



TERMS AND CONDITIONS OF BUSINESS

These terms and conditions of business shall apply to this Agreement (subject to the terms and conditions of the Order Form to which these terms and conditions of business are attached) and shall supersede all other terms and conditions of business existing between the parties. Any quotation or printed or standard conditions that appear or are referred to elsewhere are to have no legal effect whatsoever.

DEFINITIONS

In this Agreement:

"Agreement" means these terms and conditions and the Order Form which incorporates them;

"Access Point Name (APN)" means the name of a gateway between a GPRS, 3G or 4G mobile network and another computer network, either private or the public internet. All SIMs are configured with an Arkessa private APN as well as the Mobile Network Operator's public APN as standard.

"Business Day" means any day which is not a Saturday, Sunday or Public Holiday in England and Wales;

"Call-off date" means the date by which the SIM cards detailed under the Committed or Target will be delivered to you.

"Charges" means all the charges associated with the Service described in the Order Form;

"Committed" means the number of SIM Cards which will be ordered by you on or before the Call-Off date.

"Data Alert" means a service provided by us which is designed to alert you when the amount of data used by a SIM Card has reached a predefined level.

"Data Cap" means a service provided by us which is intended to prevent further data being passed to or from the SIM Card when a pre-defined level reached. "Disconnect" means to permanently terminate a SIM's access to the Network which will bring the Services to an end and the terms "Disconnected" and "Disconnection" shall be construed accordingly.

"GPRS" means General Packet Radio Service;

"HSPA" means High Speed Packet Access;

"Location Service" means the corporate passive location services provided by us pursuant to the terms of clause 7 of these terms and conditions which allow a SIM Card to be physically located by a third party.

"Network" means a public switched telephone network and/or a wireless telegraphy link by means of a cellular radio system operated by the Network Operator;

"Network Operator(s)" means any of, 3, O2 Telefonica, T-Mobile, Vodafone or Orange or such other companies from time to time which operate a Network on Arkessa's behalf for communication purposes;

"Order Form" means the order form signed by you and us incorporating these terms and conditions;

"the Parties" means collectively Arkessa and the customer whose details appear on the Order Form;

"Product(s)" means a SIM Card and/or any accessory that is sold ancillary thereto;

"Roaming" means a service which allows you to use a SIM Card on other Network Operators Networks, usually in a foreign country;

"Service(s)" means all or part of a communications facility provided by us through a Network Operator with the capacity to send and receive data by means of a Network accessible through a SIM Card, Location Services and the provision of appropriate Software from time to time to include the Data Alert and Data Cap services (if applicable);

"SIM Card" means the Subscriber Identity Module containing data (including your identity) which has been supplied to you by us with the connectivity specified in the Order Form (including fixed IP addressing where necessary);

"Software" means any software made available to you by us in providing you with the Services to include (but not limited to) access to web portals and virtual private networks, or any software that we or any third party contractor working on our behalf might be asked to produce for you in connection with the Services.

"Suspend" means to disable the SIM card from accessing Services and the terms "Suspended" and "Suspension" shall be construed accordingly. Monthly Service Charges will still apply;

"Target" means the number of SIM cards which you will use your best endeavours to order before the Call-off date.

"UMTS" means Universal Mobile Telecommunications System;

"we", "us" and "our" means Arkessa Limited, a company incorporated in England (Registered Number 06917673, VAT number GB978 7148 55), having its registered office at Salisbury House, Station Road, Cambridge CB1 2LA; and



"you" and "your" means the customer on whose behalf the Order Form is signed.

