

POSSUM LIMITED - TERMS AND CONDITIONS FOR SUPPLY OF GOODS, SERVICES AND SIM SERVICES

The Customer's attention is particularly drawn to the provisions of clause 11 (Limitation of liability).

1. Interpretation

The following rules of interpretation apply in these terms and conditions (as amended from time to time in accordance with clause 16.8) ("Conditions").

- 1.1 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and a reference to a party includes its personal representatives, successors and permitted assigns.
- 1.2 A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- 1.3 Any words following the terms including, include, in particular, for example or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms. A reference to **writing** or **written** includes email but not fax.

2. Basis of contract

- 2.1 In these Conditions, "**Possum**" is Possum Limited registered in England and Wales with company number 00711047; and "**Customer**" is the person or firm who purchases the Goods, Services and/or SIM Services (each defined below) from Possum.
- 2.2 The Customer's written acceptance of Possum's quotation ("**Order**") shall set out (a) the goods ("**Goods**"); and/or (b) the product maintenance services to be supplied by Possum of the SIM Provider to the Customer ("**Services**"); and/or (c) the services, to be supplied by the SIM Provider to the Customer via Possum ("**SIM Services**"), that the Customer wishes to purchase.
- 2.3 The Order constitutes an offer by the Customer to purchase Goods or SIM Services or Goods and SIM Services in accordance with these Conditions. The Order shall only be deemed to be accepted when Possum issues written acceptance of the Order, at which point and on which date the contract between Possum and the Customer for the supply of the Goods and/or Services and/or SIM Services ("**Contract**"), in accordance with these Conditions Contract shall come into existence (**Commencement Date**).
- 2.4 Any samples, drawings, descriptions or advertising issued by Possum and any descriptions of the Goods or illustrations or descriptions of the Services or SIM Services contained in Possum's catalogues, brochures or website are issued or published for the sole purpose of giving an approximate idea of the Goods, Services and SIM Services described in them. They shall not form part of the Contract nor have any contractual force.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing. The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 2.6 Any quotation given by Possum shall not constitute an offer, and is only valid for a period of 30 days from its date of issue. Possum reserves the right to withdraw a quotation in whole or in part any time prior to the issuing of an Order by the Customer.

3. Goods

Description and specifications

- 3.1 The Goods are described in Possum's catalogue and/or on Possum's website at www.possum.co.uk.
- 3.2 Possum reserves the right to amend the specification of any Goods if required by applicable law or any regulatory requirement, and Possum shall notify the Customer in any such event.

Delivery

- 3.3 Possum shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after Possum notifies the Customer that the Goods are ready.

Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence.

- 3.4 Possum shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event, Customer Default or the Customer's failure to provide Possum with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 3.5 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.
- 3.6 If Possum fails to deliver the Goods, the Customer's only remedy shall be to notify Possum of such late delivery and request delivery within a reasonable period of such notice. If Possum fails to deliver the Goods within such period, the Customer may terminate the Contract, whereupon the Customer shall receive a refund for any Goods and/or Services and/or SIM Services ordered but not supplied under the Contract.
- 3.7 If the Customer fails to accept delivery of the Goods within two "**Business Days**" (being a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business) of Possum or its courier notifying the Customer that the Goods are ready for delivery, then except where such failure or delay is caused by a Force Majeure Event or by Possum's failure to comply with its obligations under the Contract in respect of the Goods:
 - (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the second Business Day following the day on which Possum or its courier notified the Customer that the Goods were ready; and
 - (b) Possum shall store the Goods until actual delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 3.8 If the Customer has not accepted delivery of the Goods within ten Business Days of Possum or its courier notifying the Customer that the Goods are ready for delivery, Possum may resell or otherwise dispose of part or all of the Goods and charge the Customer for any shortfall below the price of the Goods.
- 3.9 If the Customer returns any Goods to Possum, other than under a warranty claim in accordance with clause 5, acceptance of such returned items shall be entirely at Possum's sole discretion and any refunds in respect of such returned items shall be subject to a 10% restocking charge.
- 3.10 Possum may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

Title and risk

- 3.11 The risk in the Goods shall pass to the Customer on completion of delivery. Title to the Goods shall not pass to the Customer until the earlier of:
 - (a) Possum receives payment in full (in cash or cleared funds) for the Goods and any other goods, Services or SIM Services that Possum has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; or
 - (b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 3.13.
- 3.12 Until title to the Goods has passed to the Customer, the Customer shall:
 - (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Possum's property;
 - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on Possum's behalf from the date of delivery;
 - (d) notify Possum immediately if it becomes subject to any of the events listed in clause 12.1(d) to clause 12.1(f); and
 - (e) give Possum such information as Possum may reasonably require from time to time relating to: (i) the Goods; and (ii) the ongoing financial position of the Customer.

