

"This Enabling Elements Service Contract (the "Contract") is made between Enabling Elements Inc ("Enabling Elements") and the undersigned Client for the products and services listed on the attached schedules and any Additional Order (as defined below) accepted by Enabling Elements in writing. Capitalized term used in this Contract will have the definitions set forth in this Cover Sheet, the attached Standard Terms and Conditions or any of the attached Schedules."

Company:
Company Tax ID.:
Address:

Contact Name:
Tel:
Fax:
E-Mail:

**Delivery Address
for SIM cards:**

Billing Information

Company: (If different from above)
Address: (If different from above)

Enabling Elements Inc
1376 Yorkshire #110
Carol Stream IL 60188

Billing Contact: _____

Telephone: +1 (617) 949-8900

Telephone: (____) ____ - ____

Fax: +1 (617) 830-0977

Fax: (____) ____ - ____

E-mail: Activations@EnablingElements.com

E-Mail:

Summary of Terms

- Invoicing Terms: a) All Monthly Service Charges shall be invoiced in advance on the start of the contract date. Partial months shall be invoiced on a pro-rata basis assuming 30 days in each month;
b) All additional usage charges shall be invoiced monthly in arrears.
- Payment Terms: All rental amounts shall be invoiced monthly in advance, usage charges shall be payable monthly in arrears, collected within 14 days of invoice.

Commencement of the Minimum Term

Each connection supplied by Enabling Elements to the Client under this Contract (including, but not limited to, those connections set out in the initial Order and any other connection supplied by Enabling Elements to the Client pursuant to and any Additional Order) is subject to the Minimum Term in respect of each connection supplied hereunder will commence when that SIM Card is received by the Client. Subject to earlier termination of this Contract in accordance with the provisions set out in this Contract the license granted by Enabling Elements to the Client in respect of each connection will continue beyond the end of the Minimum Term until the Client shall give to Enabling Elements at least (1) one months written notice of the Client's wish to Terminate this Contract.

"This Contract is ACCEPTED AND AGREED TO as of the last date by which this Contract is executed."

Accepted on behalf of:

on behalf of
Enabling Elements Inc

Signature: _____

Signature: _____

Print Name: _____

Name: _____

Position: _____

Position: _____

Date: _____

Date: _____

TERMS OF SUPPLY OF MOBILE DATA SERVICES AND EQUIPMENT

ATTACHMENT 1 – STANDARD TERMS AND CONDITIONS
Interpretation

In these terms and conditions:-

“Additional Order”	means an order for additional Enabling Elements Services, Equipment or SIM Cards which is placed by the Client from time to time after the initial order in accordance with these terms and conditions and accepted by Enabling Elements;
“Charges”	means the Monthly Service Charge, the Usage Charges and any other charges in connection with the provision of Enabling Elements Services, SIM Cards, Equipment and Support Services as set out in the Service Specification and as varied from time to time in accordance with these terms and conditions;
“Client”	means the person named on the Enabling Elements Service Contract for whom Enabling Elements has agreed to provide the Enabling Elements Services, SIM Cards, Equipment and Support Services in accordance with these terms and conditions;
“Content”	means all information whether textual, visual, audio or otherwise, appearing on or available through the Enabling Elements Services whether supplied by Enabling Elements or by other persons;
“Contract”	means the Enabling Elements Service Contract for the provision of the Enabling Elements Services, SIM Cards, Equipment and Support Services which encompasses, the cover sheet, any Service Specification and the Standard Terms and Conditions set out herein;
“Coverage Area”	means the approximate geographic area within which the Enabling Elements Services are from time to time made available as advised to the Client by Enabling Elements;
“End-User”	means any person whom the Client permits to use the Enabling Elements Services under the terms and conditions of the Contract;
“Goods”	means the SIM Cards and the Hired Equipment supplied by Enabling Elements to the Client under the Contract;
“Hired Equipment”	means the equipment supplied by Enabling Elements to the Client under the Contract;
“Minimum Term”	means the minimum term of the Contract in connection with the licence for the SIM Cards provided under the Contract as specified in the Service Specification. The Minimum Term with respect to each SIM Card commences on the day such SIM Card is activated on the Network in accordance with the Contract;
“Monthly Service Charge”	Means the aggregate of :- a) in respect of each SIM Card, the standing monthly charge set out in the Service Specification for continued access to the Enabling Elements Services which commences on the date the SIM Card is activated on the Network; and b) a monthly charge for the use of any Hired Equipment as set out in the Service Specification; For the avoidance of doubt the Usage Charge does not form part of the Monthly Service Charge and shall be charged separately;
“Network”	means the mobile public telecommunications system by which Enabling Elements Services are made available;
“Numbers”	means a telephone number or numbers allocated to the Client by Enabling Elements;
“Purchased Equipment”	means any equipment ordered by the Client and purchased by the Client from Enabling Elements which does not form part of the Contract;
“SIM Card”	means the card to which a unique number is ascribed which, when used with compatible equipment, enables End-Users to access the Enabling Elements' Services;
“Service Specification”	means any mutually agreed upon “Service Specification” schedule which is substantially in the form of the “Service Specification” schedule included in the current price book attached hereto.
“Support Services”	means the provision of reasonable technical advice in accordance with clause 2. below and day to day account management and support;
“Termination Charge”	means the aggregate of (a) all arrears of Monthly Service Charges due but not paid at the date of termination; and (b) and / or any termination fee or suspension fee, if applicable in the schedule of services; (c) interest charges for late payment if appropriate at the rate stated in clause 13.4.1.
“Usage Charges”	means the variable charges for usage specified in the Service Specification.
“Enabling Elements”	means Enabling Elements Inc (a company incorporated in England and Wales under number 4693714) whose registered office address is at Greybrook House, 28 Brook Street, London, W1K 5DH
“Enabling Elements Services”	means those voice and/or data communications services together with those other Enabling Elements Services set out in the Service Specification;