1. PROVISION OF SERVICE

- 1.1 It is expressly agreed that the Services and the SIM Card(s) supplied and the rights granted pursuant to this Agreement are supplied subject to the terms and conditions of this Agreement. No terms of any purchase order or other document submitted by you will have contractual effect unless we agree in writing to vary this Agreement.
- 1.2 We will use all reasonable endeavours to ensure that the Service is made available to you in the locations and for the duration of the periods set out on the Order Form but you agree and acknowledge that the ability to use the Service depends on the availability of suitable Network Operators.
- 1.3 We will use reasonable skill and care in providing the Service but you acknowledge that the Service is not fault free and it may be impaired by factors outside of our control such as (but at no time limited to) excessive Network traffic, geographical, topographical, atmospheric, or other conditions (including buildings, underpasses and other causes of interference), radio interference and you should ensure that you have appropriate contingency plans in place.
- 1.4 The Service may be used by you to transmit data to databases, web sites, resources and/or networks worldwide. We accept no responsibility for the content, services or otherwise in respect of these. It is your responsibility to take such precautions as you consider appropriate to protect data from viruses and other harmful executables.
- 1.5 Where you use the SIM Card with any other equipment not provided by us, you acknowledge that you have carried out your own investigations as to the suitability of the SIM Card for the purpose for which it is required, particularly in relation to its compatibility with any of your own equipment. You agree that we shall not be responsible for any faults, errors, interruptions, disruptions or any other problems in relation to the Services that are caused either directly or indirectly as a consequence of the use of your own equipment with the SIM Card.
- 1.6 You acknowledge that we have not made any representations to you and nor have we given any warranties as to the suitability of the Services or the Products sold under this Agreement.
- 1.7 Where a Fair Use Policy applies and your use of the Services exceeds the Fair Use Policy indicated to you then we may contact you in order to request that you moderate your use of these Services. If, even after we have contacted you, the Fair Use Policy is still breached by you, then we reserve our right to Suspend your access to these Services (or restrict your bandwidth/and / or data consumption) and / or require you to move your access to these Services to a service Plan more appropriate to your use in which case you agree to meet all reasonable costs that we might incur. We do not permit use of this service for internet phone calls.
- 1.8 We shall exercise all reasonable efforts to ensure the security of your communications over the Network but we cannot guarantee that all communications shall be completely secure. You accept that there is a risk that your communications may be unlawfully intercepted, hacked or accessed by those other than the intended recipient.
- 1.9 You accept that we are only providing you with the Services and that accordingly we shall not be responsible for and nor shall we have any liability to you in relation to any decision that you make in relation to any equipment that you use in order to utilise the Services or in relation to any decision taken by you to place the equipment that will utilise the Services and any installation of that equipment.

2. CHARGES

- 2.1 Subject to any terms set out in the Order Form, we shall be entitled to bill you for the Charges due on a monthly basis in advance and such invoices shall be paid within 14 days of the date of invoice pursuant to the terms of this Agreement and payment on time is of the essence. The Charges for the Service will be calculated on the basis set out on the Order Form. Charges based on data volumes transmitted, these shall be calculated in one kilobyte increments rounded up to the nearest kilobyte where possible, defaulting to 10 kilobytes or the Network threshold if greater.
- 2.2 It is a material condition of this Agreement that you should pay all Charges arising under this Agreement by way of direct debit (unless we otherwise agree). In the event that any request for funds under the direct debit is rejected by your bank you accept that we will incur an administration fee of £25 which will be added to your next invoice. In the event that we consent to an alternative payment method we reserve our right to charge a reasonable administration fee to cover the additional administrative burden that this creates.
- 2.3 Any overdue payment(s) shall accrue daily interest at the rate of 3% above the base rate of HSBC Bank plc from time to time and from the date that it falls due until the date that the overdue amount is paid in full and we reserve our right to claim additional interest under The Late Payment of Commercial Debt (Interest) Act 1998.
- 2.4 If we advise you of your account balance from time to time this is an estimate based on the information we have received from the Network Operator. We shall not be bound by and nor are we liable for any estimate that



we provide and you must pay all Charges as they fall due even if they exceed any previous estimate provided by us.

- 2.5 VAT and any other applicable taxes will be added to our Charges. We reserve the right to increase/decrease our Charges no more than once per year in accordance with the Consumer Prices Index issued by the Office for National Statistics from time to time.
- 2.6 HSPA and UMTS services are subject to service availability. If not available GPRS service will be utilized.
- 2.7 Failure to make payment under the terms of this Agreement will be treated as a material breach of this Agreement and you accept that we may Suspend some or all of the Services if you do not pay any part of the Charges when they fall due and if you have failed to remedy such non-payment within 48 hours of receiving notification from us. We reserve the right to charge reasonable administration fees for both the reconnection and the removal of the suspension.
- 2.8 In the event that you ask us to Disconnect a SIM Card or the Services are Disconnected by us pursuant to a term of this Agreement you will be responsible for all outstanding Charges in relation to each SIM Card Disconnected and this shall include our reasonable administration fees in dealing with the Disconnection and all Charges that would have been accrued by us in providing the Services to you for any outstanding contract period as detailed on the Order Form.
- 2.9 Should you wish to dispute any of the Charges arising under the terms of this Agreement you must notify us of such disputed amount at your earliest convenience and in any event within 10 Business Days of receiving the relevant invoice. A failure by you to notify us of any disputed invoice within that time will result in us not being obliged to consider such a dispute and nor will we be liable in respect of any disputed amount. Where all or part of a disputed amount is found to have been incorrectly invoiced we will promptly make any necessary credit to your account.
- 2.10 Any disputed invoice must be paid in full by you despite the fact that you are disputing the invoice amount.

