invoice. **2.4** The ISDN30 Service is provided with a minimum of 8 channels. Additional channels can be provided by Total as detailed in the Price List. The maximum capacity of each bearer is 30 channels. When a bearer is full and additional channels are required a new bearer will be required. There is no minimum number of channels for second or subsequent bearers. **2.5** Any Number is provided for the duration of this Agreement. The Number may not be sold by the Customer and may only be transferred with the consent of the Line Operator. **2.6** An engineering visit or Customer site survey may be required in order to establish what work, if any, is required to enable the Access Services to be supplied to the

Customer. This, together with any resulting installation work, will be carried out by the Line Operator and additional charges (as determined by the Line Operator from time to time) will be payable by the Customer to the Line Operator.

**3 Service Standards** **3.1** Total warrants that it will perform its obligations in this terms Agreement with reasonable skill and care. Total cannot however, guarantee that the Access Service(s) will be free of faults or interruptions or be secure to the extent that the Access Service(s) may be affected by things Total cannot control including, without limitation network capacity, physical obstructions or atmospheric conditions. **3.2** Total may, where reasonable, from time to time and without notice or any liability whatsoever, suspend the Access Service and at its discretion disconnect the same in any of the following circumstances: **3.2.1** during any technical failure, modification or maintenance of the telecommunications systems by which the Access Services are provided or access to the same is denied to Total for any reason; and/or **3.2.2** if the Customer fails to comply with the terms of this Agreement after being given written notice of its failure (including, but not limited to, failure to pay any sums due hereunder or the fraudulent or criminal use of the Access Service) until such failure to comply is remedied; and/or **3.2.3** if the Customer makes any offensive, indecent, menacing, nuisance or hoax calls using the Access Service; and/or **3.2.4** if the Customer allows to be done anything which in Total's reasonable opinion may have the effect of jeopardising the operation of the Access Service, or the Access Service is used in a manner prejudicial to the interest of the Customer and/or Total; and/or **3.2.5** because of an emergency or upon instruction by emergency services or any government or appropriate authority (including the Line Operator) or for the Customer's own security. **3.2.6** During any period of suspension arising from the circumstances detailed in this paragraph 3, the Customer shall remain liable for all Charges payable in accordance with this Agreement and the Customer shall reimburse Total for all reasonable costs and expenses incurred by the implementation of such suspension and/or the recommencement of the provisions of the Access Service(s) but only where such suspension was implemented as a result of a breach, fault or omission of the Customer. **3.3** Total shall provide assistance to the Customer in respect of Nuisance Calls. This will be as follows: **3.3.1** trying to identify the probable cause of and actions that can be adopted to deter Nuisance Calls; **3.3.2** recommending how to register on a preference list to exclude the Customer's Number from calling lists; **3.3.3** if Total is aware that the Nuisance Call is being made by a Power Dialler CLI, request on behalf of the Customer the removal of the Customer from the relevant Power Dialler calling lists; and/or **3.3.4** request from the Line Operator certain call barring, blocking or renumbering services. **3.4** The Customer acknowledges and agrees that various technical limitations (which may be apparent upon installation of the Access Service or thereafter) may apply to the provision of the Access Service, including, without limitation, the following: **3.4.1** that certain Line Operator services may be incompatible with the Access Services; and/or **3.4.2** that the performance of some Customer equipment may be affected by the Access Services.

**4 Customer Obligations** **4.1** The Customer shall permit Total, the Line Operator and their appointed agents reasonable access to its premises and the Customer shall obtain all necessary consents in order for the same to undertake any work to enable the Customer to use the Access Service. The Customer shall also ensure that its site is a safe working environment for such persons' work. **4.2** The Customer consents to Total supplying all necessary details of the Customer to the Line Operator for the purposes of Phone Book entries. **4.3** The Customer undertakes with Total that throughout the Access Service Period it will use its reasonable endeavours to: **4.3.1** comply with all statutory requirements in relation to the use of the Access Service. The Customer shall reimburse Total in respect of any costs, liabilities or expenses incurred by Total for any failure to so comply; **4.3.2** comply with the reasonable directions of Total or the Line Operator from time to time; **4.3.3** provide Total with such information as Total reasonably request in connection with this Agreement; and **4.3.4** notify Total immediately (and to confirm in writing) on becoming aware that any person is making improper, fraudulent or illegal use of the Access Services. **4.4** The Customer shall not, during the Access Service Period, (i) knowingly receive, upload, download, use or re-use material which is abusive, indecent, defamatory, obscene or menacing, or in breach of copyright, privacy or any other rights, or (ii) make any offensive, indecent, menacing, nuisance or hoax calls. **4.5** The Customer shall maintain its telecommunications apparatus at all times during the Access Service Period in good working order.

