



Terms & Conditions

The terms and conditions which apply to your purchase of goods and services from Eseye Ltd, a company incorporated and registered in England and Wales with number 6397669 whose registered office is at Surrey Technology Centre, 40 Occam Road, Guildford Surrey, GU2 7YG (*Eseye*)(we)

1. Terms used in these terms and conditions:

Words appearing in bold type in these terms and conditions have special meanings as set out below:

The **agreement** is these terms and conditions, and the application form in accordance with which we permit you to use the *equipment* and agree to provide *services* to you.

The **equipment** is a SIM Card and/or other device and any related items which may be provided by us for use with the *services*.

The **minimum period** is the period for which you have agreed to receive the *services* as set out in the application form and starting on the *service start date* and any extensions to it made pursuant to this *agreement*.

The **network** is the mobile telecommunications network to which the *equipment* supplied under this *agreement* is connected.

The **services** are those services provided by us and other mobile telecommunication services obtained from our telecommunications network provider as specified in the application form and provided to you.

The **service start date** means the date that the service is first provided to you.

The **service charges** are the combination of reoccurring fixed charges invoiced in advance and usage based charges invoiced in arrears relating to the *services* provided to and consumed by the *equipment*.

The **Subscriber Identity Module** or **SIM** card is supplied by us and allows you to use the *services*. Each SIM card supplied by us remains our property or the property of our telecommunications network provider.

2. Your right to cancel:

(a) You have the right to cancel this *agreement* at any time from the date you sign the customer *agreement* until the *service start date* by writing or by sending a fax to us. Once we commence providing the *services* you may only cancel them in accordance with the terms set out below. You consent to us commencing provision of the *services* as soon as reasonably possible.

3. The *services*

(a) We shall provide the *services* you have requested in the application form. We shall do our best to provide the *services* to you, but our ability to do so may be affected by circumstances beyond our control. These include but are not limited to: the capability of the *equipment*; the *networks* of the telecommunications network provider where the *equipment* may be situated, *network* congestion; geographic or atmospheric conditions; maintenance requirements or equipment failures.

(b) We may at any time set a limit on an amount of *service charges* you incur during each billing period or place a bar on the *equipment* being used. If you want to vary any such limit or release any such bar you should contact us. You acknowledge that we may undertake credit checks to determine your creditworthiness and based on this we may refuse to vary any such limit or release any such bar.

(c) Except as expressly set out in this *agreement*, you do not acquire any rights or licences to any of our intellectual property rights. If software, documentation or manuals are provided to enable you to receive and use the service, we grant you, for the duration of this *agreement*, a nonexclusive, non-transferable licence to use such software, documentation or manuals for your own use. Unless otherwise agreed in writing, any licence granted by us under this *agreement* will terminate when the *agreement* is terminated.

4. Paying for the service

(a) We shall invoice you in advance for your regular monthly charges and in arrears for your data/SMS usage. All invoices are payable within 30 days of the date of our invoice date. We also reserve the right to request a deposit in the event that your credit rating is unsatisfactory to us.

(b) should you use the Equipment or services other than as agreed on an order form (for example in a different country not specified) we reserve the right to apply extra charges in accordance with our Standard Charges (as amended from time to time and which can be obtained on request).

(c) We reserve the right to charge interest on late payments at the rate of 2% above the base lending rate of the HSBC bank from the date the amount becomes due to the date of payment by you in full.

(d) You shall notify us of any billing queries within one month of the date of the invoice upon which the query arises and shall not withhold payment of any *service charges* set out in the queried invoice, or any invoice, by reason of your billing query until it has been resolved by us.

(e) We also reserve the right to suspend the *service* should you not pay the invoice within the specified time.

(f) All figures in this *agreement* are expressed exclusive of value added tax.

5. Your responsibilities

(a) You must: (i) keep to any other conditions we set regarding the use of the *equipment* from time to time; (ii) tell us immediately of any change of address; (iii) tell us immediately if any *equipment* is lost or stolen and write or fax to confirm the details.