1.2 The headings in these terms and conditions are for convenience only and shall not affect their interpretation.

2. Supply of the Enabling Elements Services

2.1 In consideration of the payment by the Client from time to time of the Charges in accordance with clause 12 below Enabling Elements:

- 2.1.1 shall provide the Enabling Elements Services and Support Services to the Client;
 - 2.1.2 shall supply to the Client the Hired Equipment set out in the Initial Order; and
 - 2.1.3 hereby grants to the Client a licence to use the SIM Cards set out in the Service Specification for access to the Enabling Elements Services only and such other telecommunications systems, including the Client's private network (whether in the UK or elsewhere) as Enabling Elements may from time to time make available to the Client.
- 2.2 The Client will be deemed to have accepted the Hired Equipment upon entering into the Enabling Elements Service Contract and will be responsible for ensuring that the Hired Equipment is in accordance with and fit for the purposes of the Client.
- 2.3 Enabling Elements' employees or agents are not authorised to make and Enabling Elements makes no and disclaims any and all express or implied representations concerning the Enabling Elements Services, SIM Cards, Equipment or Support Services unless confirmed by Enabling Elements in writing signed by a duly authorized representative of Enabling Elements. In entering into the Contract the Client acknowledges that it does not rely on any such representations which are not so confirmed.
- 2.4 All information supplied to the Client by Enabling Elements in relation to the Enabling Elements Services, SIM Cards, Equipment or Support Services before a Contract is made (including without limitation in a tender) and the descriptions and illustrations contained in Enabling Elements' catalogues, price guides and other advertising media (including without limitation Enabling Elements' website) are approximate, being a general description by way of identification only and such information and descriptions will not in any circumstances constitute a sale by description, nor will any statement made in any such document, on Enabling Elements' web-site or any other electronic media, or any other statement made, whether orally or in writing by or on behalf of Enabling Elements, be deemed to be a representation by which the Client has been induced to enter the Contract.
- 2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, catalogue, acceptance of offer, invoice or other document or information issued by Enabling Elements (including without limitation on Enabling Elements' website) will be subject to correction without any liability on the part of Enabling Elements.
- 2.6 Enabling Elements may at any time without notifying the Client make any changes to the Enabling Elements Services and/or Support Services which are necessary to comply with any applicable safety or other statutory requirements, or which do not materially adversely affect the nature or quality of the Enabling Elements Services and/or Support Services. For the avoidance of doubt any such changes under this clause will not result in a reduction to the Charges.
- 3. Commencement of the Minimum Term**
- 3.1 All Goods supplied by Enabling Elements to the Client under the Contract (including, but not limited to, those Goods set out in the Initial Order and any other Goods supplied by Enabling Elements to the Client pursuant to an Additional Order) are subject to the Minimum Term. The Minimum Term in respect of each item of Goods

supplied under the Contract will commence when each SIM Card is activated on the Network. Each SIM Card will be deemed activated on the Network on delivery of that SIM Card to the Client in accordance with Clause 8. Subject to early termination of the Contract in accordance with the provisions set out therein the licence granted by Enabling Elements to the Client in respect of each SIM Card will continue beyond the end of the Minimum Term until the Client shall give to Enabling Elements at least one month's written notice of the Client's wish to terminate the said licence.