3.13 Subject to clause 3.14, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before Possum receives payment for the Goods. However, if the Customer resells the Goods before that time, it does so as principal and not as Possum's agent; and title to the Goods shall pass from Possum to the Customer immediately before the time at which resale by the Customer occurs.

3.14 At any time before title to the Goods passes to the Customer, Possum may:

- (a) by notice in writing, terminate the Customer's right under clause 3.13 to resell the Goods or use them in the ordinary course of its business; and
- (b) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

4. Goods Warranty

4.1 Subject to clauses 4.2 and 4.3, Possum warrants that on delivery, and for a period of 12 months from the date of delivery, the Goods manufactured by Possum ("**Possum Goods**") shall: conform in all material respects with their description;

- (a) be free from material defects in design, material and workmanship; and
- (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

4.2 Possum shall use reasonable endeavours to pass to the Customer the benefit of any warranties that Possum has received from the third party manufacturers of Goods, for such period as those warranties subsist.

4.3 For SIM Cards (being a 'Universal Integrated Circuit Card' with electronic chip containing a microprocessor and memory) and for Goods containing SIM Cards, the warranty provisions of clause 6.7 shall apply in respect of the SIM Card(s) contained within such Goods and the provisions of this clause 4 shall apply to any other elements or components of such Goods.

4.4 Subject to clause 4.5, if:

- (a) the Customer gives notice in writing to Possum during the period of 12 months from date of delivery of the affected Possum Goods and within a reasonable time of discovery that some or all of the Possum Goods do not comply with the warranty set out in clause 4.1;
- (b) Possum is given a reasonable opportunity of examining such Possum Goods; and
- (c) the Customer (if asked to do so by Possum) returns such Possum Goods to Possum's place of business at the Customer's cost,

Possum shall, at its option, repair or replace the defective Possum Goods, or refund the price of the defective Possum Goods in full.

4.5 Possum shall not be liable for any Possum Goods' failure to comply with the warranty set out in clause 4.1 if:

- (a) the Customer makes any further use of such Possum Goods after giving a notice in accordance with clause 4.4;
- (b) (a) the defect arises because the Customer failed to follow Possum's oral or written instructions as to the storage, commissioning, installation, use or maintenance of the Possum Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of Possum following any installation specification or configuration supplied by the Customer;
- (d) the Customer alters or repairs such Possum Goods without the written consent of Possum;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- (f) the Possum Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

4.6 Except as provided in this clause 4, Possum shall have no liability to the Customer in respect of any Goods' failure to comply with the warranty set out in clause 4.1.

4.7 These Conditions shall apply to any repaired or replacement Goods supplied by Possum.

5. Supply of Services

5.1 Possum shall supply the Services to the Customer and/or (as applicable) the Customer's customer, in accordance with the description of the Service set out in the Order, in all material respects.

5.2 Possum shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

5.3 Possum reserves the right to amend the description of the Service set out in the Order if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and Possum shall notify the Customer in any such event.

Services warranty

5.4 Possum warrants to the Customer that the Services will be provided using reasonable care and skill.

5.5 For Services that fail to meet the warranty at clause 5.4 the Customer's sole remedy shall be for Possum to: (a) re-perform the Services and/or rectify any Service outputs; or (b) where resupply or rectification by Possum is not possible, and subject always to clause 11, refund the Customer such amount that Possum determines, at its sole discretion, reflects the extent of the failure.

5.6 The Customer's remedies at clause 5.5 are at all times subject to the Customer notifying the Company as soon as possible after the Customer becomes aware of a failure of the Services and providing any information or evidence as reasonably requested by Possum.

6. Supply of SIM Services

6.1 Goods containing SIM Cards shall be governed in the same manner as all other Goods under these Conditions, save that the SIM Card contained within such product shall be subject to the provisions of clause 6.7 and not clause 4.