(b) You must not: (i) use the *equipment* (or allow it to be used) for any illegal purpose. We may report the incidents to the police or any other relevant official organisation; or (ii) use any *equipment* that has not been approved by us for use of the *services* or on the *network*. If you are not sure whether the *equipment* is approved, you should contact us.

(c) The risk in the *equipment* shall pass to you on completion of delivery. Title to the *equipment* shall not pass to you until we have received payment in full (in cash or cleared funds) for *equipment* and any other goods or services that we have supplied to you in respect of which payment has become due.

(d) Until you have title to the *equipment* you shall: (i) hold the *equipment* on a fiduciary basis as our bailee; (ii) ensure that the *equipment* is readily identifiable as our property; (iii) not remove, deface or obscure any identifying mark or packaging on or relating to the *equipment*; (iv) maintain the *equipment* in satisfactory condition and keep them insured against all risks for their full price from the date of delivery; (v) notify us immediately if you become subject to any insolvency or administration events; and (vi) give us such information relating to the *equipment* as we may require from time to time.

6. How you can end this *agreement*:

You can end this *agreement* in its entirety or part only insofar as it relates to the *services* delivered in respect of particular piece of *equipment* in the following circumstances:

(a) Immediately if we commit a material breach of this *agreement* and cannot correct the situation within 30 days of you telling us about the breach; or

(b) By giving us 30 days' written notice given to the address at the top of this *agreement* or as otherwise notified to you.

7. What you have to pay when you end this *agreement*

(a) If you end all or part of this *agreement* under 6(a) above, you will only have to pay the *service charges* to the date this *agreement* ends.

(b) If you end all or part of this *agreement* under 6(b) and the *minimum period* has ended we charge you *service charges* to the end of the month.

(c) If you end all or part of this *agreement* under 6(b) we will apply a termination charge if you stop your service when still within your *minimum period*. When you sign up for a *minimum period* service, the costs of that service are spread across the term period, for example over 1, 3 or 5 years. Discounts and any free installation are also included in the agreed service charges. Early termination charges are applied to recover the costs of the service provided to you over the agreed *minimum period*.

8. Changes to the *services*

(a) You may request us to change, modify or extend the service and we will then carry out a change control analysis to assess the impact and cost of such change which we will then notify to you. Should you wish to proceed we will jointly agree a supplementary application form. These terms and conditions will apply to any changes to the *service*.

(b) If the law changes or VAT or any other tax is increased, these changes will be passed on to you automatically.

(c) We can change the service charges at any time. If we increase the service charges in excess of the current retail price index, you can end this *agreement* by giving us written notice. You will then only have to pay service charges for the services that you already owe. This *agreement* will end 30 days after we receive your written notice. During the notice period the previous services charges will apply.

(d) We reserve the right to change the way the *services* are provided so long as it does not materially alter the *services* as requested in the application form

9. How we can end this *agreement*:

(a) Either we or you can end this *agreement* immediately if the other becomes bankrupt, insolvent or go into liquidation or if the other enters into a voluntary arrangement or has a receiver or an administrator appointed over any or all of its assets. Notice does not need to be given in these circumstances.

(b) We can also end this *agreement*: (i) if you break this *agreement* and do not correct the situation within 30 days of us telling you about the break; (ii) if the underlying *network* closes down for any reason and we are unable to provide an alternative solution; (iii) if you give us false information which we have relied on to provide the *services*.

10. What you have to pay when we end this *agreement*:

If we end this *agreement* under 9(b)(ii), you will only have to pay the service charges you already owe. If we end this *agreement* for any other reason, you will pay all the service charges as if you had ended the *agreement* under 6(b).