4. Use of the Enabling Elements Services

- 4.1 The Enabling Elements Services are made available on the basis that the Client shall:
- 4.1.1 not use them for any improper, immoral or unlawful purposes, nor allow others to do so;
 - 4.1.2 not act nor knowingly permit others to act in such a way that the operation of the Network or the Enabling Elements Services will be jeopardised or impaired;
 - 4.1.3 only use equipment approved for use with the Network in accordance with all relevant legislation or regulation relating to its use in any jurisdiction;
 - 4.1.4 not be involved in or knowingly, recklessly or negligently permit any other party to be involved in any fraudulent or other unauthorised use or attempted use of any Enabling Elements Services or SIM Cards and to notify Enabling Elements immediately on the Client becoming aware of or suspecting such activity;
 - 4.1.5 not knowingly recklessly or negligently permit any lost or stolen Equipment and/or SIM Cards to be connected to the Network and shall adhere to any procedures issued by Enabling Elements from time to time in relation to lost or stolen Equipment and claims in respect thereof;
 - 4.1.6 comply with all reasonable directions and instructions issued by Enabling Elements which concern the Client's use of the Enabling Elements Services;
 - 4.1.7 accept that the Enabling Elements Services are only available within the Coverage Area;
 - 4.1.8 ensure that the End-Users do not use abusive or threatening behaviour towards other users of the Network or members of Enabling Elements' staff; and
 - 4.1.9 the Client shall not knowingly recklessly or negligently allow any person to reverse engineer, de-compile or modify the software or the Numbers contained within or on any SIM Card or Equipment in any way.
- 4.2 The use of any device to route third party call traffic or other data services through the Network can cause capacity issues and may be illegal. The Client must obtain Enabling Elements' prior written consent before operating such devices on the Network.
- 4.3 If the Client commits any breach of the obligations contained in clauses 4.1 and 4.2 Enabling Elements may (without losing or reducing any other right of remedy under the Contract) suspend Enabling Elements Services (fully or partially) temporarily without notice. Notwithstanding such suspension under this clause, the Client shall remain liable to pay all Charges due during the suspension period.
- 4.4 The Client hereby agrees to indemnify and hold Enabling Elements and its officers, employees and affiliates harmless against any and all claims, suits, proceedings losses, liability, damages, expenses or costs howsoever arising, resulting from any End-User's use of the Enabling Elements Services. The Client acknowledges that Enabling Elements have no contractual obligations to the End-User whatsoever.
- 4.5 The Goods and Enabling Elements Services are not designed, intended, or authorized for use in components of systems intended for, or in relation to the operation of, weapons, weapons systems, nuclear installations, means of mass transportation, aviation, life-support computers or equipment (including resuscitation equipment and surgical implants), pollution control, hazardous substances management, or for any other application in which the failure of the Goods or Enabling Elements Services could create a situation where personal injury or death may occur. Should Client provide any of the Goods and/or use the Enabling Elements Services for any such unintended or unauthorized application, Client shall indemnify and hold Enabling Elements and its officers, employees and affiliates harmless against all claims, costs, damages, expenses, and reasonable attorney fees arising out of, directly or indirectly, any claim of personal injury, death, or other damages associated with such unintended or unauthorized use, even if such claim alleges that Enabling Elements was negligent regarding the design of the Goods or Enabling Elements Services.

5. Content of the Enabling Elements Services

- 5.1 The Enabling Elements Services enables access to Content. Enabling Elements will not be liable to the Client or End User or any other party for any action taken in reliance upon the accuracy, completeness or continuous supply of the Content.
- 5.2 It is the Client's responsibility to evaluate the value and integrity of goods and services offered by third parties by means of the Network. Enabling Elements will not be a party to, nor in any way be responsible for any transaction concerning third party goods and services.
- 5.3 Client hereby grants Enabling Elements a non-exclusive, royalty-free right to access and internally use Content supplied by Client and its End Users, solely in connection with performing the Enabling Elements Services and related services, including, but not limited to, support and technical services and analysis of bills.

6. Availability of the Enabling Elements Services

- 6.1 Enabling Elements shall use reasonable endeavours to ensure that the Enabling Elements Services are available to the Client at all times during the term of the Contract. The Client hereby acknowledges that quality and availability of the Enabling Elements Services may be affected by factors outside Enabling Elements' control, such as (but not limited to) physical obstructions, atmospheric conditions and other causes of radio interference and by faults in other telecommunication networks to which the Network is connected. In connection with any such adverse effect on the quality and availability of the Enabling Elements Services Enabling Elements shall incur no liability to the Client whatsoever. Notwithstanding such effects to the Enabling Elements Services during the term of the Contract, the Client shall remain liable for the payment of the Monthly Service Charge.

