

# Partner Application Form

Powered by Mdee  Yes  No

For Office use only

**Important - Please ensure that the following are included with your application:**

- Copy of Business Cheque or Bank statement
- Proof of home address & photo identity
- Signed copy of our terms & conditions
- VAT Certificate (Copy)
- Directors Guarantee on letterhead (if applicable)
- Personal Guarantee (If applicable)
- Completed EE Pack

**Business Partner**

Full company name

Full partner principal name

**Business Development Manager**

Full name

I/we warrant that I/we are empowered to sign being a director, partner, proprietor, or authorised signatory, this agreement on behalf of the business partner.

**Authorised signature(s) for application:**

Signed	<input type="text"/>	Print Name	<input type="text"/>
Position	<input type="text"/>	Date	<input type="text"/>
Signed	<input type="text"/>	Print Name	<input type="text"/>
Position	<input type="text"/>	Date	<input type="text"/>

**Authorised Mdee signature:**

Signed	<input type="text"/>	Print Name	<input type="text"/>
Position	<input type="text"/>	Date	<input type="text"/>

## 1 Trading Details

Current trading address

Postcode

Years at current address

Email address

Telephone

Website

If the registered address is different from the trading address please give details:

Date commenced trading

Owned or rented

Company registration No

VAT No

Type of premises

Type of business

Limited  Partnership  Sole Trader  Plc Other (state)

Approximate turnover last year

## 2 Personal Details

### Names and addresses of proprietors/partners/directors

(If more than two proprietors/partners/directors please continue on a separate sheet).

Full Name

Address

Postcode

Years at current address

Date of birth

Telephone

Mobile

Status

Owner  Rented  Living with parents

Previous address if less than three years at the above premises:

Postcode

Telephone

Mobile

Status

Owner  Rented  Living with parents

Names and addresses of proprietors/partners/directors (continued)

Full Name

Address

Postcode

Years at current address

Date of birth

Telephone

Mobile

Status

Owner  Rented  Living with parents

## Personal Details continued

Previous address if less than three years at the above premises:

  

Postcode

Telephone

Mobile

Status

Owner

Rented

Living with parents

## 3 Key Contacts

### Sales

Name

Phone

Email address

### Purchasing

Name

Phone

Email address

### Accounts Payable

Name

Phone

Email address

### Administration

Name

Phone

Email address

## 4 Checklist

- |  |  |
|--|--|
| <input type="checkbox"/> Completed & Signed Application Pack   | <input type="checkbox"/> Signed terms & conditions                         |
| <input type="checkbox"/> EE Pack completed including Business Plan, Interior and exterior photos, Blank Letterhead | <input type="checkbox"/> Completed Connect Mee Terms & conditions          |
| <input type="checkbox"/> Copy of Business Cheque/Bank Statement  | <input type="checkbox"/> Copy of VAT Certificate                           |
| <input type="checkbox"/> Proof of home address (dated within last 3 months)  | <input type="checkbox"/> Directors Guarantee on letterhead (if applicable) |
| <input type="checkbox"/> Proof of identity (copy of driving licence /passport)                                     | <input type="checkbox"/> Personal Guarantee (If applicable)                |

# 5 Data Protection Policy

Midland Communications Distribution Ltd will hold personal data upon individuals within your organisation. This will be the information supplied to us when we commence trading with you and any information relating to that individuals' credit worthiness obtained subsequently. This information will be held for a period of five years following Midland Communications Distribution Ltd ceasing to trade with your organisation.

The information that is processed by Midland Communications Distribution Ltd upon individuals (this may include the Directors of limited companies) will be used by Midland Communications Distribution Ltd generally to monitor and record trade credit performance. It will be made available to other organisations (including credit reference agencies) to assess applications for credit.

It is the policy of Midland Communications Distribution Ltd to make searches with credit reference agencies in respect of individuals (this may include the Directors of limited companies) with whom Midland Communications Distribution Ltd choose to trade. Midland Communications Distribution Ltd will keep records of all searches made and share any information obtained with other organisations.