11. When we may suspend the service

We may suspend the service or any part of it if:

(a) A *network* fails or if modification or maintenance work is being carried out, or if a *network* is unavailable for any reason;

(b) If we do not receive full payment on time;

(c) If we think or know your *equipment* is being used fraudulently or illegally or if they have been lost or stolen.

If the *services* are suspended under 11(b) and if you wish to be reconnected, we may require you to pay an administration charge per piece of *equipment*.

If the services are suspended under 11(c), you will still have to pay the service charges.

12. What we are liable for

Both we and you accept liability as set out in this clause:

(a) We do not guarantee that the *services* will be fault-free.

(b) Neither we nor you exclude or restricts our liability for death or personal injury caused by our own negligence or the negligence of either of our respective employees or agents acting in the course of their employment or agency or for fraudulent misrepresentation or to any extent not permitted by law.

(c) Unless otherwise expressly stated in this *agreement* neither of us shall be liable to the other in contract, tort (including negligence), breach of statutory duty or otherwise for any direct loss of profit, revenue, time, anticipated savings or profit or revenue, opportunity, data, use, business, wasted expenditure, business interruption or for any other similar direct loss which may arise in relation to this *agreement* whether or not the other was advised in advance of the possibility of such loss or damage.

(d) Unless otherwise expressly stated in this *agreement* neither we nor you shall be liable to the other in contract, tort (including negligence), breach of statutory duty or otherwise for any indirect or consequential loss of profit, revenue, time, anticipated savings or profit or revenue, opportunity, data, use, business, wasted expenditure, loss of or damage to physical property, business interruption or for any other indirect or consequential loss or punitive damages which may arise in relation to this *agreement* whether or not either one of us was advised in advance of the possibility of such loss or damage.

(e) Subject to clauses c) and d) you and we accept liability to the other in contract, tort (including negligence) breach of statutory duty or otherwise for direct loss limited to: (i) £100,000 for loss of or damage to physical property in any period of 12 consecutive months; and (2) £100,000 for all other loss or damage arising from any one incident or series of connected incidents and £200,000 for all incidents in any period of 12 consecutive months.

(f) Each part of this clause operates separately. If any part of a clause is held by a Court to be unreasonable or inapplicable the rest of the clause shall continue to apply.

13. Data Protection

You and Eseye acknowledge that for the purposes of the Data Protection Act 1998, You are the Data Controller and Eseye is the Data Processor of personal data and both of them agree to comply with the Data Protection Act 1998. Eseye shall ensure that adequate protection is in place sufficient to discharge its and your obligations under the Data Protection Act 1998 including its requirements regarding outsourcing or exporting data to any organisation outside the EEA.

14. Transferring this *agreement*

(a) You may not transfer all or any part of this *agreement* to anyone else without our consent. This *agreement* is personal to you (b) We can transfer all or any part of this *agreement* to someone else.

15. Severability

If any term of this *agreement* is held invalid, illegal or unenforceable by any court of competent jurisdiction, it will be severed and the remaining terms will continue in full force as if this *agreement* had been made without the invalid, illegal or unenforceable terms.

16. Entire Agreement

This *agreement* contains the entire *agreement* between us and replaces all previous written or oral *agreements* relating to its content, you agree that: (i) you have not been induced to enter into this *agreement* by, nor have you relied on, any statement, representation, warranty or other assurance not expressly incorporated; and (ii) in connection with this *agreement* your only rights and remedies in relation to any statement, representation, warranty or other assurance are for breach of this *agreement* and that all other rights and remedies are excluded. The terms of this clause will not affect your rights or remedies for any fraudulent misrepresentation by us.

17. Third Parties

Third parties are not entitled to enforce any term of this *agreement*.

18. Notices

Notices must be in writing (including email to the most appropriate individual) and sent to the addresses shown in the application form). Notices in writing will be deemed received three days after posting and on the next business if successfully sent by email.

19. Disputes and the Law

(a) This *agreement* is governed by English law and both parties submit to the non-exclusive jurisdiction of the English courts.

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