7. Use of SIM Cards

- 7.1 If a SIM Card is lost, stolen or damaged the Client must notify Enabling Elements of the same in writing as soon as reasonably possible. The Client will remain liable for all Charges incurred by the use of the SIM Card until the Client has notified Enabling Elements as aforesaid. On notification of a lost, stolen or damaged SIM Card Enabling Elements, at the request of the Client shall provide a replacement. Enabling Elements reserves the right to make a charge for issuing a replacement SIM Card.
- 7.2 The Client may terminate the licence in respect of any of the Services supplied under the Contract at any time upon giving at least 30 days' written notice, to Enabling Elements providing that the Client pays to Enabling Elements the Termination Charge, if applicable unless otherwise contained in this agreement, without any set off or withholding or deduction whatsoever. Electronic terminations via Web GUI or API are handled in real time.
- 7.3 Upon any termination of the Contract howsoever arising before the Minimum Term has expired or the Client terminates the licence in respect of any service before that service's Minimum Term has expired then the Client must pay to Enabling Elements the Termination Charge, if applicable. No reduction to the Termination Charge will be made under any circumstances following such termination. If the Contract is terminated such Termination Charge will be paid to Enabling Elements in cleared funds within 7 days.

8. Delivery

- 8.1 Delivery of Goods will be made by either (a) the Client collecting the Goods at Enabling Elements' premises at any time after Enabling Elements has notified the Client that the same is ready for collection or (b) if some other place for delivery is agreed by Enabling Elements, by Enabling Elements delivering the Goods to that place.
- 8.2 Any date quoted for delivery of the Goods are approximate only and Enabling Elements will not be liable for any delay in delivery of the Goods however caused. Time for delivery of the Goods will not be of the essence of the Contract unless previously expressly agreed by Enabling Elements in writing. The Goods may be delivered by Enabling Elements in advance of the quoted delivery date upon giving reasonable notice to the Client.
- 8.3 If the Client fails to take delivery of the Goods or fails to give Enabling Elements adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Client's reasonable control or by reason of Enabling Elements' fault) then, without prejudice to any other right or remedy available to Enabling Elements, Enabling Elements may:
- 8.3.1 store the Goods or any of them until actual delivery and charge the Client for the reasonable costs (including insurance) of storage, and/or
 - 8.3.2 sell the Hired Equipment at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) charge the Client for any shortfall below the price Enabling Elements would have received from the Client for such Hired Equipment under the terms of the Contract.

9. Risk and Property

- 9.1 Risk of damage to or loss or unauthorised use of the SIM Cards or Hired Equipment will pass to the Client:
- 9.1.1 in the case of Goods to be delivered at Enabling Elements' premises, at the time when Enabling Elements notifies the Client that the Goods are available for collection; or
 - 9.1.2 in the case of Goods to be delivered otherwise than at Enabling Elements' premises, at the time of delivery or, if the Client wrongfully fails to take delivery of the Goods, the time when Enabling Elements has tendered delivery of the Goods.
- 9.2 Title in the Goods, being either SIM Cards (including all software contained in the SIM Cards) and/or Hired Equipment shall remain solely and exclusively with Enabling Elements and shall not vest in the Client at any time.
- 9.3 The Client will hold the Goods as Enabling Elements' fiduciary agent and bailee, and will keep the Goods separate from those of the Client and third parties and properly stored, protected and insured and identified as Enabling Elements' property and so long as the Client is not in breach of the Contract, the Client will be entitled to use the Goods in the ordinary course of its business for the term of the Contract in accordance with the terms and conditions of this Contract.
- 9.4 The Client will not be entitled to sell, let, pledge or in any way dispose of or charge by way of security for any indebtedness any of the Goods which shall remain the property of Enabling Elements at all times.
- 9.5 The Client acknowledges and agrees and shall cause each of its End Users to acknowledge and agree that the Numbers do not belong to the Client or to the End-Users, and are the property of the underlying wireless carrier, subject to local regulations.
- 10. Additional Orders for Additional Hired Equipment, SIM Cards and Enabling Elements Services**
- 10.1 An Additional Order submitted by the Client will be deemed to be accepted by Enabling Elements when confirmed in writing and allocated an order number by Enabling Elements' authorised representative, but not until then.
- 10.2 The Client will be responsible to Enabling Elements for ensuring the accuracy of the terms of any Additional Order (including any applicable specification) submitted by the Client.
- 10.3 No Additional Order which has been accepted by Enabling Elements may be cancelled by the Client except with the agreement in writing of Enabling Elements and on terms that the Client will indemnify Enabling Elements in

