

# Midshire business airtime application Agreement

## Terms for wireless services

Telephone: 0800 008 6038

### YOUR AGREEMENT TERMS

"Agreement" means these terms, any terms that apply to the supply of the Additional Wireless Services, any supplemental agreement and any amendments to these terms or the terms that apply to the supply of the Additional Wireless Services agreed with the Customer. This agreement is made between Midshire Business Systems (Communications) Limited (Company number 4351890) whose registered office is Doranda Way, West Bromwich, West Midlands, B71 4LT and the 'Customer' whose details appear on the application form.

"Additional Wireless Services" means any additional wireless services agreed to be supplied by Midshire to the Customer from time to time (subject to the standard terms of service applicable to such supply). Which additional services and their terms shall be listed (or as the case may be, removed from the listing) from time to time on Midshire application forms.

"Airtime" means wireless telecommunications airtime and network capacity procured from the Network Operator.

"Agreement Number" means any reference number allocated to the Customer by Midshire for the purpose of placing Sales Orders.

"Airtime Charges" means the recurring Charges for Airtime (being Line Rental Charges and usage) to be paid by the Customer as set out on an application form.

"Usage" means calls, SMS messaging, Multimedia Messaging and Data services.

"Charges" means the charges for Wireless Services payable to Midshire by the Customer in accordance with clause 6.1.

"Commencement Date" means the date upon which Wireless Services are first provided to the Customer.

"Customer" means the customer of Midshire whose details and registered office appear on application form and any group or subsidiary companies as the same are defined by section 736 of the Companies Act 1985.

"Customer Service Charter" means the service charter, being the internal targets which Midshire aims to achieve, set by Midshire from time to time for the provision of managed customer services on a non-discriminatory basis to customers and as detailed at <http://www.Midshire.co.uk>.

"Data" means call and billing information.

"Device" means a wireless telecommunications device or handset incorporating a SIM Card.

"Device Subsidy" the subsidy applicable to any item of Equipment for the relevant Minimum Period.

"Disconnection Notice" means a notice to disconnect one or more items of Equipment or Devices from the Wireless Services given pursuant to clause 5.1 which should be in the form made available to the Customer at [<http://www.Midshire.co.uk>] or as otherwise made available to the Customer by the Help Desk at the Customer's request or in a form as otherwise agreed by Midshire.

"Discount Table" Form which states the discounts (variable by Midshire) from time to time available to the Customer in respect of some of the tariffs.

"Early Termination Payment Table" Means the table which sets out the sum which may be payable by the Customer (variable by Midshire from time to time) where Equipment is terminated during the Minimum Term in respect of Midshire tariffs.

"Equipment" means the items sold by Midshire to the Customer under this Agreement and includes any Software and documentation supplied under this Agreement.

"Equipment Prices" means the standard prices charged by Midshire for Equipment identified in the Price List and shall include the price charged by Midshire for the Equipment as set out on application form.

"GroupWorker Service" means the Service more particularly described in the Price List which uses certain wireless extension technology and that enables certain Devices purchased by the Customer pursuant to the terms of this Agreement to operate as part of the Customer's wireless virtual private network.

"Helpdesk" means Midshire's helpdesk for customers.

"Line Rental Charges" means the charges payable by the Customer which forms the non-usage dependent part of the Airtime Charges.

"Minimum Period" means in respect of each item of Equipment the term of 12 months from the Commencement Date or the date of supply of new or upgrade of such Equipment or the date of a port or migration (whichever is the later).

"Minimum Term" means the number of years or months stated on application form during which you agree to take the Service from Midshire Commencing on the date of connection, port migration or upgrade of Equipment.

"Network Operator" means the network operator who operates the wireless telecommunications network or networks to which the Equipment is connected and from whom Airtime is procured by Midshire for the benefit of the Customer.

"Numbers" means the telephone numbers allocated to Midshire by the Network Operator and used by the Customer to access the Wireless Services.

"Midshire" means Midshire Business Systems (communications) Limited, Midshire House, Doranda Way, West Bromwich, Birmingham, B71 4LT

"Midshire System" means the system and software used by Midshire for the time being to record details of the Customer, inventory, Data and to provide Wireless Services.