## TELEPHONE SYSTEM MAINTENANCE

**1 THE CUSTOMER AGREES:-** (a) To pay the maintenance charges in the schedule (the "Maintenance Charges") in all circumstances and in full to Total Limited ("Total") in consideration for Total carrying out the maintenance services described herein (the "Maintenance Services"). If at any time should the whole or any part of the Maintenance Charges be in arrears for more than twenty eight days from the invoice date then Total shall be entitled to suspend all Maintenance Services hereunder until such payment is received. (b) Where the Customer's equipment ("Equipment") is connected to the Line Operator's apparatus, such Equipment must comply with the Line Operator's specifications and requirements. Where any additional Line Operator's equipment is specifically required for the Customer's purpose and the operation of the Equipment, such equipment shall be procured by Total at the Customer's expense. (c) To orally notify Total immediately of any fault in the Equipment or any repair which may be necessary, (such notification to be confirmed in writing) and to provide Total at all reasonable times with access to the Equipment and allow Total to carry out all necessary Maintenance Services under the terms of this Agreement. (d) Not to maintain, service, repair, adjust, tamper or alter the Equipment or any extension wiring used or installed in conjunction with the Equipment (the "Extension Wiring"). In the event of the Customer requiring any alterations to the Equipment or Extension Wiring the Customer must give Total fourteen days prior written notice. In the event that any alterations to the Equipment and/or the Extension Wiring be affected by an agent not appointed by Total, the Customer shall allow Total the right to inspect that work. Such work must be carried out in accordance with Total's current "code of practice" from time to time in relation to such work. Should Total deem that this work is unsatisfactory the Customer shall or shall procure to remedy the defect within fourteen days of Total's inspection or pay Total's charges for effecting the remedy. Any breach of this condition may result in this Agreement being terminated by Total, if Total so desires, and all payments due for the outstanding term of the Agreement will become immediately payable in such circumstances. (e) To pay the charge for the reprogramming and or service visits as a result of any programming error effected by the Customer. (f) Not to assign the benefit of this Agreement without the prior written consent of Total. (g) In the event of a modem being provided by Total, the modem shall remain on the site for the duration of this Agreement and shall remain the property of Total. If at any time this Agreement is terminated, the Customer shall immediately return such modem to Total and/or Total shall have a full right of access to the Customer's premises to recover the modem. (h) Ensure that the Equipment is cared for in accordance with manufacturer's recommendations. (i) Take all reasonable precautions to protect the health and safety of personnel provided under this Agreement. (j) If the Customer fails to observe any provisions of this Agreement, Total may terminate with immediate effect by giving the Customer written notice.

**2** This Agreement shall start on the commencement date specified overleaf (the "Commencement Date") and shall continue for a minimum period of one year from the Commencement Date or as otherwise set out in the Sales Order (the "Minimum Period") and shall thereafter continue for further periods of one year unless and until terminated by either party on a minimum of 90 days notice. If the Agreement is cancelled by the Customer prior to the expiry of the Minimum Period, the remainder of the outstanding payments for that period will immediately be due and payable to Total.