TERMS OF SUPPLY OF MOBILE DATA SERVICES AND EQUIPMENT

- full against all loss (including without limitation loss of profit), costs, damages, charges and expenses incurred by Enabling Elements as a result of cancellation.
- 10.4 In the event of a conflict between any of the terms, conditions or provisions of this Contract and an Additional Order accepted by Enabling Elements in writing or any sales order acknowledgement or other form issued by Enabling Elements, the applicable term, condition or provision of this Contract shall prevail and no additional terms, conditions or provisions in any Additional Order shall apply unless accepted by Enabling Elements in writing signed by a duly authorized representative of Enabling Elements.
- 11. Support Services**
- 11.1 During the term of the Contract Enabling Elements shall provide the Client with Support Services.
- 11.2 Notwithstanding any other provision in the Contract, Enabling Elements will not be responsible for failure to provide the Support Services where such failure is as a result of the act or omission of the Client (and/or its agents or subcontractors) (including without limitation the improper use, operation or neglect of either the Enabling Elements Services, the Goods or the failure by the Client to implement recommendations in respect of solutions to fault previously advised by Enabling Elements).
- 11.3 In relation to the provision of the Support Services the Client shall:
- 11.3.1 use its reasonable endeavours to make available and ensure the co-operation of such staff of the Client as are reasonably required on a timely basis to liaise with Enabling Elements in relation to the provision of the Support Services;
- 11.3.2 promptly furnish Enabling Elements with such other information, documents and instructions as Enabling Elements may reasonably request for the proper performance of its obligations hereunder; and
- 11.3.3 provide answers on a timely basis to queries, consents and approvals requested by Enabling Elements to enable Enabling Elements to provide the Support Services.
- 11.4 Enabling Elements shall have the right to subcontract to a qualified third party provider the obligations and duties to provide the Support Services subject to the other terms and conditions of this Contract.
- 12. Charges**
- 12.1 The Client shall pay the Charges on the dates and at the frequency set out on the Service Specification and any additional sums which are agreed between Enabling Elements and the Client for the provision of the Enabling Elements Services, SIM Cards, Hired Equipment and Support Services. Time shall be of the essence in relation to the payment of the Charges.
- 12.2 All Charges quoted to the Client are exclusive of any Value Added Tax, for which the Client shall be liable additionally at the rate applicable from time to time.
- 13. Invoicing**
- 13.1 Subject to any special terms agreed in writing between the Client and Enabling Elements, Enabling Elements will invoice the Client:
- 13.1.1 monthly in advance for Monthly Service Charges; and
- 13.1.2 monthly in arrears for Usage Charges.
- Enabling Elements reserves the right to request amendments to the invoicing cycle referred to in clause 13.1.1 and 13.1.2 and the Client's consent thereto shall not be unreasonably withheld or delayed.
- 13.2 All Charges and any additional sums payable shall be paid by the Client (together with any applicable Value Added Tax, and without any set-off or counterclaim or other deduction) within 7 days of the date of the Enabling Elements' invoice.
- 13.3 Provided that the Client has paid the sums due under clause 13.2 on the due dates, the Client may raise queries in relation to any items on the invoice within 3044 days from the date of the invoice and Enabling Elements undertakes to deal with such queries within a further 3044 day timescale.
- 13.4 If payment is not made on the due date, Enabling Elements shall be entitled, without limiting any other rights it may have, to:-
- 13.4.1 charge interest on the outstanding amount (both before and after any judgment) at the rate per annum of 2% above the "Prime Rate" in effect at such time as quoted in the Wall Street Journal from the due date until the outstanding amount is paid in full; and
- 13.4.2 to suspend Enabling Elements Service (including partially) temporarily without notice, though the Client remains liable to pay all Charges incurred during the suspension period until payment has been made. Any further suspension within a period of 12 months following restoration of Enabling Elements Services may take place 10 days after a failure to pay instead of after 25 days.
- 14. Warranties and Liability**
- 14.1 Subject to the conditions set out below Enabling Elements warrants that the Goods will materially comply with any written specifications provided by Enabling Elements at the time of delivery and will be free from material defects in material and workmanship for a period of 12 months from delivery;
- 14.2 The above warranty is given by Enabling Elements subject to the following conditions:
- 14.2.1 Enabling Elements will be under no liability in respect of any defect arising from improper storage, fair wear and tear, willful damage, negligence, abnormal working conditions, failure to provide competent supervision, failure to follow Enabling Elements' or manufacturer's instructions (whether oral or in writing), incorrect installations, maintenance, misuse or alteration or repair of the Goods without Enabling Elements' approval in each case by anyone other than Enabling Elements;