**By signing this application I hereby consent to the processing of data upon me in accordance with the Data Protection Policy set out above and freely acknowledge that all contracts between my company and Midland Communications Distribution Ltd will be governed by the full Terms and Conditions of Midland Communications Distribution Ltd.**

Signed	<input type="text"/>
Position	<input type="text"/>

Print Name	<input type="text"/>
Date	<input type="text"/>

Signed	<input type="text"/>
Position	<input type="text"/>

Print Name	<input type="text"/>
Date	<input type="text"/>

# 6 Terms and conditions for the supply of Products and services

## 1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions, the following definitions apply:

### **Business Day**

a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business; the person or firm who purchases the Products and/or Services from the Supplier;

### **Business Partner Claw Back**

the obligation of the Business Partner to repay any Commission in accordance with clause 10;

### **Commission**

the Commission payments to be made by the Supplier in accordance with clause 10;

### **Conditions**

these terms and conditions as amended from time to time in accordance with clause 17.7;

### **Confidential Information**

information belonging or relating to either party (the "providing party"), its customers, affairs, or business which is not in the public domain and which is provided to the other party (the "receiving party") which the receiving party obtains under or as a result of a Contract (including any new document including such information) and which information (i) the providing party has marked as confidential, or (ii) the providing party has advised the receiving party is of a confidential nature or (iii) due to its character or nature, a reasonable person would treat as confidential, including, without limitation, any and all Customer Data and the content of the Contract;

### **Connection**

the commencement of Services to a valid SIM pursuant to an EE contract purchased by the Customer from the Business Partner in relation to Products supplied by the Supplier (and "Connect(s)" or "Connected" shall be construed accordingly);

### **Contract**

the contract or contracts between the Supplier and the Business Partner from time to time for the supply of Products and/or Services in accordance with these Conditions;

### **Customer**

the person or firm who purchases the Products and/or Services from the Business Partner;

### **Customer Data**

Personal Data pertaining to a particular Customer or prospective customer (or any individual associated with such Customer or prospective customer) obtained by, generated by or provided to either party as a result of or in connection with a Contract;

### **Delivery Location**

has the meaning set out in clause 4.2;

### **EE**

Everything Everywhere Limited;

### **GC 23**

OFCOM General Condition 23 on sales and marketing of mobile telephony services as may be amended from time to time together with any current guidance notes issued by OFCOM in respect of General Condition 23;

### **GSM Gateway Apparatus**

a device containing one or more SIMS for one or more mobile networks, which enable calls to mobile networks from fixed

networks (whether directly or indirectly) to be routed directly via a GSM link into the relevant mobile network;

### **OFCOM**

the Office of Communications or such other replacement organisation from time to time;

### **Order**

the Business Partner's order for the supply of Products and/or Services which if accepted by the Supplier shall be the basis of the Contract as per clause 2;

### **Personal Data**

has the meaning ascribed to it in the Data Protection Act 1998;

### **Price List**

a current price list for Products issued by EE or the Supplier;

### **Products**

the mobile handsets and/or other related products set out in the Order;

### **Quarter**

is one of the four three calendar month periods beginning on any 1 January, 1 April, 1 July or 1 October;

### **Services**

the EE network services as may be procured by the Supplier to the Business Partner pursuant to these Conditions for use by Customers;

### **SIM**

an EE subscriber identification module card programmable with a unique telephone number or numbers, which enables access to, and the use of, the Services when operated in conjunction with a compatible Product;

### **Supplier**

Midland Communications Distribution Limited registered in England and Wales with company number 3413872 trading as Mdee.

## 2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Business Partner to purchase Products and/or Services in accordance with these Conditions.

2.2 All Orders must be submitted by email from the nominated email address notified to the Supplier and each Order must identify the relevant account number. When the Supplier has introduced an online portal to facilitate the Orders it will provide the relevant details to the Business Partner and thereafter the portal may be used for any Orders.

2.3 The Order shall only be deemed to be accepted on the first to occur of:

- (a) the Supplier issuing written acceptance of the Order; or
- (b) when the Supplier despatches the Products/commences provision of the Services;

and on which date the Contract shall come into existence.

2.4 The Contract constitutes the entire agreement between the parties. The Business Partner acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.

2.5 Under no circumstances shall the Supplier's acceptance of the Order be construed or implied to create an obligation on the Supplier to subsequently accept any additional or subsequent Order.

2.6 These Conditions apply to the Contract to the exclusion of any other terms that the Business Partner seeks to impose or

incorporate, or which are or may be implied by trade, custom, practice or course of dealing.

2.7 The Supplier does not warrant the availability of Products and the Business Partner accepts that Products listed in Price List may not be available at all times or at all.

### 3. PRODUCTS

3.1 The Business Partner shall be responsible for ensuring the Products ordered are of the correct specification for their intended use and location..

3.2 From time to time the Supplier may have to make changes in the specification of the Products (but these will not materially reduce the quality of performance of the Products):

(a) as a result of changes made to make the Products conform with any applicable safety or other legal and/or statutory requirements; or

(b) to make the Products reflect changes in the manufacturer's specification.

3.3 The Supplier reserves the right to substitute products substantially similar in all material respects to the Products ordered. Once the partner has provided consent of such substitute.