**3 Total AGREES:-** (a) To maintain the Equipment and carry out the Maintenance Services at the installation address in the schedule (or such other address may be agreed in writing by Total) in efficient working order and during the continuance of this Agreement to execute by its servants or agents without charge all repairs and replacements to the Equipment necessitated by fair wear and tear or faulty workmanship and or faulty materials, provided that the Customer shall have duly notified Total of such fault or necessary repair in accordance with Condition 1 (c) hereof. For the avoidance of doubt, Total (without prejudice to the terms and conditions of this Agreement or the Customer's liability for payment of the Maintenance Charges) shall not be obliged to service the Equipment and provide the Maintenance Services if all or any part of the Maintenance Charges is/are overdue. (b) At the additional expense of the Customer to provide the Maintenance Services where failure of the Equipment is subsequently found to be due to (i) the incorrect operation of the Equipment, or (ii) failure of a Line Operator's equipment and or host PBX systems, or (iii) failure of an electricity supply service, or (iv) if any person not authorised by Total and/or the Customer shall have tampered with or otherwise operated the Equipment. (c) At the request and additional expense of the Customer i) To carry out any alterations to the Equipment or Extension Wiring in accordance with Total's current "code of practice" from time to time in relation to such work; ii) Upon receipt of fourteen days notice to allow the Customer's appointed agents to carry out alterations to the Equipment or Extension Wiring. Such alterations or extensions are to be carried out in accordance with Total's current "code of practice" from time to time in relation to such work. Total reserves the right to inspect such work and if

found to be unsatisfactory to remedy the defect within fourteen days of the inspection. (d) At the request and expense of the Customer to move the Equipment to an alternative premises where in the reasonable opinion of Total suitable service reception facilities exist (provided always that the Equipment does not thereby pass out of the possession or control of the Customer). (e) During the term of this Agreement, in consideration of the payment of the Maintenance Charges, Total shall as soon as is reasonably practical after notification in accordance with Condition 1 above, provide a maintenance engineer to carry out during its normal business hours any maintenance of and repairs and replacements to the Equipment that may be reasonably requested by the Customer and shall carry out free of any charge any maintenance repairs and replacements (including provision of any necessary materials and spare parts, associated wiring and reprogramming of software which is not accessible to the Customer through normal operating procedures) as shall be reasonably necessary as a result of fair wear and tear arising from the proper installation and operation of the Equipment. Any maintenance, repairs or replacements or Customer visits caused otherwise than by wear and tear arising from the proper operation of the Equipment or telecommunications network may be carried out at the Customer's additional expense at Total's current scale of charges. All maintenance, repairs or replacements may be carried out at the premises where the Equipment is installed or elsewhere at Total's discretion.

**4 EXCLUSIONS** Unless specifically provided under this Agreement, the Maintenance Services do not include: (a) Electrical work external to the Equipment such as power supply or maintenance of accessories, attachments, machines or other devices not furnished by Total. (b) Repair or damage resulting from accident, transportation, neglect or misuse, failure of electrical power, lightning strike or other electrical interference. (c) Furnishing supplies or accessories, painting or refinishing purchased Equipment or furnishing material therefore making specification changes, or performing services connected with relocation of the Equipment, or adding or removing accessories, attachments or other devices. (d) If the Customer or persons other than Total's field service engineers shall perform maintenance or repair the Equipment, and as a result, Total's field service engineers are required to restore the Equipment to good operating condition, such work will be carried out at Total's then applicable time and material rates and terms. (e) Repair of wiring external to the Equipment cabinets and enclosures. (f) Battery maintenance or replacement of batteries or individual cells. (g) Maintenance on any two wire devices, unless specified in any Equipment list. (h) Rectification of lost or corrupted data arising from the carrying out of the Maintenance Services.

**5 EQUIPMENT CHANGES** Changing of Equipment specification, attachments or features may result in adjustment of the Charges. All changes must be notified to Total as soon as is reasonably practicable and in any event within 7 days of the change taking place.

**6 DESCRIPTION OF PRIORITIES** Priority 1 = Complete System Failure, Failure to gain access to incoming and outgoing calls, Drop Out on call. Priority 2 = System still functions but at less than 100% of its capacity.

**7 LIMITATION OF LIABILITY – ADDITIONAL PROVISIONS** (a) Total accept liability for direct physical damage to property on the Customer's premises where the Equipment is installed only, where this is caused by the negligence of Total or its employees or agents (subject to a maximum limit of £3,000,000) and provided that Total shall under no circumstances be liable for any loss of business or profit or for any other consequential loss or damage arising from such damage. (b) Total is not liable for the failure of any alarms or ancillary equipment attached but not part of the Equipment if such equipment should fail as a result of the failure of the Equipment or the carrying out of the Maintenance Services. (c) Total is not liable for the loss of computer data as a result of failure or interference of the Equipment supplied or maintained by Total or due to the carrying out of the Maintenance Services .