- 14.2.2 Enabling Elements will be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;
- 14.2.3 The above warranty does not extend to parts, materials or equipment not supplied directly by Enabling Elements, or services not provided directly by Enabling Elements, in respect of which the Client will only be entitled to the benefit of any such warranty or guarantee as is given by the supplier or service provider to Enabling Elements;
- 14.2.4 Enabling Elements or its agent is given a reasonable opportunity safely to inspect the Goods which are alleged to be defective (with the Client bearing all reasonable costs of such inspection); and
- 14.2.5 The Goods which are alleged to be defective is returned to Enabling Elements' premises with transportation charges prepaid (unless Enabling Elements agrees otherwise).
- 14.3 EXCEPT FOR THE EXPRESS WARRANTIES MADE IN THIS SECTION 14, ENABLING ELEMENTS MAKES NO WARRANTIES, WHETHER EXPRESS OR IMPLIED REGARDING OR RELATING TO MATTERS COVERED UNDER THIS CONTRACT OR ANY MATERIALS OR SERVICES FURNISHED OR PROVIDED TO CLIENT UNDER THIS CONTRACT. WITHOUT LIMITING ANY OF THE FOREGOING, ENABLING ELEMENTS SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE (EVEN IF LICENSOR HAS BEEN INFORMED OF SUCH PURPOSE), OR OTHER WARRANTY ARISING OUT OF COURSE OF ORDINARY PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE WITH RESPECT TO THE GOODS AND ENABLING ELEMENTS SERVICES.
- 14.4 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to Enabling Elements in accordance with these terms and conditions, Enabling Elements will be entitled to replace the Goods (or the part in question) free of charge or, at Enabling Elements' sole discretion, refund to the Client the price of the Goods (or a proportionate part of the price), but the foregoing shall be the Client's sole and exclusive remedy for such claim and Enabling Elements will have no further liability to the Client. Enabling Elements will be entitled to invoice the Client for any replacement Goods sent to the Client prior to the resolution of any complaint.
- 14.5 Enabling Elements warrants that it has the right power and authority to licence the SIM Cards upon the terms and conditions of the Contract and that in performing any obligation under the Contract it will exercise reasonable care and skill.
- 14.6 Enabling Elements will not be liable to the Client or any third party by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law any action in negligence, contract or tort or under the express terms of the Contract or otherwise:
- 14.6.1 for any loss or profit, business, contracts, revenues or anticipated savings, wasted processing costs, costs of Client's management and employee time, disruption, loss of use of any of the following namely vessels, vehicles, engines, machinery or other plant, damage to goodwill or reputation and any loss resulting from any claim by a third party or arising out of or in any way connected with this Contract; nor
- 14.6.2 for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever, (whether caused by the negligence of Enabling Elements, its employees or agents or otherwise) which arise out of or in connection with the supply of the Hired Equipment and/or SIM Cards or their use by the Client or the supply of the Enabling Elements Services or Support Services.
- 14.7 UNDER NO CIRCUMSTANCES WILL ENABLING ELEMENTS HAVE ANY LIABILITY TO CLIENT OR ANY END USERS FOR ANY CAUSES OF ACTION, LOSSES OR DAMAGES ARISING OUT OF MISTAKES, OMISSIONS, INTERRUPTIONS, ERRORS OR DEFECTS IN FURNISHING THE GOODS OR ENABLING ELEMENTS SERVICES, EXCEPT AS PROVIDED IN ARTICLE 14.4, INCLUDING, WITHOUT LIMITATION, THOSE THAT ARISE FROM FAILURES OF DEFECTS IN THE NETWORK. The entire liability of Enabling Elements under or in connection with the Contract in each 12 month period will not exceed the lower of 100% (one hundred percent) of the Charges paid by the Client over the previous 12 month period or US\$200,000 (two hundred thousand dollars).
- 14.8 Enabling Elements will not be liable to the Client or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of Enabling Elements' obligations under the Contract if the delay or failure was due to any cause beyond Enabling Elements' reasonable control including (but not limited to) Acts of God, explosion, flood, pest, fire, accident, lightning, war, disorder, industrial disputes (whether or not including Enabling Elements employees), acts of local or central Government or other competent authorities.
- 14.9 The Client is asked to note the limitations on Enabling Elements' liability set out in these conditions. Enabling Elements' prices are based on the level of liability provided by these terms and conditions being accepted by the Client.
- 14.10 The Client shall indemnify and hold Enabling Elements and its officers, employees and affiliates harmless against all claims, suits, proceedings losses, liability, damages, expenses or costs that any person other than the Client threatens or makes against Enabling Elements arising out of or in connection with the manner in which Enabling Elements Services are used or the use of the Enabling Elements Services by or on behalf of the Client or due to the unavailability of the Enabling Elements Services.
- 15. Termination**