6.2 SIM Services are supplied by Mobius Networks Limited registered in England and Wales with company number 05384466 (the "**SIM Provider**")

6.3 SIM Services and are subject to the SIM Provider's terms and conditions contained at Schedule 1 ("**SIM Provider Terms**"). Possum has no liability to the Customer in respect of the SIM Provider's failure to comply with the SIM Provider Terms.

6.4 The Customer acknowledges that the SIM Provider reserves the right to suspend any SIM Services in the event of abnormal international or out-of-zone usage of any SIM Cards.

[Auto-activation of SIM Cards

6.5 SIM Cards shall be supplied in a 'test ready' state. Billing in respect of a SIM Card shall commence automatically once any one of the following testing thresholds are exceeded: (a) 1000KB of data usage; (b) 2 minutes of airtime usage; or (c) 2 SMS messages.]

Auto-renewal of SIM Services

6.6 SIM Services in relation to each ordered SIM Card shall, unless otherwise terminated in accordance with clause 12, commence on the date of delivery of the SIM Card] and shall continue for an initial term of 12 months (the "**SIM Initial Term**") and, thereafter, shall be automatically renewed for successive periods of 12 months (each a "**SIM Renewal Period**"), unless: (a) either party notifies the other party of termination, in writing, at least 30 days before the end of the SIM Initial Term or any SIM Renewal Period, in which case this agreement shall terminate upon the expiry of the applicable SIM Initial Term or SIM Renewal Period; or (b) otherwise terminated in accordance with the provisions of this agreement.

SIM warranty

6.7 Possum shall use reasonable endeavours to pass to the Customer the benefit of any warranties in respect of SIM cards and/or SIM Services that Possum has received from the SIM Provider (**SIM Warranty**), for such period as any such SIM Warranty subsists. Possum supplies no warranty in addition to or supplemental to the SIM Warranty and has no liability to the Customer in respect of the SIM Provider's failure to comply with any SIM Warranty.

7. Customer's obligations

7.1 The Customer shall:

- (a) ensure that the terms of the Order are complete and accurate;

- (b) co-operate with Possum in all matters relating to the Order and the supply of any Services;
- (c) where the Order includes SIM Cards or Goods containing SIM Cards, comply with the SIM Provider Terms;
- (d) provide Possum with access to the Customer's and/or (as applicable) the Customer's customer's premises, systems and facilities as reasonably required by Possum to provide the Services;
- (e) provide Possum with such information and materials as Possum may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the SIM Services are to start;
- (g) comply with all applicable laws;
- (h) keep all materials, equipment, documents and other property of Possum (**Possum Materials**) at the Customer's premises in safe custody at its own risk, maintain Possum Materials in good condition until returned to Possum, and not dispose of or use Possum Materials other than in accordance with Possum's written instructions or authorisation.
- 7.2 If Possum's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- (a) without limiting or affecting any other right or remedy available to it, Possum shall have the right to suspend: (i) the dispatch of any Goods ordered but not yet dispatched; and/or (ii) performance of the Services;
- (b) until the Customer remedies the Customer Default, and Possum may rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays Possum's performance of any of its obligations;
- (c) Possum shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Possum's failure or delay to perform any of its obligations due to or in respect of a Customer Default; and
- (d) the Customer shall reimburse Possum on written demand for any costs or losses sustained or incurred by Possum arising directly or indirectly from the Customer Default.
- 8. Charges and payment**
- 8.1 The price for Good shall be the price set out in the Order or, if no price is quoted, the price set out in Possum's published price list as at the date of delivery. The price for Goods shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Customer.
- 8.2 The charges for SIM Services including any costs for data or airtime usage in excess of the stated levels in the Order or other costs and charges, shall be as set out in the Order.
- 8.3 The charges for Services shall be calculated on a time and materials basis and the charges shall be calculated in accordance with the rates set out in the Order.
- Price increases:**
- 8.4 Possum reserves the right to increase the charges for Services on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Consumer Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Consumer Prices Index;
- 8.5 Where Possum supplies Services at fixed charge rates set by a third party (for example, the NHS), Possum reserves the right to increase the charge for such Services in line with the rate increases dictated by such third party, but a sum equal to the third party's rate increase;
- 8.6 Possum reserves the right to increase the charges for the SIM Services with effect from the end of the SIM Initial Term and each SIM Renewal Term, in line with any increase in charges made to Possum by the SIM Provider for the SIM Services and SIM Cards, by a sum equal to the increase. Possum shall notify the Customer of any such increases made known to it by the SIM Provider and shall pass on such increases to the Customer by the same rate;
- 8.7 Possum reserves the right to increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to Possum that is due to:
- (a) any factor beyond the control of Possum (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
- (c) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give Possum adequate or accurate information or instructions in respect of the Goods.
- 8.8 **Invoicing.** Except where otherwise agreed by the parties in writing,
- (a) for Goods, Possum shall invoice the Customer at the Commencement Date.
- (b) for Services, Possum shall invoice the Customer monthly in advance;
- (c) for SIM Services, Possum shall invoice the customer monthly in arrears.
- 8.9 The Customer shall pay each invoice submitted by Possum:
- (a) (except where otherwise agreed in writing) within 30 days of the date of the invoice;
- (b) for Goods, prior to deliver of the Goods; and
- (c) in full and in cleared funds to a bank account nominated in writing by Possum, and
- time for payment shall be of the essence of the Contract.
- 8.10 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by Possum to the Customer, the Customer shall, on receipt of a valid VAT invoice from Possum, pay to Possum such additional amounts in respect of VAT as are chargeable on the supply.
- 8.11 If the Customer fails to make a payment due to Possum under the Contract by the due date, then, without limiting Possum's remedies under clause 12, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 8.11 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 8.12 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 9. Intellectual property rights**
- 9.1 All intellectual property rights in or arising out of or in connection with the Services and the SIM Services (other than intellectual property rights in any materials provided by the Customer) shall be owned by Possum or its licensors.
- 9.2 Possum grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy the outputs of the Services (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.
- 9.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 9.2.
- 9.4 The Customer grants Possum a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to Possum for the term of the Contract for the purpose of providing the Services to the Customer.
- 10. Data protection**
- 10.1 In this clause 10, the following terms have the following meaning:
- Agreed Purposes:** to enter into and perform the Contract.
- Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures:** as set out in the Data Protection Legislation.

