

4G Access Agreement Terms and Conditions

Addendum to Base Agreement

Terms and conditions for 4G Access

These terms and conditions apply to the 4G backup service and are supplemental to your base agreement with Gamma, whose provisions continue to apply. In case of a conflict between the base supply agreement and these terms and conditions, the latter will apply.

Definitions

“Addendum” means these terms and conditions together with its attached Schedules;

“Alternative Access Networks” means mobile networks operated on behalf of Gamma from time to time by Alternative Access Network providers other than the Primary Network Access provider;

“Alternative Access Network Provider Marks” means all registered and unregistered trade and service marks used and/or owned by Alternative Access Network providers or any of their affiliates;

“Alternative Access Network Provider Technology” means any software or technology used by Alternative Access Network providers to provide mobile services;

“Anti-Corruption Laws” means any applicable foreign or domestic anti-bribery and anti-corruption laws and regulations, including the Bribery Act 2010, the US Foreign Corrupt Practices Act 1977 and any laws intended to implement the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions;

“Approved Device” means a handheld device used by End Users to access Gamma Mobile Services which has been approved by Gamma from time to time, complies with all relevant GSMA and GCF policies, accreditations and guidelines and does not solely use a 2G network;

“Base Agreement” means the agreement between Gamma and the Company (being either the carrier services agreement, the telecommunications services agreement, the electronic communications services agreement or any other such agreement if agreed by Gamma in writing;

“Defect” means, for whatever reason, any fault or error in the USIMs and/or parts thereof or a failure by the USIMs to meet the requirements of the Specification.

“Delivery” means the delivery by Gamma of the USIMs to the Company in accordance with these terms, and Deliver, Delivered, Deliveries and any other cognate expressions will be construed accordingly.

“Documentation” means the descriptive materials supplied by Gamma with USIMs (in hard and/or soft copy including CD-ROM format), including but not restricted to operating instructions or manuals, non-proprietary specifications, test specifications, repair, service and/or USIM descriptions, print/report descriptions, drawings, technical information and other documents, which are associated with the USIM supplied and services performed by Gamma for the Company.

“IMSI” means the unique International Mobile Subscriber Identity number allocated to each End User;

“Input Files” means electronic data containing information required for the production of USIM cards which may include but is not limited to ICCID numbers, purchaser profiles, PIN/PUK codes and any other applications to be loaded on to the relevant USIM.

“Primary Access Network” means the 3G and 4G radio access network operated on behalf of Gamma by the Primary Access Network provider but excluding any 2G network;

“Primary Access Network Provider Marks” means all registered and unregistered trade and service marks used and/or owned by Hutchison 3G UK Limited or any of its affiliates, or as may be updated by Gamma from time to time;

“Primary Access Network Provider Technology” means any software or technology used by the Primary Access Network provider to provide mobile services;

“Regulatory Requirement” means any regulation, law, decree, action, direction, code of practice, condition or order of a competent regulatory authority including, without limitation, Ofcom or the Home Office of the Government of the United Kingdom;

“Security Requirements” means the security requirements of Gamma set out in Schedule 1 as may be updated on written notice from Gamma from time to time;

“Service” means the 4G backup mobile service provided by Gamma to the Company for reseller to their customer and for use in the United Kingdom.

“Software” means all the operating programs and the user-loadable application feature packages, the assemblers, compilers (including the machine-readable, object code version for, and the firmware embedded in, the USIM), including revisions, updates and copies thereof, as described in the Specification.

“Specification” means the technical and functional specifications for the USIM, including but not limited the relevant Input Files.

“USIM” means a Gamma universal SIM card (or any subsequent technological enhancements thereto such as ESIMs).

“USIM Warranty Period” means the period of 15 months from the date of Delivery or 12 months from the date of End User connection of that USIM to the Gamma network, whichever is the earlier.

Operative clauses

The Service will be available in the United Kingdom within the Gamma Coverage Area (as published from time to time on Gamma’s knowledgebase website knowledgebase.gamma-portal.com). International roaming services, all voice and all SMS usage will be disabled by Gamma.

Subject to the provisions of earlier termination set out in the base supply agreement, the initial term of each Horizon subscription is as set out in the relevant order. Upon expiry of such initial term, the subscription shall be renewed on an indefinite basis subject to each party’s right to terminate for convenience at any time upon a thirty (30) day notice to the other party.

The Company accepts that the quality and availability of the Service may be affected by factors outside Gamma’s control such as physical obstructions, atmospheric conditions and other causes of radio interference, faults in other telecommunication networks, unavoidable maintenance or other Force Majeure events. Gamma will have no liability to the Company or its Customers or End Users in connection with any such adverse effect on the quality and availability of the Service.

Gamma may at any time and without liability modify, expand, improve, maintain or repair the mobile network or vary network capacity even if this requires suspension of the operation or provision of the Service.

Gamma makes no warranty as to the quality, fitness, the continuity or provision of Service as may be affected by services provided by such third party operators, and expressly excludes all liability in contract, tort or otherwise in relation thereto.