- 15.1 Enabling Elements shall be entitled to terminate the Contract at any time by giving not less than 30 days written notice to the Client, such termination to be effective on or after the expiry of the Minimum Term applicable to
- those Goods supplied pursuant to the Initial Order
- 15.2 Enabling Elements may (without limiting any other remedy) at any time terminate the Contract or the provision of goods and services under the Contract immediately by notice in writing to the Client at any time if:-
- a) the Client fails to pay the Charges within 14 days of the due date for payment; or
- b) the Client commits any other breach of these terms and conditions and (if capable of remedy) fails to remedy the breach within 21 days after being required by written notice to do so; or
- c) the Client goes into liquidation, becomes bankrupt, makes a voluntary arrangement with its creditors or has a receiver or administrator appointed;
- d) the Client is unable to pay its debts as they fall due, or becomes bankrupt or insolvent or files any petition or action for relief under any bankruptcy, reorganisation, insolvency or moratorium law; or begins negotiations with any creditor with a view to the readjustment or rescheduling of its of its Indebtedness; or proposes or enters into any composition or other arrangement for the benefit of its creditors generally or any class of creditors;
- e) any steps are taken with a view to the Client being adjudicated or found insolvent; or the winding-up or dissolution of the Client other than in connection with a solvent reconstruction, or a winding up petition the terms of which have been previously approved in writing by Enabling Elements; or the Client obtaining a moratorium or other protection from its creditors; or the appointment of a trustee, supervisor, receiver, administrative receiver, liquidator, administrator or similar officer in respect of the Client;
- f) the Client ceases or threatens to cease to carry on its business in the ordinary course;
- g) in the opinion of Enabling Elements, any event or series of events occur which has or could reasonably be expected to have a Material Adverse Effect;
- h) if there is a (i) merger, acquisition, sale of voting control, or other business combination involving the Client such that the stockholders or owner of the Client immediately prior to such transaction do not hold more than fifty percent (50%) of the voting power of the surviving or acquiring corporation, or (ii) the sale, lease, exclusive license or other transfer of all or substantially all of the assets of the Client ("change of control") without the consent of Enabling Elements, which shall not be unreasonably withheld.
- 15.3 On termination or expiry of the Contract or the provision of goods and services under the Contract:
- 15.3.1 any outstanding arrears of Charges and any interest (if applicable) payable by the Client shall become immediately due and payable to Enabling Elements;
- 15.3.2 the licence granted to the Client to use the SIM Cards, including Numbers shall terminate immediately and all such Numbers shall be re-assigned to Enabling Elements and the Termination Charge shall become immediately due and payable. The Client shall immediately return to Enabling Elements all SIM Cards supplied by Enabling Elements to the Client during the duration of the Contract;
- 15.3.3 any Numbers reserved for the Client's use but which have not been used by the Client or the End-Users or connected to Enabling Elements' Network shall be re-assigned to Enabling Elements immediately;
- 15.3.4 The Client shall immediately return to Enabling Elements all of Enabling Elements' property in its possession or control; and
- 15.3.5 Enabling Elements shall be entitled upon giving reasonable prior written notice to enter the Client's premises in order to remove any Hired Equipment the title of which belongs to Enabling Elements.
- 16. Confidentiality**
- 16.1 In this clause "Confidential Information" shall mean all information disclosed by either Party to the other Party in any form or manner, provided that each such item of information would appear to a reasonable person to be confidential or is specifically stated by Enabling Elements to be confidential.
- 16.2 Each Party will take all reasonable care to keep confidential all Confidential Information disclosed to, or obtained by the Client under or as a result of the Contract, and will not divulge such information to any third party or use such Confidential Information except as necessary to exercise its rights under this Contract. Without prejudice to the foregoing, such information may be divulged where this is necessary for the proper performance of the Contract and providing the Client ensures that the recipient of such information is under a like obligation to that spelled out in this clause. In addition, no liability will attach in relation to Confidential Information which, through no fault on the Client's part, enters the public domain. The obligations and restrictions imposed by this clause shall survive the termination or expiry of the Contract.
- 16.3 If the Client is compelled by law to disclose Confidential Information, it shall provide Enabling Elements with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Enabling Elements' cost, if Enabling Elements wishes to contest the disclosure.
- 17. General**
- 17.1 These terms and conditions (together with the terms, if any, set out in the Enabling Elements Service Contract) constitute the entire agreement between the parties, supersede any previous agreement or understanding and may not be varied except in writing between the parties. All other terms, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.