### 4. DELIVERY OF PRODUCTS

4.1 The Supplier shall ensure that each delivery of the Products is accompanied by a delivery note (Delivery Note) which shows the date of the Order, all relevant Business Partner and Supplier reference numbers, the type and quantity of the Products (including the code number of the Products, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Products remaining to be delivered.

4.2 The Supplier shall deliver the Products to the location set out in the Order or such other location as the parties may agree in writing (Delivery Location) within 48 hours after the Supplier notifies the Business Partner that the Products are ready unless otherwise agreed.

4.3 Delivery of the Products shall be completed when they are collected by the Business Partner's courier from the Delivery Location or, if delivered by the Supplier, on arrival at the Delivery Location.

4.4 Any dates quoted for delivery of the Products are approximate only, and the time of delivery is not of the essence. The Supplier shall have no liability for any losses or other expenses sustained or incurred by the Business Partner as a result of delay. The Business Partner shall not be entitled to refuse acceptance of the Products as a consequence of such delay.

4.5 Failure by the Business Partner to take delivery of the Products or to give adequate delivery instructions will not relieve the Business Partner of its obligation to pay for the Products.

4.6 Where the Business Partner initially fails to take delivery of the Products, unless the goods are rejected due to damage, missing items or incorrect orders, the Supplier shall store the Products until delivery takes place and reserves the right to charge the Business Partner for all related costs and expenses (including insurance).

4.7 The Business Partner must, on request, pay to the Supplier any costs in supplying the Products caused by:

(a) any breach by the Business Partner of its obligations under these Conditions and/or any Contract;

(b) any factor beyond the Supplier's reasonable control;

(c) any changes in the dates of delivery of the Products which

the Business Partner requires; or

(d) any delay caused by the Business Partner's instructions or failure to give adequate information or instructions when the Order has been accepted or at any other time.

4.8 All Products shall be checked by the Business Partner on delivery and any shortages, or damaged Products or non-delivery must be notified within 24 hours of receipt (or non-receipt as the case may be).

4.9 The Business Partner shall make a note on the Delivery Note referred to in clause 4.1 and give notice in writing to the Supplier within seven (7) days if it is alleged that:-

(a) there is a surplus or shortfall of the amount of Products delivered; or

(b) there is any visible damage to the Products, or any indication that the Products have been otherwise tampered with.

4.10 If the Business Partner does not give notice in accordance with clause 4.9 within seven (7) days from the date of delivery, Products delivered shall be deemed in all respects to be in accordance with the Order and the Business Partner shall be deemed to have irrevocably and unconditionally accepted the Products on delivery and, save in respect of faulty Products where the fault was not visible on delivery of the Products, shall not be entitled to raise any subsequent claim in relation thereto.

4.11 The Business Partner shall keep any Products it has reported to the Supplier under clause 4.8 and/or clause 4.9 in the state in which such Products were delivered and at the Business Partner's risk for a period of thirty (30) days from the date of delivery and shall allow the Supplier or its authorised representative to inspect and recover the same together with all original packaging materials or, if requested by the Supplier, shall return the same to the Supplier at the Business Partner's cost, such cost to be reimbursed in the event that the Business Partner's complaint regarding such Products is proved to the Supplier's reasonable satisfaction to be justified.

4.12 The Supplier may deliver the Products 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 Business Partner to cancel any other instalment.

4.13 The Supplier will at its sole discretion either replace or repair free of charge any Products proved to the Supplier's satisfaction to have been damaged prior to delivery and will complete any shortfall in the amount of Products supplied, provided the Business Partner has given written notice to the Supplier as provided above.

4.14 14 day returns policy for cancellation/change of mind, 30 day returns policy for faulty handsets. All returns/faulty replacements should be boxed, accompanied with an RA (returns authorisation) number, be completed and returned within 14 days of receiving an RA. If there are any missing or non-genuine items replacing the genuine items in the box returned to the Supplier then the Product will be returned. RAs should be kept to a minimum of 4% of the total dispatches within each calendar month. Any returns that exceed the 4% cap per a month will be charged, per a device at the rates below:

£50	Per a non-smartphone
£120	Per a smartphone

### 5. QUALITY OF PRODUCTS

5.1 The Supplier purchases Products with the benefit of industry standard warranties from the manufacturers. Such warranties shall be extended to the Business Partner.

5.2 Save as provided in clause 5.1, and to the fullest extent permitted by law, the Supplier gives no warranty, representation,

undertaking or guarantee in relation to the Products and all terms, conditions and warranties that would, but for this clause, be implied into these Conditions are expressly excluded to the fullest extent permitted by law.

**5.3** Except as provided in this clause 5, the Supplier shall have no liability to the Business Partner in respect of the Products' failure to comply with the warranty set out in clause 5.1.