3. **WARRANTIES, REPAIRS AND REPLACEMENT**

- 3.1 Once the Product(s) has been collected by you or upon the date and time that the Product(s) have been despatched to you, all risk of damage to, or loss of, such Product(s) shall pass to you.
- 3.2 Subject to the Clauses set out below, the Product(s), where new, is sold with the benefit of and subject to the terms applicable to such warranty or guarantee as is given by the relevant Network Operator.
- 3.3 You accept that SIM Cards have a limited life span and may need to be replaced from time to time. We do not guarantee the lifespan of the SIM Cards.

4. **SERVICE AVAILABILITY**

- 4.1 The Network and the Services may from time to time require upgrading, modification, maintenance or other works and, in addition to an emergency situation or for your own security, these may result in some or all of the Services becoming temporarily unavailable. We will try and keep any Network disruption to a minimum and wherever possible and reasonable to do so we will transfer you to another Network by issuing you with a replacement SIM Card.
- 4.2 We may, by giving you reasonable prior notice, suspend some or all of the Services if we have grounds to believe that you have not complied with one or more of the terms of this Agreement.
- 4.3 You accept that Roaming relies on foreign Networks over which we have no control. Therefore we are not able to offer any guarantee about the availability and quality of Roaming services.
- 4.4 If we Suspend your Service because you break this Agreement, the Agreement will still continue and despite the Suspension you must pay all Charges due under this Agreement until the Agreement is terminated pursuant to the terms of clause 10.

5. **YOUR RESPONSIBILITIES**

- 5.1 You agree to use the Product and the Service in the way described in any user guide or other instructions issued by us. You acknowledge that, as between you and us, the SIM Card remains our property at all times.
- 5.2 If you fail to order the number of SIM cards specified in the contract as Committed, we reserve the right to deliver to you the balance of the Committed quantity of SIM Cards by the Call-off date and commence the date of commitment from the date of delivery.
- 5.3 You must not use the Services for any improper, immoral, fraudulent or unlawful purposes or for the sending of any communications which are of an offensive, abusive, indecent, obscene or menacing nature to include causing a nuisance by sending any unsolicited communications without exercising reasonable care and attention.



- 5.4 You shall take adequate precautions to prevent damage to or unauthorised use or theft of the Products and inform us as soon as possible if the SIM Card is lost, stolen, damaged, destroyed or likely to be used in an unauthorised manner and to co-operate with us in our reasonable security and other checks.
- 5.5 If the SIM Card is lost, stolen, damaged, destroyed or used in an unauthorised manner we may charge you for reconnection and / or a reasonable fee for replacing the SIM Card and you will be responsible for all Charges that are incurred up until the time and date that you notify us that the SIM Card has been lost or stolen..
- 5.6 You must notify us immediately upon changing your address, contact details, bank account details or your name.

6. CORPORATE LOCATION SERVICES

- 6.1 In providing the Location Services you accept and shall ensure that each of your employees, agents, sub-contractors or any other third party using any of the Products to be tracked accept that it is the SIM Card that will be tracked using the Location Service and that at no time will the Location Service be used to track the location of an individual.
- 6.2 You must obtain the necessary consents from users of the Products that are subject to the Location Services before any Location Service is activated by us and you must be able to provide proof of this consent on request from us. In the event that consent is not forthcoming then we will not be able to activate the Location Service.
- 6.3 It is your responsibility to ensure that the Location Service is used within the law and that all relevant privacy and data protection legislation is adhered to.
- 6.4 You will be responsible for managing the processing of any location data received by you in using the Location Service and you must explain to your employees, agents and sub-contractors how that location data will be used before it is collected.
- 6.5 In the event that we are made aware that the Location Services are being used unlawfully either by you or a third party then you accept that we shall have the right to Suspend the Location Service and any other Services provided under these terms and conditions until such time as we are satisfied that any unlawful use of the Location Service has ceased.
- 6.6 Further information on the Location Service and a copy of the Code of Practice for the provision of location services are available on request.