"Price List" means the descriptions of and the list of prices and tariffs for Equipment, Wireless Services and for the Value Added Wireless Services which are charged to customers, and which documents are available at [<http://www.Midshire.co.uk>] or as may otherwise be made available to the Customer by the Help Desk at the Customer's request. "Sales Order" means a request by the Customer pursuant to clause 4.1 for Equipment or Value Added Wireless Services or a change or variation in respect of the same (but not a disconnection) which should be submitted in accordance with the Sales Order process and using the Sales Order request form, (which documents are available at [<http://www.Midshire.co.uk>] or as may otherwise be made available to the Customer by the Help Desk at the Customer's request).

"SIM Card" means the subscriber identity module supplied by the Network Operator (and which shall remain the property of the Network Operator) which identifies a Device as belonging to the Customer and being in service.

"SMS" means the short message service, which enables text messages to be sent and received via Devices connected to the Wireless Services.

"Software" means any software supplied by Midshire, the Network Operator or any supplier of a Device under the terms of or in respect of this Agreement to the Customer 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 Wireless Services and/or any Value Added Wireless Services.

"Termination Fee" means the Line Rental Charges to the end of the Minimum Period in respect of each Device or SIM Card disconnected from the Wireless Services, and if appropriate the sum stated in Early Termination Payment Table.

"Termination Notice" means the notice to terminate this Agreement served pursuant to clause 9 which should be submitted in accordance with the Termination Notice process and using the Termination Notice form, (which documents are available at [<http://www.Midshire.co.uk>] or as may otherwise be made available to the Customer by the Help Desk at the Customer's request).

"Value Added Wireless Services" means the value added services such as installation, insurance, field services, repair etc. as may be made available from time to time by Midshire to Business Customers on a non discriminatory basis and details of which appear on the Price List.

"Wireless Services" means the provision by Midshire to the Customer of Airtime and Equipment, GroupWorker, Additional Wireless Services, and/or the Value Added Wireless Services or any other services which Midshire may from time to time provide.

"Wireless Service Period" means the period commencing at the Commencement Date during which period the Wireless Services will be provided by Midshire to the Customer pursuant to this Agreement.

### Agreement for the Sale and Purchase of Equipment

1.1 Midshire agrees and undertakes:

1.1.1 to sell and supply to the Customer the Equipment; and

1.1.2 subject to acceptance by Midshire of a satisfactory Sales Order prior to 11.00 am, and subject to availability of stock, to arrange for any such Equipment to be delivered to the Customer in accordance with the Service Charter.

1.2 Midshire will use its reasonable endeavours to ensure that all Equipment when delivered is in full working order; and performs in accordance with the manufacturer's description and specification.

1.3 Midshire guarantees each item of Equipment supplied to the Customer under the terms of this Agreement for a period of 12 months unless special conditions associated with certain Equipments apply. The Customer is referred to the Price List in this regard. Such guarantee does not extend to fair wear and tear. However, Midshire does not guarantee that any Software supplied under this Agreement will be error free, but Midshire will correct errors within a reasonable time if they impair the performance of the Equipment. If the Customer reports a fault during any guarantee period and Midshire investigates such reported fault and reasonably concludes that the fault is due to faulty design, manufacture or materials then Midshire shall, at its own exclusive option, either replace the faulty Equipment with a new or similar Equipment or repair the faulty Equipment provided always that: 1.3.1 the Equipment, and any Software associated with the Equipment, has been used always in strict accordance with Midshire's or the manufacturers/suppliers instructions and advice; and

1.3.2 the fault is not due to damage (including lightning, electrical and accidental damage) or the actions or inaction of any party other than Midshire; and

1.4 Midshire's obligation to sell and supply Equipment shall cease as and from the date of any Termination Notice. (Although Midshire may thereafter sell and supply Equipment in its discretion).

1.5 Acceptance of the Equipment by the Customer shall take place when the Customer takes delivery or possession of the Equipment.

1.6 Where Equipment is provided to the Customer on a chargeable basis then notwithstanding delivery and acceptance of the Equipment title in the Equipment shall not pass to the Customer until the date upon which all invoices relating to the Equipment have been paid in full to Midshire.

1.7 Where Equipment is provided to the Customer on a free of charge basis, then notwithstanding delivery and acceptance of the Equipment title in the Equipment shall remain with Midshire. Following any upgrade of the Equipment or disconnection of the Equipment from the Wireless Services Midshire shall reserve the right to request the safe return of the Equipment from the Customer to Midshire. The Customer shall keep the Equipment in good working order during the period of use by the Customer. Midshire reserves the right to charge the Customer any applicable replacement or repair charges as set out from time to time in the Price List for any Equipment that is not returned to Midshire in accordance with the provisions of this clause.