**5.4** The terms of this clause 5 shall apply to any repaired or replacement Products supplied by the Supplier under clause 4.13.

**5.5** If a valid warranty claim is made within the warranty period (if applicable), the Supplier will replace or repair (at its discretion) the Products free of charge.

## **6. TITLE AND RISK**

**6.1** The risk in the Products shall pass to the Business Partner on completion of delivery.

**6.2** Title to the Products shall not pass to the Business Partner until the Supplier has received in cleared funds payment in full in respect of those specific products.

**6.3** Until title to the Products has passed to the Business Partner, the Business Partner shall:

- (a)** store the Products (at no cost to the Supplier) separately from all other Products held by the Business Partner so that they remain readily identifiable as the Supplier's property;
- (b)** not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
- (c)** maintain the Products in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery. On request the Business Partner shall produce a policy of insurance to the Supplier;
- (d)** not allow the Products to become the subject of any encumbrance, charge, lien or other interest;
- (e)** give the Supplier such information relating to the Products as the Supplier may require from time to time.

**6.4** Subject to clause 6.5, the Business Partner may resell to Customers or use the Products in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Products. However, if the Business Partner resells the Products before that time:

- (a)** it does so as principal and not as the Supplier's agent; and
- (b)** title to the Products shall pass from the Supplier to the Business Partner immediately before the time at which resale by the Business Partner occurs.

**6.5** If before title to the Products passes to the Business Partner the Business Partner becomes subject to any of the events listed in clause 14.1(c), then, without limiting any other right or remedy the Supplier may have:

- (a)** the Business Partner's right to resell Products or use them in the ordinary course of its business ceases immediately; and
- (b)** the Supplier may at any time:
  - (i)** require the Business Partner to deliver up all Products in its possession which have not been resold, or irrevocably incorporated into another product; and
  - (ii)** if the Business Partner fails to do so promptly, enter any premises of the Business Partner or of any third party where the Products are stored in order to recover them.

**6.6** The Supplier shall be entitled to recover payment for the Products notwithstanding that the ownership of any other Products has not passed to the Business Partner.

## **7. BUSINESS PARTNER'S OBLIGATIONS**

**7.1** The Business Partner shall at all times:

- (a)** ensure that the terms of the Order are complete and accurate;
- (b)** not advertise, promote, market, deal with sell or rent the Products other than in accordance with clause 7.1(b);
- (c)** not make any unauthorised, false or misleading representations relating to the Products and/or, the Services or otherwise nor shall it make any promises, representations, warranties or guarantees with reference to the Products and/or Services beyond those contained in the promotional material supplied or approved by EE or the Supplier or otherwise incur any liability on behalf of EE or the Supplier;
- (d)** comply with all legislation and regulations, guidelines or industry codes of practice as may be applicable, including, without limitation, the Distance Selling Regulations, the Privacy and the Electronic Communications (EC Directive) Regulations 2003, the Privacy and the Electronic Communications (EC Directive) (Amendment Regulations 2011 and the Bribery Act 2010 where applicable) and be responsible for obtaining all licences, permits and approvals that are necessary or advisable for the sale of any Products and for the performance of its obligations hereunder;
- (e)** comply with GC 23 and the Business Partner shall indemnify the Supplier in respect of any liability, loss, damage or expenses incurred or suffered by the Supplier as a result of any breach by the Business Partner of, or any non-conformance by the Business Partner with the obligations under GC 23;
- (f)** in respect of its promotion of the Services, clearly indicate that it is acting as a selling representative only and not as part of EE or the Supplier and not cause the public in any way to confuse it with EE or the Supplier;
- (g)** notify the Supplier in writing if any Product which has been provided to the Business Partner but not on-sold is stolen, lost, damaged or tampered with;
- (h)** immediately notify the Supplier in writing of all complaints it receives with regard to the Services and/or Products;
- (i)** not act in any way which brings the Supplier, EE or its Products, Services or trademarks (including without limitation the name EE) into disrepute or which in any way damages the reputation of EE, its Products, Services or trademarks (including without limitation the name EE);
- (j)** not directly or indirectly assist or enable a Customer to cancel a contract or otherwise deactivate the Services where the Business Partner knows or ought reasonably to know that the Customer is within the minimum term of his or her contract;
- (k)** not (without the prior written consent of the Supplier) facilitate, promote, sell or otherwise use GSM Gateway Apparatus or any other device which is used to route nonmobile or third party traffic through the EE network. If the Business Partner is in breach of this clause 7.1(l) or the Supplier reasonably believes that the Business Partner is in breach of this clause, the Supplier shall have the right to immediately suspend from the EE network, without liability or notice to the Business Partner, any SIM card being used (or reasonably believed to be being used) with such GSM Gateway Apparatus or other device. In addition to the suspension right set out above, or any other right the Supplier may have under this Agreement, the Supplier shall be entitled to Claw Back from the Business Partner any Commission paid to the Business Partner related to use of a SIM in breach of this clause and shall be entitled to recover any losses suffered by the Supplier as a consequence of such breach;
- (l)** maintain a dedicated staff with suitable expertise in mobile communications or similar electronic products and in particular at least one employee, who is undertaking or who

has undertaken such training as may be required from time to time;