- Data Discloser:** a party that discloses Shared Personal Data to the other party.
- Data Protection Legislation:** the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.
- Permitted Recipients:** the parties to the Contract, the employees or personnel of each party, any third parties engaged to perform obligations in connection with this agreement.
- Shared Personal Data:** the personal data to be shared between the parties under clause 10.2 of this agreement. Shared Personal Data shall be confined to the following categories of information relevant to the following categories of data subject: (a) names; (b) postal addresses; (c) email addresses; (d) telephone numbers; (e) job titles and (f) medical conditions.
- 10.2 **Shared Personal Data.** This clause 10 sets out the framework for the sharing of personal data between the Customer and Possum as controllers. Each party acknowledges that one party (referred to in this clause as the **Data Discloser**) will regularly disclose to the other party Shared Personal Data collected by the Data Discloser for the Agreed Purposes.
- 10.3 Possum and the Customer shall each comply with all the obligations imposed on a controller under the Data Protection Legislation, and any material breach of the Data Protection Legislation by one party shall, if not remedied within 30 days of written notice from the other party, give grounds to the other party to terminate this agreement with immediate effect.
- 10.4 Possum and the Customer shall each:
- ensure that it has all necessary notices and consents and lawful bases in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes;
 - give full information to any data subject whose personal data may be processed under this agreement of the nature of such processing. This includes giving notice that, on the termination of this agreement, personal data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;
 - process the Shared Personal Data only for the Agreed Purposes;
 - not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
 - ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this agreement;
 - ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
 - not transfer any personal data received from the Data Discloser outside the UK, unless the transferor ensures that (i) the transfer is to a country approved under the applicable Data Protection Legislation as providing adequate protection; or (ii) there are appropriate safeguards or binding corporate rules in place pursuant to the applicable Data Protection Legislation; or (iii) the transferor otherwise complies with its obligations under the applicable Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; or (iv) one of the derogations for specific situations in the applicable Data Protection Legislation applies to the transfer.
- 10.5 **Mutual assistance.** Possum and the Customer shall each assist the other in complying with all applicable requirements of the Data Protection Legislation.
- 11. Limitation of liability**
- 11.1 References to liability in this clause 11 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 11.2 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 11.3 Nothing in the Contract limits any liability for: (a) death or personal injury caused by negligence; (b) fraud or fraudulent misrepresentation; (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and SIM Services Act 1982 (title and quiet possession); or (d) any liability that legally cannot be limited.
- 11.4 The Customer acknowledges that the SIM Cards and SIM Services are supplied by the SIM Provider governed by the SIM Provider Terms and accordingly, Possum shall have no liability to the Customer in respect of the SIM Cards and SIM Services.
- 11.5 Subject to clause 11.2, clause 11.3 and clause 11.4, Possum's total liability to the Customer shall not exceed:
- for Goods, the amount paid by the Customer to Possum for Goods under the Contract to which the liability relates;
 - For Services, the amount paid by the Customer to Possum for the supply of the Services in the 12 months immediately preceding the date on which the event giving rise to the liability arose or, if liability arises from more than one event in a series of events, then the 12 months immediately preceding the date on which the first such event in the series arose.
- 11.6 Subject to clause 11.2 and clause 11.3, neither party shall be liable to the other for: loss of profits, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of use or corruption of software, data or information, loss of or damage to goodwill; and indirect or consequential loss.
- 11.7 Possum has given commitments as to compliance of the Goods and SIM Services with relevant specifications in these Conditions. In view of these commitments, any warranties implied by statute are, to the fullest extent permitted by law, excluded from the Contract.
- 11.8 This clause 11 shall survive termination of the Contract.
- 12. Termination and suspension**
- 12.1 Without affecting any other right or remedy available to it, Possum may terminate the Contract with immediate effect by giving written notice to the Customer if:
- the Customer fails to pay any amount due under the Contract on the due date for payment;
 - the Customer commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
 - there is a change of control (within the meaning given in section 1124 of the Corporation Tax Act 2010) of the Customer;
 - the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - the Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 12.2 Without affecting any other right or remedy available to it, Possum may suspend the supply of Services or SIM Services or any further deliveries of Goods under the Contract or any other contract between the Customer and Possum if: (a) the Customer fails to pay any amount due under the Contract on the due date for payment; (b) the Customer becomes subject to any of the events listed in clause 12.1(d) to clause 12.1(f); or (c) Possum reasonably believes that the Customer is about to become subject to any of them.