1.8 Unless and until title in the Equipment has passed from Midshire to the Customer, the Customer undertakes not to sell, transfer, lease, charge, assign by way of security or otherwise deal in or encumber the Equipment in any way.

1.9 Notwithstanding clause 1.5 risk in the 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 Equipment is delivered to the delivery location specified in the Sales Order unless the damage is caused by the negligence of Midshire.

1.10 Midshire reserves the right to add to, substitute, or to discontinue any item of Equipment at any time. Midshire does not guarantee the continuing availability of any particular item of Equipment and (as the Customer acknowledges) may be dependent upon third parties in this respect.

1.11 The Customer agrees to purchase and to accept delivery of the Equipment on the terms of this Agreement and undertakes to notify Midshire as to any alleged fault, defect, shortage or discrepancy in any Equipment within 14 days of delivery.

2 Agreement for the Sale and Purchase of Airtime, GroupWorker, Wireless Services and any Additional Wireless Services

2.1 On the acceptance by Midshire of an application by the Customer for Midshire Service Midshire agrees and undertakes that it will use its reasonable endeavours to provide the Midshire Service on the following terms:

2.1.1 Midshire will provide the Midshire Service by a date which it shall specify. If the Customer requests any change to its Application for the Midshire Service then Midshire may determine a new date for provision of the Midshire Service. All dates for provision of the Midshire Service are estimates only. Midshire accepts no liability for failure to meet any estimated date for provision.

2.1.2 The period for provision of the Midshire Service shall be agreed by Midshire, shall be specified in the Customer's application for the Midshire Service and shall be in accordance with the tariffs, prices and notes set out in the Price List. Following the expiry of any initial minimum term for the provision of the Midshire Service, the Midshire Service shall continue for further subsequent fixed periods of one year unless and until the Customer shall give Midshire at least one month's written notice prior to the end of the relevant annual period of its wish to terminate the Midshire Service in which case Midshire shall cease to provide such Service at the end of that annual period.

2.1.3 The Customer may by one month's written notice to Midshire of further subsequent fixed periods, request termination of its Midshire Service. Midshire shall agree to such request on payment to it of a sum representing 20% of the Charges for the Midshire Service for the remainder of any outstanding fixed period for provision of the Midshire Service.

2.1.4 The Customer agrees that any telecommunications equipment provided by Midshire to it for the purpose of providing the Midshire Service shall remain the property of Midshire and the Customer shall be responsible for its proper use. If any part of such telecommunications equipment is lost, destroyed or damaged (save for fair wear and tear) the Customer shall pay Midshire its replacement value. The Customer shall not interfere with or permit any third party to interfere with such telecommunications equipment.

2.1.5 The Customer agrees that any telecommunications equipment of its own that it connects to any telecommunications equipment provided by Midshire in connection with the Midshire Service shall meet relevant standards and licences applicable to such equipment or the Customer. If the Customer's equipment does not meet those standards or licences then the Customer must immediately disconnect such equipment or allow Midshire to do so at the Customer's expense. The Customer's telecommunications equipment must only be connected to Midshire's telecommunications equipment supplied in connection with the Midshire Service using connecting points approved by Midshire.

2.1.6 If Midshire engineers request access to the Customer's premises or to any third party premises in order to provide the Midshire Service then the Customer will provide such access subject to Midshire complying with the Customer's and/or any third party's reasonable requirements as to security and safety of people at such premises.

2.1.7 Midshire will have to place certain telecommunications equipment at the Customer's and/or at a third party's premises in order to be able to provide the Midshire Service. The Customer agrees to provide a suitable place and conditions for such equipment (including electricity supply and connections points) at its own expense at its or third party's premises.

2.1.8 Midshire shall operate a fault repair service in respect of the Midshire Service. The Customer should report any fault in the Midshire Service to the Help Desk. Details of the fault repair service are available from the Help Desk.