- (m) provide suitable pre and after sales support to prospective and actual customers including without limitation information relating to the acceptance process and the standard forms all in accordance with EE policies and practices from time to time;
- (n) indemnify the Supplier against all liabilities, claims, demands, actions, costs, damages or loss arising out of any failure by the Business Partner to comply with any term of these Conditions;
- (o) use reasonable endeavours to promote the sale of accessories for the Products.

## 8. ACCOUNT

- 8.1 Upon receipt of the application form duly completed by the Business Partner, the Supplier may provide an account for the use of the Business Partner. The Supplier reserves the right to decline applications for any reason whatsoever.
- 8.2 In connection with the account application the Supplier will carry out credit fraud prevention checks with a licensed credit reference and fraud prevention agency and this agency will retain a copy of the search. Information from the application and payment details of the account will be recorded and may be shared with other organisations to help make credit or insurance decisions about the Business Partner and members of the Business Partner's group and for debt collection and fraud prevention purposes.
- 8.3 The Supplier will only accept the application when the Business Partner passes a credit check to the Supplier's satisfaction.
- 8.4 If approved an account will be opened and a credit limit inclusive of VAT will be notified to the Business Partner and this credit limit should not be exceeded. Any increase in the credit limit must be requested in writing and will be subject to approval by the Supplier, which may entail further credit checks.
- 8.5 Credit limits are subject to periodic review at the Supplier's discretion.
- 8.6 The Supplier reserves the right to close the Business Partner's account if:
  - (a) there is no trading with the Business Partner for a consecutive period of three (3) months;
  - (b) EE issues a "do not deal" notice in respect of the Business Partner;
  - (c) the Business Partner is found to have acted fraudulently (as determined by EE or the Supplier);
  - (d) there are persistent Customer complaints about the Business Partner;
  - (e) the Business Partner fails to comply with the EE's compliance guidelines; and
  - (f) any of the grounds for termination in clause 14.1 occur.

## 9. CHARGES AND PAYMENT

- 9.1 The price for the Products shall be the price set out in the Order or, if no price is quoted, the price set out in the Price List as at the date of delivery. The price of the Products is exclusive of all costs and charges of packaging, insurance, transport of the Products which shall be payable in addition where relevant. Additional charges must be detailed on the order
- 9.2 The Business Partner acknowledges that EE reserves the right to amend the Price List from time to time and the Supplier shall give the Business Partner such notice as is reasonably practicable of such changes.
- 9.3 The Supplier shall invoice the Business Partner on or at any time after completion of delivery.

9.4 The Business Partner shall pay each invoice submitted by the Supplier:

- (a) within 21 days of the date of the invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by the Supplier,

and time for payment shall be of the essence of the Contract.

9.5 If the Supplier agrees that payment may be paid by cheque the Business Partner acknowledges and agrees that it will be liable to pay £10 (ten pounds) to the Supplier for any cheques which fail to clear in addition to the amount of the payment due.

9.6 Products which are stolen or unaccounted for, Products which are subject to a seven day money back guarantee, unregistered upgrade SIMS, fraudulent Connections and Products over 30 days will incur a gross value of a mobile surcharge. The Business Partner will be liable to pay an invoice for such surcharge immediately on receipt.

9.7 All amounts payable by the Business Partner 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 the Supplier to the Business Partner, the Business Partner shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Products at the same time as payment is due for the supply of the Services or Products.

9.8 Notwithstanding clause 9.4 above, the parties agree that the Supplier shall be entitled to set off against undisputed sums due to the Business Partner (including Commission) any sums which are or become payable by the Business Partner to the Supplier whether or not such liability arises under the Contract or otherwise. Any exercise by the Supplier of its rights under this clause shall not limit or affect any other rights available to it under these Conditions.

9.9 The Business Partner will properly advise the Supplier in writing of any of the following:

- (a) change of address;
- (b) change of bank details;
- (c) change in VAT status and confirmation on an annual basis (where applicable) of existing VAT status.

9.10 If the Business Partner fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Business Partner shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank Plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Business Partner shall pay the interest together with the overdue amount. Any exercise by the Supplier of its rights under this clause shall not limit or affect any other rights available to it under these Conditions.