13. Consequences of termination

13.1 On termination of the Contract:

- (a) the Customer shall immediately pay to Possum all of Possum's outstanding unpaid invoices and interest and, in respect of Goods, Services and SIM Services supplied but for which no invoice has been submitted, Possum shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) unless agree otherwise in writing, all Services and SIM Services shall cease with immediate effect and any licences granted under the Contract shall terminate;
- (c) the Customer shall return all of Possum Materials and Goods which have not been fully paid for. If the Customer fails to do so, then Possum may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

13.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

13.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

14. Confidentiality

14.1 Each party undertakes that it shall not at any time during the Contract, and for a period of two years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 14.2.

14.2 Each party may disclose the other party's confidential information: (a) to its employees, officers, representatives, contractors or subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 14; and (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

14.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

15. Force majeure

Neither party shall be liable for any delay or failure in the performance of its obligations for so long as and to the extent that such delay or failure results from a Force Majeure Event. If the period of delay or non-performance continues for 90 days, the party not affected may terminate the Contract by giving not less than 10 days' written notice to the affected party.

16. General

16.1 **Assignment and other dealings** Possum may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract. The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Possum.

16.2 **Notices.** Any notice given to a party under or in connection with the Contract shall be in writing and shall be: (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at the address stated in the Order; or (b) sent by email to the email address stated in the Order (or an address substituted in writing by the party to be served):

Any notice shall be deemed to have been received: if delivered by hand, at the time the notice is left at the proper address; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the

place of receipt, when Business Hours resume. "**Business Hours**" means the period from 9.00 am to 5.00 pm on any Business Day.

This clause 16.2 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

16.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 16.3 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

16.4 **Waiver.** Except as set out in clause 2.5, a waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

16.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

16.6 **Entire agreement.** This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances, and understandings between them, whether written or oral, relating to its subject matter.

16.7 **Third party rights.** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

16.8 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

16.9 **Governing law and Jurisdiction.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

SCHEDULE 1 – SIM PROVIDER TERMS