7. DATA ALERT AND DATA CAP

- 7.1 In relation to the Data Alert and Data Cap services you should note that we are only able to count the amount of data used by each SIM Card in the event that the data is transmitted across our Access Point Names ("APNs") and we cannot be held liable for any losses that you suffer as a result of us not being able to effectively provide these services due to the transmission of data over any APN that is not our own.
- 7.2 Where Data Alert and Data Cap services are provided by us, you should be aware that you are responsible for inputting or providing us with a correct email address for the notification emails and that we can accept no liability for damages suffered by you as a consequence of any notification emails that you do not receive as a result of you inputting or providing us with an incorrect email address.
- 7.3 We shall use all reasonable endeavours to ensure that the Data Alert and Data Cap services are accurate and delivered to you in a timely fashion and, subject to clauses 8.1 and 8.2, our liability for any losses that you suffer as a consequence of our failure to deliver the Data Alert and Data Cap services shall be limited to the amount detailed in clause 11.4.2 of this Agreement.
- 7.4 In utilising the Data Cap service you accept that the SIM Card will be prevented from sending or receiving data via our APN, if a Data Cap is reached and we cannot accept any liability for any losses that you might suffer as a consequence of this Suspension. Mobile Network Public APNs may be configured as standard and the Data Alert and Cap services do not operate on public APNs.

8. CHANGES TO THE SERVICES AND TERMS & CONDITIONS OF AGREEMENT

- 8.1 We reserve the right to:
 - 8.1.1 vary the Charges; or
 - 8.1.2 introduce new mandatory Charges; or
 - 8.1.3 make any amendments to this Agreement that are required as a direct result of any legislation, statutory instrument, government regulation or authorisation; or
 - 8.1.4 withdraw any promotional tariffs and offers by giving you 15 Business Days notice;



and if you fail to exercise your right to terminate this Agreement pursuant to clause 9.4 within 15 Business Days of being given notice of the change(s) then you will be deemed to have accepted the change(s).

8.2 Our most recent version of Terms and Conditions will be posted on our website (www.arkessa.com).

9. DURATION AND TERMINATION

9.1 This Agreement shall commence when the Order Form is signed by both parties and will (unless terminated in accordance with this clause 9) continue for the period specified on the Order Form (the Service Period). Thereafter this Agreement will automatically continue in force from month to month and at the previously agreed Charges unless terminated in accordance with the terms of this clause 9.

9.2 This Agreement can be terminated at any time after the end of the Service Period by either party giving one month's written notice. You must pay all charges incurred up until Disconnection.

9.3 We may end this Agreement or suspend the Service or both at any time without telling you and (subject to clause 11) without incurring any liability to you if:

9.3.1 you commit any material breach of this Agreement that is not put right by you within 24 hours of being notified by us of the breach;

9.3.2 bankruptcy (in the case of an individual) or insolvency proceedings are brought against you, or if any arrangement with creditors is made, or a receiver or administrator is appointed over any of your assets, or if you enter into liquidation (other than a solvent liquidation for the purposes of a group reorganisation);

9.3.3 you fail to pay the Charges when they are due and do not pay the Charges within 10 Business Days of our having advised you that the Charges are overdue;

9.3.4 there is an emergency or for your security; or

9.3.5 if any agreement, giving us access to any part of or the ability to provide the Service, is suspended or terminated.

9.4 You may end this Agreement:

9.4.1 immediately by writing to us if we commit any material breach of this Agreement and do not put it right within 10 Business Days of being asked in writing to do so; or

9.4.2 at the end of the current service month if you have given us notice within 15 Business Days of any variation by us of the terms of this Agreement (other than an increase in the Charges which is in line with the appropriate Index of Retail Prices as published by the Central Statistical Office in the Monthly Digest of Statistics (or any successor body from time to time)) pursuant to clause 8 which has a material adverse affect on your contractual rights and increases the Charges;

provided that in relation to clause 9.4.2 and upon receipt of your notice to terminate we shall have the option to withdraw such variations to the Agreement and revert to the wording of the original agreement between us at which time, on giving notice to you that we withdraw the variations, both of the Parties shall be entitled to continue to perform their respective responsibilities under the terms of the original agreement.

9.5 After this Agreement is ended you must immediately pay in full all Charges incurred during this Agreement and return all SIM Cards to us if requested to do so.

9.6 Subject to the earlier provisions of this clause 9, if you terminate the Services in connection with any of the SIM Cards at any time before the expiry of the Service Period then you will pay us all Charges that are due in respect of the SIM Card being Disconnected.