2.2 Midshire agrees and undertakes that it will as and from the Commencement Date and continuing throughout the Service Period use its reasonable endeavours to: procure from the Network Operator Airtime on a 24 hour per day 365 days per year basis; and

2.2.2 procure from the Network Operator Numbers for assignment to and use by the Customer with the Devices; and

2.2.3 connect and activate each SIM Card on to the Wireless Services and to allocate Numbers appropriately to each SIM Card; and

2.2.4 provide the GroupWorker Service (if so requested by the Customer) provided always that (i) the minimum number of Devices to be connected to the GroupWorker Service shall not be less than five (5), (ii) the Customer's own telecommunications Devices, network, switch, software is suitable for the GroupWorker Service and (iii) the Customer provides all reasonable assistance and information promptly to Midshire to enable it to provide and configure the GroupWorker Service; and

2.2.5 provide any Value Added Wireless Services requested by the Customer; and

2.2.6 Subject to the Customer agreeing to the terms applicable to the supply of Additional Wireless Services and subject to their availability to the Customer, provide the Additional Wireless Services.

2.3 Midshire reserves the right to add to, substitute, or to discontinue any Value Added Service at any time. Midshire 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.

2.4 The Customer agrees to purchase the Wireless Services from Midshire on the terms of this Agreement.

2.5 Copyright in the On Line Account Management website belongs to Midshire copyright must remain on all reproductions of material from this website. The Customer may access, download, store and make use of only their own online account information and shall agree to any special terms and conditions that apply to the provision of such online account information.

2.6 The Customer agrees not to use the SMS service for the purpose of marketing or advertising company's products or services to Device users without the consent of those users.

2.6.1 The Customer agrees that SMS text messages which are sent via the Customer's Midshire Service, or other leased, or indirect access, to a Device which is not connected to the same network, may incur additional inter-connect charges in respect of transfer of the message to another mobile network operator service and Midshire reserves the right to invoice the Customer, and the Customer agrees to pay such charges.

2.7 The Customer agrees that in using the SMS service;

2.7.1 each Device is capable of receiving SMS text messages which may originate from a variety of sources; and

2.7.2 Midshire is acting as a wireless service provider and as such has no knowledge of, involvement with, or liability for the specific content of any SMS text messages sent to the Customer's Devices, which originate from such sources.

3 Service Standards

3.1 The Customer is entitled to the same quality of Service as is generally provided by Midshire on a non-discriminatory basis to its customers.

3.2 Midshire warrants that it will perform its obligations in this Agreement with the reasonable skill and care of a competent wireless telecommunications virtual service provider and warrants that:

3.2.1 the Wireless Services will substantially conform in all material respects to the description of the same in the Price List; and

3.2.2 it will to the best of its ability maintain accurate records of Data so as to ensure accurate billing; and

3.2.3 it will operate a Helpdesk during working hours as specified in the Service Charter.

3.3 The Customer acknowledges that Midshire is entirely dependent upon its suppliers and the Network Operator in relation to:

3.3.1 the quality of Airtime, in terms of line clarity, and call interference, and the geographic extent of Airtime coverage; and

3.3.2 local geography, topography and/or atmospheric conditions and/or other causes of physical or electromagnetic interference that may from time to time adversely affect the provision of Airtime.

3.4 Midshire may, where reasonable, from time to time and without notice suspend the Wireless Services and provision of customer services in accordance with the Service Charter and at its discretion suspend the provision of Wireless Services to the Device in any of the following circumstances without prejudice to its rights hereunder, provided that it shall use reasonable endeavours to restore the Wireless Services, the Service Charter and reconnect the Device as soon as reasonably practicable:

3.4.1 during any technical failure, modification or maintenance of the telecommunications systems by which the Wireless Services are provided; and

3.4.2 during any technical failure, modification or maintenance of the Midshire System by which the customer services in line with the Service Charter are provided; and

3.4.3 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

3.4.4 if the Customer allows to be done anything which in Midshire's reasonable opinion may have the effect of jeopardising the operation of the Wireless Services, or the Midshire System or the attainment of the Service Charter; and

3.4.5 if in the reasonable opinion of Midshire, the Wireless Services are being used in a manner prejudicial to the interest of the Customer and/or Midshire; and

3.4.6 at its discretion suspend any Device from making calls (other than to the emergency services) and disconnect the Device if Midshire has reasonable cause to suspect fraudulent use of any payment method, the Device's SIM card or the Device itself, or the Device is identified as having been stolen.

3.4.7 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.

3.5 During any period of suspension arising from the circumstances detailed in clauses 3.4.3 to 3.4.7 inclusive, the Customer shall remain liable for all Charges levied in accordance with this Agreement.