9.11 In addition to the rights prescribed by clauses 9.4 and 9.8 above, in the event that the Business Partner has not paid any undisputed sum(s) which are due to the Supplier, the Supplier shall have the right to, without prior notice:

- (a) suspend delivery of any Products not then delivered at that time; and/or
- (b) require the Business Partner as a condition of further supply and delivery of Products to provide such financial security which is in the reasonable opinion of the Supplier appropriate as security against the Business Partner's non-compliance with the payment provisions of this clause.

9.12 The Business Partner shall pay all undisputed amounts due under the Contract in full without any set-off, counterclaim,



deduction or withholding except as required by law.

## 10. COMMISSION AND CLAW BACK

- 10.1** Subject to these Conditions and any conditions that may be imposed by EE, the Supplier shall pay to the Business Partner the Commission.
- 10.2** The Supplier shall provide statements of Commission to the Business Partner either in paper written format and/or electronic format and such statements will be provided on a weekly or such other basis as may be specified by the Supplier. Each statement will contain a summary of the previous week's Connections with full details listed by IMEI, and calculated Commission due on a self-billing invoice. The Supplier will use all reasonable endeavours to issue this on Tuesday each week.
- 10.3** Commission shall not be payable or for any of the following categories of Connections:
- (a)** Connections completed without adherence to the proper process or other conduct on the part of the Business Partner violates these Conditions; unless agreed in writing with the supplier
  - (b)** Connections using a SEC (unique sales entity code) not assigned by EE to the Supplier or the Business Partner as the case may be;
  - (c)** Connections made using Products not supplied by the Supplier to the Business Partner, and any commission paid to the Business Partner that the Business Partner is not entitled to pursuant to this clause shall be subject to Claw Back.
- 10.4** The Supplier reserves the right to withhold Commission for a period of up to 120 days for any Connection that the Business Partner does not provide satisfactory proofs for or where the Supplier determines the Connection may be subject to Claw Back.
- 10.5** All new Business Partners will be required to provide Customer information forms and proofs in a form reasonably acceptable to the Supplier for all Connections secured during the first two months of a trading relationship with the Supplier, or such other time as the Supplier may request. Copies of this documentation should be attached to the relevant self-billing invoice to which any claim for Commission relates and returned to the Supplier in order to generate a Commission payment. The Supplier reserves the right to review any proof supplied and to require further information in connection therewith. Failure to supply the relevant documentation will delay the payment of Commission as no payments will be made without it. If after the expiry of the aforementioned two month period the Supplier is satisfied with the provision of supporting documentation by the Business Partner it may waive the requirement for Customer information forms and proofs provided that the Supplier reserves the right to reintroduce the requirement at any time by giving written notice to the Business Partner. The Supplier may also on a monthly or such other basis as it sees fit issue a proof audit requesting a random selection of copies of proofs taken at the point of registration of the Customer, and any such request must be returned to the Supplier within thirty (30) days of receipt by the Business Partner. Failure to supply the relevant documentation will delay the payment of Commission and may lead to a suspension or closure of the Business Partner's account.
- 10.6** The Supplier may attend any visit (including follow up visits that may occur) that EE makes to the Business Partner for the purpose of reviewing the matter referred to in clause 10.4 and general compliance with EE's rules and guidelines.
- 10.7** Claw Back will be applied to any Commission paid to the Business Partner where:
- (a)** a Connection has been identified as fraudulent (as determined by EE);
  - (b)** no payment due on the Business Partner's account has been received in cleared funds or where there are any outstanding payments due;
  - (c)** any value added services are sold and subsequently

disconnected within 120 days;

- (d)** loyalty promotions are sold and subsequently disconnected within 120 days;
- (e)** a Customer is disconnected within 120 days of the Connection, having paid their first bill;
- (f)** the Customer breaches its contract with EE and EE suspends or terminates the Services for that Customer;
- (g)** the number of Connections in any month that becomes inactive is above 10%. A Connection shall be considered inactive if the Customer does not make an average of at least 10 minutes per month of outbound calls (or equivalent value data usage) over a rolling three month period, and the inactivity percentage is calculated by dividing the number of Connections which are inactive per month with the number of Connections made by the Business partner in that same month.