10. **LIMITATION OF LIABILITY - YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

10.1 **This clause 10 sets out our entire financial liability to you (including any liability for the acts or omissions of our employees, agents, consultants and subcontractors) to you in respect of:**

10.1.1 any breach of this Agreement;

10.1.2 any use that you make of the Services, Product(s) or any part of them; and

10.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.

10.2 **All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this agreement.**

10.3 **Nothing in this agreement limits or excludes our liability:**

10.3.1 for death or personal injury resulting from our negligence; or

10.3.2 for any damage or liability incurred by you as a result of fraud or fraudulent misrepresentation by us; or

10.3.3 for any liability incurred by you as a result of any breach by us of the clause as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982.

10.4 Subject to clause 10.2 and clause 10.3 and unless otherwise specifically stated and limited in this agreement:

10.4.1 we shall not be liable for:

- (a) loss of profits; or**
- (b) loss of business; or**
- (c) depletion of goodwill and/or similar losses; or**
- (d) loss of goods; or**
- (e) loss of contract; or**
- (f) loss of or corruption of data or information; or**
- (g) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; or**
- (h) any act or omission of the Network Operator(s) or any other provider of telecommunications services; and**

10.4.2 our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this agreement shall be limited to the total amount recoverable under our product liability insurance policy in place from time to time (less any excess payable by us) or, in the event that a claim is not covered by our product liability insurance, an amount equal to the Charges payable in relation to the remaining period of the Agreement.

10.5 You accept that SIM Cards have a limited life span and may need to be replaced from time to time. We do not guarantee the lifespan of the SIM Cards. You understand that we will limit our total liability to you for a SIM Card which has failed to the cost of a replacement SIM Card. No liability is accepted for: any defect resulting from fair wear and tear; rain, water or other liquid damage; accidental or wilful damage; failure to follow the manufacturer's instructions (whether oral or in writing); or misuse or alteration or repair of the SIM Card without the manufacturer's approval.

11. INSURANCE

11.1 During the continuance of this Agreement each party warrants to the other that it shall have all appropriate insurances in place and will continue to have all appropriate insurances in place for the continuance of this agreement that a prudent company engaged in the same business as each of the parties would be expected to have in place and that each party complies with all minimum statutory requirements (if applicable) particularly:

11.1.1 public liability insurance with a limit of at least £1,000,000 (one million pounds sterling) per claim; and

11.1.2 employer's liability insurance with a limit of at least £5,000,000 (five million pounds sterling) per claim.

12. GENERAL

12.1 We will not be liable for any failure to perform our obligations because of something beyond our reasonable control such as, without limitation, lightning, flood, exceptionally severe weather, fire, explosion, war, military operations, national or local emergency, civil disorder, industrial disputes (whether or not involving our employees), or acts of local or central Government or other competent authorities and any failure by a Network Operator(s) that prevents us from being able to deliver the Services.

12.2 We may assign or novate our rights and obligations under this Agreement at any time. You cannot assign or purport to assign any rights or obligations under this Agreement without our prior written consent. You consent to our assigning and/ or novating this Agreement to any third party.

12.3 Failure by either of us to enforce rights under this Agreement shall not prevent you or us (as the case may be) from taking further action or constitute any waiver of any of our respective rights hereunder.

12.4 Subject to clause 8, this Agreement can only be varied or amended by the express mutual agreement of both you and us.



- 12.5 You consent to us processing data relating to you for legal, administrative and management purposes and in particular so that we can assure ourselves of your credit worthiness. You accept that we may make such information available to those who provide products and services to us and to any regulatory authorities, governmental or quasi-governmental organisations. At all times the parties shall comply with the provisions of the Data Protection Act 1998.
- 12.6 If any provision of this agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the agreement, and the validity and enforceability of the other provisions of the agreement shall not be affected.
- 12.7 A person who is not a party to this Agreement shall have no rights under or in connection with it.
- 12.8 Nothing in this agreement is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name of or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 12.9 If we need to send notices to you or you to need to send notices to us these must be in writing and can be delivered by hand or first class post to the other's address as stated on the Order Form and will be deemed to have arrived at their destination within 24 hours if delivered by hand and within 48 hours if sent by first class post.

This Agreement is subject to and shall be construed in accordance with the laws of England and the parties agree to the exclusive jurisdiction of the English Courts.