3.6 If Midshire in their sole discretion re-instate the Service following a suspension or disconnection, the Customer may be liable for a re-connection fee if the suspension or disconnection is due to the default of the Customer.

4. Sales Orders

4.1 At any time after the commencement date the customer may by means of a sales order request a change or a variation to the wireless services (but not a disconnection).

In placing a Sales Order the Customer shall make use of any Agreement Number allocated to it.

4.2 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.

4.3 Midshire undertakes to use all reasonable endeavours to fulfill any Sales Order as soon as reasonably practicable and if possible by the requested dates for delivery/commencement.

4.4 The Customer undertakes to use its reasonable endeavours to keep Midshire informed whenever reasonably practicable of likely future Sales Orders.

4.5 As and from the date of any Termination Notice Midshire shall have no obligation to fulfill any Sales Orders, but may in its discretion choose to do so and for the avoidance of any doubt any Device supplied under the terms of this Agreement will be charged to the Customer at its full price as appears on the Price List without the benefit of any Device Subsidy.

5. Disconnection of Devices

5.1 A Disconnection Notice may be given by the Customer in respect of an item of Equipment at any time.

5.2 Upon giving of a Disconnection Notice Midshire will disconnect the relevant Device or Devices from the Wireless Services in accordance with the Disconnection Notice upon the expiry of 30 days from the date of the Disconnection Notice. The Agreement will remain in full force and effect in relation to all other Equipment and in relation to the provision of Airtime to such other Equipment.

5.3 In the event that the Customer gives a Disconnection Notice to take effect (and resulting in Device disconnection's) prior to the expiry of the Minimum Period for the particular Device concerned, the Customer will pay to Midshire any applicable Termination Fee.

## 6. Basis of Charges

6.1 Except in the circumstances described at clause 4.5 the prices and tariffs payable by the Customer to Midshire for Equipment and Airtime are as set out on the application form and for the Value Added Wireless Services the prices and charges are set out in the Price List.

6.2 The Customer hereby agrees to pay the Charges in full without any deduction or set off to Midshire within 14 days following the date of invoice for such Charges.

6.3 Midshire will provide the discount on call charges shown in the Discount Table which is appropriate for the Minimum Term selected by the Customer. Midshire will apply the discount on the basis the Customer will be using the Service for the Minimum Term. When the Minimum Term expires, Midshire will no longer apply this discount to any Devices connected to the Service.

6.4 Notwithstanding clause 17.2 of this Agreement Midshire shall only be required to give as much notice as is reasonably practicable of changes to its Wireless Services, Charges, standard terms with customers or Service Charter where such changes arise as a consequence of variations or changes imposed by third party manufacturers or suppliers or by the Network Operator, or due to variations in the rate of Value Added Tax or variations in the technical specifications of Wireless Services.

6.5 The charges are exclusive of Value Added Tax.

6.6 The Charges detailed on application form are available subject to the Customer achieving the Minimum Holding within six months of the Commencement Date and maintaining the Minimum Holding for the duration of the Service Period. Where the number of Devices connected to the Service falls below the Minimum Holding for a consecutive period of three months Midshire reserves the right to amend the Charges accordingly.

## 7. Billing Arrangements

7.1 Midshire 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 Wireless Services and provide other relevant charges and information giving the level of detail and presented in a format and in a medium agreed with the Customer.

7.2 All Charges shall be based upon Data recorded or logged by Midshire.

7.3 Without prejudice to any other rights of Midshire in the event of the Customer failing to pay any sums due to Midshire on time or at all notwithstanding delivery of a written reminder to the Customer Midshire shall be entitled to:

7.3.1 charge interest (both before and after any judgement) on amounts overdue from the Customer under this Agreement from the due date until the payment is actually made at the rate of 2% per annum over the base rate of HSBC Bank plc for the time being during the relevant period; and

7.3.2 reclaim from the Customer all costs and expenses (including legal costs) incurred in the collection of overdue amounts from the Customer; and

7.3.3 suspend the provision of the Wireless Services, the performance of customer services to the Service Charter and/or disconnect Devices or Equipment from the Wireless Services; until such time as all payments due including all interest accrued has been paid and satisfied in full.

7.4 Midshire reserves the right to review any credit applied to this Agreement. Midshire may require from the Customer a deposit as security for payment of Charges. The Customer may request the return of any deposit paid at the expiry of any 12 month period but the decision to return any deposit prior to termination of the Agreement will be at the discretion of Midshire reserves the right to set off any deposit against the Charges. Midshire may require the Customer to pay by Direct Debit.