- 17.2 A notice required or permitted to be given by either party to the other under these terms and conditions shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 17.3 No failure or delay by either party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either party of any breach of the Contract by the other shall be considered as a waiver of any subsequent breach of the same or any other provision. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.
- 17.4 In the event that any provision of this Contract is found to be unenforceable, such provision will be reformed only to the extent necessary to make it enforceable, and the remainder will continue in effect, to the extent consistent with the intent of the parties as of the Effective Date.
- 17.5 The Contract may be entered into in any number of counterparts and by the parties to it on separate counterparts, each of which when so executed and delivered shall be an original.
- 17.6 Except as otherwise expressly stated in the Contract, there are no intended third party beneficiaries of this Contract. The representations, warranties, covenants, and agreements contained in this Contract are for the sole benefit of the parties and their respective successors and permitted assigns, and they are not to be construed as conferring any rights on any other persons.
- 17.7 The Client may not assign any of its rights or delegate any of its duties under the Contract without the prior written consent of Enabling Elements. A Change of Control of Client shall be deemed to be an assignment. Enabling Elements may assign, charge or otherwise transfer any of its rights and/or delegate any of its duties or obligations under the Contract at any time without the consent of the Client.
- 17.8 No announcement concerning the terms of the Contract shall be made or caused to be made before the commencement of, during or after the termination of, the Contract by any party without the prior written approval of the other party (such approval not to be unreasonably withheld or delayed).
- 17.9 Subject to clause 12.2 Enabling Elements may vary the terms and conditions of the Contract immediately in writing if new legislation, statutory instrument or other governmental regulation or the terms under which Enabling Elements provides access to the Network Enabling Elements make such variation necessary. For the avoidance of doubt the Client acknowledges that the Charges will not be reduced as a result of the provisions of this clause.
- 17.10 Except as may be expressly provided in the Contract, all trade and service marks, inventions, patents, copyrights, design rights (whether registered or unregistered), database rights and all other intellectual property rights shall unless expressly assigned in writing remain in the ownership of the party creating or owning the same. Enabling Elements reserves all right, title and interest in and to its intellectual property which are not expressly granted to Client hereunder.
- 17.11 The parties shall ensure that they shall at all times comply with the provisions and obligations imposed by the Data Protection Act 1998 and the Data Protection Principles (together with the equivalent applicable rules and legislation in each other jurisdiction in which the parties operate) together with any subsequent re-enactment or amendment thereof in storing and processing personal data. By entering into the Contract the Client consents to the use of its data by Enabling Elements for the purposes of securing information necessary for approving credit terms in relation to the Contract or any Additional Order
- 17.12 Each party shall indemnify the other party against any liability, damage, costs, expenses (including reasonable legal expenses) or losses arising out of any unauthorised disclosure of personal data by it.
- 17.13 Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Any arbitration hearing shall be held in New York, NY or Boston MA before one (1) arbitrator.
- 17.14 In the event that any of the terms or conditions of any mutually agreed upon Service Specification conflicts with these Terms and Conditions, these Terms and Conditions shall control.
- 17.15 For the avoidance of doubt, the Enabling Elements Service Contract and these Terms and Conditions shall comprise the entire contract between Enabling Elements and the Client. No other agreement or documentation shall form part of this contract unless agreed in writing by an authorised Director of Enabling Elements INC.
- 17.16 **No Export.** Client represents, warrants and covenants that it will not remove from the United States, or otherwise export or re-export any of the Goods or Enabling Elements Services provided hereunder without the express written permission of Enabling Elements, and then only in accordance with United States and other applicable export laws and regulations, including, without limitation, the Export Control Act 2002, the Dual Use Items (Export Control) Regulations 2000, and the export laws and regulations applied by the U.S. Department of Commerce. Client agrees to indemnify and hold Enabling Elements and its officers, employees and affiliates harmless against all claims, suits, proceedings losses, liability, damages, expenses or costs arising from any breach of this Section 17.16