**10.8** Subject to clause 10.4 any Commission due will be paid weekly in arrears by BACS.

## 11. CONFIDENTIALITY

- 11.1** The Supplier and the Business Partner undertake and agree with each other that they shall not, either during the continuance of their trading relationship or at any time thereafter, (and shall procure that their employees, servants, or agents do not) disclose to any third party any Confidential Information without the prior written consent of the other party.
- 11.2** The Business Partner shall procure that all Personal Data disclosed to it by the Supplier or EE which may at any time come into the Business Partner's knowledge, possession or control, shall be kept secret and confidential and shall not be used for any purposes other than those required or permitted by these Conditions and shall not be disclosed to any third party.
- 11.3** The provisions of clause 11.1 above shall not apply in respect of Confidential Information if:
- (a)** the receiving party is required to disclose such information by law or a Court, by a taxation authority or other authority of competent jurisdiction;
  - (b)** the receiving party needs to disclose such information to its employees or professional advisers or subsidiary or parent companies in connection with the Contract, provided that the receiving party shall procure that such employees or professional advisers or subsidiary or parent companies are made aware of the confidential nature of such information and are bound by obligations of confidence no less strict than those set out in this clause 11 in respect of the same;
  - (c)** the receiving party develops such information independently;
  - (d)** the providing party has provided the receiving party with written authorisation for the disclosure of such information; or
  - (e)** such information is or becomes publicly known through no fault of the receiving party.
- 11.4** The Business Partner is responsible for the security of any usernames or passwords it uses to access and use any system maintained or used by EE in relation to the Contract (the System) and such usernames and passwords shall be deemed to be the Confidential Information of EE. In particular, but without limiting the generality of the foregoing, the Business Partner shall ensure that:
- (a)** such usernames and passwords are not disclosed to any person, or for any purpose, other than to its own employees or agents for the purpose of accessing and using the System; and
  - (b)** best practice security and technical measures are put into place and maintained by the Business Partner to ensure that the Business Partner's employees or agents cannot:
    - (i)** have access to, or use, the System; or

(ii) inform a third party how to access or use the System, once such employee or agent ceases to be employed or engaged by the Business Partner.

11.5 The obligations of confidentiality in this clause 11 shall survive termination of the trading relationship between the Supplier and the Business Partner.

## 12. CUSTOMER DATA

12.1 The Business Partner warrants and undertakes that:

- (a) it shall have no rights in the Customer Data, including, without limitation, in any database containing the Customer Data and that the Business Partner is permitted to use such Customer Data solely for the purpose, and duration, and in accordance with the terms, of these Conditions and solely as agent for the Supplier;
- (b) it shall implement and maintain all such technical and organisational security procedures and measures necessary or appropriate to preserve the security and confidentiality of the Customer Data processed by it to protect such Customer Data against unauthorised and unlawful processing, accidental loss, destruction or damage or alteration;
- (c) it shall at all times comply with the terms of EE's policies on personal data and marketing to consumers and any other instructions received by the Business Partner from the Supplier from time to time in relation to the Customer Data;
- (d) it shall not disclose the Customer Data otherwise than as permitted in clause 11.2 above whether by sale or otherwise;
- (e) other than in accordance with the terms of these Conditions, it shall not process the Customer Data for its own purposes nor for the purposes of any third party and in particular shall not use the Customer Data in any mailing, cold calling or other marketing activity involving the promotion of products and/or services of any competitor of EE even if such marketing activity should also involve the promotion of EE products and/or services;
- (f) it shall securely return to the Supplier all copies of the Customer Data in it's a possession or control immediately upon termination of the trading relationship with the Supplier and shall not retain any copies thereof.

12.2 The Business Partner shall take all reasonable steps to ensure the reliability of any of its employees who have access to the Customer Data.

12.3 The Business Partner shall deal promptly and properly with all enquiries from the Supplier relating to its processing of the Customer Data.

12.4 The Business Partner shall promptly notify the Supplier and in any event within 24 hours about any incident relating to the processing of Customer Data, including any unauthorised or unlawful processing, loss, destruction, damage or alteration of the Customer Data. The Business Partner undertakes to provide all reasonable assistance to the Supplier in respect of the facts or matters giving rise to any such incident and shall not release any communications in respect of such breach without the prior written approval of the Supplier.

12.5 In the event that the Supplier believes that the Business Partner may be in breach of this clause 12 the Supplier may, without prejudice to its other rights and remedies, exercise its rights of audit in accordance with clause 16.

12.6 The Business Partner shall fully indemnify the Supplier against all claims, demands, actions, costs, expenses, losses and damages arising from or incurred by reason of any loss, damage or distress suffered by any person as a result of the loss, destruction or unauthorised disclosure of, or unauthorised access to, Customer Data by it or its personnel or as a result of any failure by the Business Partner to comply with the provisions of this clause 12.

12.7 The Business Partner acknowledges and agrees that the

Supplier may supply the Personal Data of the persons it deals with at the Business Partner to EE (whether as part of the process for opening a trading account or otherwise), and the Business Partner confirms that the persons whose Personal Data is covered by this clause, have agreed to the processing of this information by the Supplier.