7.5 If the parties agree that payments of the Charges to Midshire are to be made by credit card and if payments of Charges are not made on the due date Midshire is authorised to debit the Customer's nominated credit card company with all Charges due and payable to Midshire.

## 8. Obligations of the Customer

8.1 The Customer undertakes with Midshire that throughout the Service Period it will:

8.1.1 not permit or suffer its employees to act or omit to act in any way which may injure or damage any persons' property or in any way which may cause the quality of the Wireless Services or any aspect of them to be suspended; and

8.1.2 not use or allow its employees to use the Equipment or have access to the Wireless Services for any improper, immoral or unlawful purpose; and

8.1.3 comply with all statutory requirements in relation to the use of the Equipment and the Wireless Services; and

8.1.4 provide Midshire with such information as Midshire reasonably request in connection with this Agreement; and

8.1.5 not use the Equipment and the Wireless Services for any purpose other than that for which it was designed or intended, or for self provision of wireless telecommunication services; and

8.1.7 notify Midshire immediately (and to confirm in writing) on becoming aware that any Equipment or Device has been lost or stolen or that any person is making improper or illegal use of the Equipment 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 Midshire have suspended the Service; and

8.1.8 not damage or tamper with the Equipment so as to invalidate any warranty provided by the Equipment manufacturer and to pay the standard charges levied by Midshire from time to time applicable to repair work on Equipment which is outside (in scope or time) the warranty provided by the manufacturer of the Equipment; and

8.1.9 not damage or tamper with any Software so as to invalidate any warranty provided by the supplier of the same; and

8.1.10 use the Equipment and any Software in accordance with any user guide or other reasonable instruction of any manufacturer or supplier of the same or reasonable instruction of Midshire and not to copy (save as permitted by law) reverse engineer or modify the Software in any way.

8.2 In the event that 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 Price List and shall be liable to Midshire in respect of any charges losses or expenses associated with such damage, destruction, loss or theft.

8.3 In the event that the Customer is subject to a claim in respect of any alleged infringement of any trademark, patent, registered design or copyright arising from its normal use or possession of Equipment or Software then Midshire will indemnify the Customer in relation to such claim provided that the Customer promptly notifies Midshire of such claim, makes no admission in respect of such claim, allows Midshire to conduct all negotiations and proceedings (providing Midshire with all reasonable assistance) and allows Midshire at Midshire's own discretion and expense to modify or replace the Equipment or Software so as to avoid any continuing infringement. This indemnity does not apply to any infringements caused by the Customer's own breach of the terms of this Agreement or the operation or use of the Equipment or Software in conjunction with other equipment and software not supplied by Midshire pursuant to this Agreement in which event the Customer shall indemnify Midshire in respect of any claims, proceedings and expenses arising from any such infringement by the Customer.

8.4 The terms of this Agreement shall also apply to any Sales Orders placed by any subsidiaries or group companies of the Customer (unless the parties agree in writing otherwise). The Customer agrees that it is the authorised agent of its subsidiary and group companies and will be liable to Midshire for all claims, losses and expenses arising out of the breach of the terms of this Agreement by any subsidiary or group companies.

8.5 The Customer agrees to sign any agreement reasonably required by the owner of the copyright in the Software, including where appropriate any end-user licence agreement necessary to protect the owner's interest in the Software.

## 9 Duration and Termination

9.1 This Agreement shall commence on the Commencement Date and shall continue for the Minimum Term and thereafter throughout the Service Period until the same is brought to an end by means of a Termination Notice.

9.2 A Termination Notice may be given by either party if the other party is in material breach, and the breach is capable of remedy and the party in breach shall have failed to remedy the breach within thirty (30) days of written notice specifying the breach and requiring its remedy, or the breach is not capable of remedy.

9.3 In addition a Termination Notice may be given by Midshire at any time on the grounds that:

9.3.1 the Customer has persistently failed to pay monies properly due to Midshire under this Agreement; or

9.3.2 the Customer is otherwise materially or persistently in breach of the Agreement; or

9.3.3 bankruptcy or insolvency proceedings are brought against the Customer, or if an arrangement with creditors is made, or a receiver or administrator is appointed over any of the Customer's assets, or the Customer goes into liquidation; or

9.3.4 Airtime becomes unavailable due to the termination of any of Midshire's agreements with the Network Operator(s).

9.4 A Termination Notice may be given to Midshire at any time by the Customer if Midshire increases its prices or tariffs in respect of Airtime or Equipment from the Charges set out on application form 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 a change or variation in prices, tariffs, terms or otherwise made or requested by the Network Operators and/or third party manufacturers or suppliers and/or due to a variation in the rate of Value Added Tax.