## 13. LIABILITY

13.1 Subject to clause 13.4, the Supplier shall not be liable in any circumstances whether under the law of contract, tort (including without limitation negligence), breach of statutory duty or otherwise for any indirect or consequential loss howsoever caused arising under or in connection with the Contract or arising out of the purchase, possession, sale, rental, advertising or use by the Business Partner of any Product or Service.

13.2 Subject to clause 13.4, the Supplier shall not be liable in any circumstances for any

(a) loss of profits, revenue, business, contracts, anticipated savings, or any other financial loss; or

(b) loss of profits; or

(c) loss of goodwill,

however arising and whether such loss is direct or indirect.

13.3 In the event that any Product is in breach of the warranty set out in clause 5.1, the sole and exclusive remedy of the Business Partner shall be such credit as the Supplier is entitled to receive from the manufacturer (less any depreciation and/or price protection that the Business Partner has benefitted from, and provided the Product in question has been returned to the Supplier in accordance with its instructions).

13.4 Nothing in these Conditions limits or excludes the Supplier's liability for death or personal injury caused by its negligence and/or the Supplier's liability for fraudulent misrepresentation.

13.5 The limitations set out in this clause have been agreed in recognition of the parties' respective roles, benefits and obligations and both parties acknowledge that they are reasonable.

13.6 This clause 13 shall survive termination of the Contract.

## 14. TERMINATION

14.1 The Supplier may at any time by giving notice in writing to the Business Partner (and in reciprocation) terminate the Contract with immediate effect:

(a) if the Business Partner commits a material breach not capable of remedy; or

(b) if the Business Partner commits a material breach or persistent immaterial breach of any of these Conditions and has not complied with a notice specifying the breach and requiring its remedy within thirty (30) days;

(c) if the Business Partner is unable to pay its debts (within the meaning of Section 123 of the Insolvency Act 1986) or if any step is taken (by the Business Partner or by any third party in respect of the Business Partner) to: initiate a composition, scheme, or other arrangement with any of its creditors; commit any act of bankruptcy or appoint a trustee in bankruptcy; resolve or petition to wind up the Business Partner; appoint an administrator, receiver or manager over all or any part of the Business Partner's business or assets; or if any analogous event occurs in any jurisdiction.

14.2 Without limiting its other rights or remedies, the Supplier may suspend deliveries of Products under the Contract or any other contract between the Supplier and the Business Partner:

(a) if the Business Partner fails to pay any undisputed amount due under the Contract on the due date for payment; or

(b) the Business Partner becomes subject to any of the events

listed in clause 14.1(c), or the Supplier reasonably believes that the Business Partner is about to become subject to any one of them.

**14.3** On termination of a Contract for any reason:

- (a) the Business Partner shall immediately pay to the Supplier all of the Supplier's undisputed outstanding unpaid invoices and interest and, in respect of the Products supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Business Partner immediately on receipt;
- (b) if EE has issued a do not deal notice all Commission payments will automatically cease;
- (c) the Supplier reserves the right to stop ongoing payments of Commission;
- (d) the accrued rights and remedies of the parties as at termination shall not be affected, 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; and
- (e) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

**15. FORCE MAJEURE**

**15.1** For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

**15.2** The Supplier shall not be liable to the Business Partner as a result of any delay or failure to perform its obligations under the Contract as a result of a Force Majeure Event.

**16. AUDIT – in accordance with clause 11**

**16.1** The Business Partner hereby grants the Supplier and/or its authorised agents the right of access on reasonable notice at all reasonable times during the Business Partner's normal business hours to the premises of the Business Partner, its business records and its computer and support systems for the purposes of the Supplier monitoring and/or carrying out an audit of the Business Partner's compliance with the Contract; and

**16.2** The Business Partner shall endeavour to remedy any breaches highlighted by such audit promptly and at its sole expense.

**17. GENERAL**

**17.1** Assignment and other Dealings

- (a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party, with prior written notice
- (b) The Business Partner shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

**17.2** Notices

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing,

addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first class post or other next working day delivery service, or by commercial courier, fax or e-mail.

- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 17.2(a); 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; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.

- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

**17.3** Severance

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

**17.4** Waiver

A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**17.5** No Partnership or Agency

Nothing in a Contract or these Conditions is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

**17.6** Third Parties

A person who is not a party to a Contract shall not have any rights to enforce its terms.

**17.7** Variation

Except as set out in these Conditions, no variation of a Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Supplier and the partner.

**17.8** Governing Law

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

**17.9** Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with these Conditions or any Contract or its subject matter or formation (including non-contractual disputes or claims).