9.5 Upon the giving of a Termination Notice by Midshire 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 Midshire this Agreement will come to an end 30 days thereafter.

9.6 Upon the expiry of any Termination Notice or otherwise upon the determination of this Agreement Midshire will disconnect all Devices, all SIM Cards, (and any other Equipment) from the Wireless Services and the Customer will pay to Midshire any applicable Termination Fee.

9.7 If the customer disconnects or terminates service within their minimum term, or if the level of usage drops below the minimum Average Revenue Per User threshold of £20 per user per month, then the customer is liable to pay Midshire the minimum sum of Midshire's full Line Rental price (£19.00) until no less than the end of the contractual period. 9.8

If the customer continues to use Midshire's mobile service beyond the minimum contractual term, then the customer is liable to keep the level of usage per user above the minimum Average Revenue Per User until notice of termination is given by the customer. If level of usage falls below ARPU threshold, the customer is liable to pay Midshire's full Line rental price until notice is given.

9.9 If the customer disconnects or terminates service within their minimum term, or if the level of usage drops below the Average Revenue Per User for the customer up until that date during their term Midshire reserves the right to charge the customer the Average Revenue Per User for the customer's account up until the end of their minimum term.

10.1 Confidentiality. The parties will each keep confidential any proprietary information and/or any information obtained from the other in connection with this Agreement which is reasonably identified by either party as commercially confidential 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 without the consent in writing of the other.

10.2 The obligations aforesaid shall not apply to any material or information which is in the public domain (other than as a result of a breach of this Agreement); already known to the receiving party; 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, goodwill, or any loss or corruption of data, or any indirect or consequential loss or damage whatsoever.

11.2 Midshire's aggregate liability of any sort resulting from Midshire's negligence or otherwise arising in connection with this Agreement shall be limited to the sum of £500,000 for any one event or series of related events and to £1 million in total for all incidents in any 12 month period.

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 Midshire does not accept liability for the acts or omissions of other providers of telecommunication services.

#### 12 Matters Beyond the Parties Reasonable Control

12.1 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 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 Midshire, such consent not to be unreasonably withheld or delayed.

13.2 Midshire 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

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.

#### 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 Changes to These Terms and Service Charter

17.1 It is the policy of Midshire to continually review the charges it makes, its Service Charter and the terms upon which it contracts with customers in order to maintain a competitive advantage over other providers of similar services and Midshire accordingly reserves the right to vary its prices and tariffs as set out in its Price List, its Service Charter and these Terms from time to time in accordance with that policy.

17.2 In the event that Midshire does change its prices and tariffs within its Price List, its Service Charter or these Terms such variations or changes will be published at [<http://www.Midshire.co.uk>] at least 14 days before any such changes take place and come into effect (save in the circumstances provided for at clause 6.4 where as much notice of such changes as reasonably practicable shall be given by Midshire to the Customer).

18 Data Protection Midshire operates in accordance with the Data Protection Act 1998 as updated or amended from time to time. The Customer agrees that its details or those of its users may be used by Midshire for marketing purposes and to inform the Customer and its users from time to time about other wireless telecommunications services or associated technologies. If the Customer does not want its details, or those of its users to be used in this way then the Customer should contact the Midshire Data Controller at Midshire House, Doranda Way, West Bromwich, Birmingham B71 4LT.

#### 19 No Partnership

Nothing in this Agreement shall create, or be deemed to create, a partnership between the parties.

#### 20 Notices

Any notice or other communication required or permitted under this Agreement to be given in writing to the address of the recipient stipulated herein or as notified from time to time and will be deemed to have been given or made when delivered personally if properly addressed and posted by first class mail in England within two business days of posting and/or if sent by facsimile upon being sent or if sent by e-mail or other electronic means upon such communication being acknowledged as having been received.

#### 21 No 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.

#### 22 Operative Law

This Agreement shall be considered as a contract made in England and according to English Law and subject to the exclusive jurisdiction of the English courts to which both parties hereby submit.