The Company acknowledges that at times and in locations where Gamma's network is experiencing high capacity usage, Gamma will be entitled to throttle the Company's access to, and/or speed of, provision of the Service. Gamma will have the right to deny access to Gamma's network to any End User, Approved Device or other equipment where (i) in Gamma's reasonable opinion, permitting such access will adversely affect the operation of Gamma's Network or provision of the Service or provision of the Service or any other services utilising to any other person, or (ii) if Gamma suspects fraudulent, criminal or illegal activities are being carried out, or are likely to be carried out, by that End User or via that equipment, whether or not such equipment has been approved or tested by Gamma.

The Company agrees to include and maintain in its contracts with Customers and End Users, conditions equivalent to those contained in paragraph 6 above, and to require that any sub-reseller includes and maintains such conditions in its contracts with End Users, and undertakes to enforce such conditions diligently and properly (including if appropriate by suspending or terminating the provision of its services to any Customer or End User in breach of such conditions).

Gamma will provide fraud detection and prevention information and usage alerting as described on the Gamma Portal in accordance with usual industry standards, provided that Gamma will have no liability in respect of such information, nor in respect of any failure or omission to provide any such information. The Company or its Customers or End Users will remain liable for any fraud or misuse and accept full risk and responsibility therefor. The Company recognises and accepts that the Service may be suspended without prior notification in the case of suspected fraud or misuse, and will ensure that this requirement is set out in all contracts with Customers, any sub-resellers and End Users.

Subject to paragraph 10 below Gamma will use reasonable endeavours to make CDRs available for daily download. Gamma will use reasonable endeavours to ensure that such CDRs are regularly updated but only in respect of telecommunications networks in the United Kingdom. Such CDRs are not produced in "real time" and are not designed to support pre-pay services. CDRs may not contain a full record of all the Services that have been supplied up to the time of download of the CDRs.

Notwithstanding paragraph 9 above, CDRs may contain details of Services supplied at any time in the previous 12 months. The provisions of this paragraph 10 (which may have the effect that billing could be up to 12 months late) will take precedence over any other provision to the contrary (or

which limits the time period within which calls must be billed) in this Addendum.

The Company will:

consult with the applicable regulatory authorities (including but not limited to Ofcom and the Home Office of the Government of the United Kingdom) and comply with all Regulatory Requirements and applicable laws (including Data Protection Legislation and Anti-Corruption Laws) in relation to the exercise of its rights and/or performance of its obligations under these terms and conditions and/or the provision of the Service to Customers and End Users and will provide upon request to Gamma any information that Gamma may reasonably require to demonstrate Gamma's compliance with any applicable laws or Regulatory Requirements;

not use the Service or, where within the Company's reasonable control, allow any third party (including Customers and End Users) to use the Gamma Mobile Services for any immoral, obscene, defamatory, harmful, offensive or unlawful purpose;

only provide the Service on legally binding contracts which include terms which restrict the activities set out in (k) and (l) below and will take all steps as are reasonably necessary to enforce such restrictions contained;

monitor activities to the extent technically feasible and commercially reasonable, involving fraud, artificially inflated traffic and any other breaches of security connected with the use of the Service and notify Gamma immediately of any such activities;

comply with the Security Requirements in relation to access to Gamma's systems;

comply with all reasonable instructions issued by Gamma from time to time in relation to the use of the Service;

not make any defamatory remarks about the Gamma Mobile Services, the Gamma Network, Gamma, any Gamma affiliate or the Primary Access Network provider or any Alternative Access Network provider;

promptly comply with all directions issued by Gamma reasonably necessary to assist it in complying with any Regulatory Requirements (including, but not limited to, its obligations under the Communications Act 2003 and Data Protection Legislation, the Privacy and Electronic Communications (Directive) Regulations 2003 and RIPA);

not mislead or deceive, or make any false statements or representations to, Customers or any other person in respect of Gamma's network or the Service;

not use the Service or allow any third party to use the Service in any way that infringes any Intellectual Property Rights or in any way that is in breach of any obligation of confidence, privacy or other rights;

comply with all reasonable instructions issued by Gamma from time to time in relation to the operational use of the Service (including where such instructions are required to comply with any Regulatory Requirement);

not amend, and ensure its Customers are contractually bound not to amend, the settings on any instance of the Service in any way that might enable such Service instance to generate or receive voice or SMS traffic;

not connect or knowingly allow any third party to connect to the network any device other than an Approved Device;

ensure its Customers and End User use the Service in accordance with the acceptable use policy which is set out in the Service Literature, as published by Gamma on the Portal, in a form suitable for issue to End Users. The Company must not use the Service or allow or permit any Customer or End User to use a Service:

to knowingly make available or upload files that contain software or other material, data or information not owned by or licensed to the Company, a Customer or End User (as appropriate); or

to knowingly make available or upload files that contain a virus or corrupt data; or

to falsify the true ownership of software or other material or information contained in a file that the Company or any Customer or End User makes available via the Service; or

to publish, post, distribute, disseminate, send, knowingly receive, upload, download, use or re-use material which is abusive, indecent, defamatory, offensive, obscene or menacing, or in breach of copyright, privacy or any other rights; or

to deliberately abuse any part of a Gamma Service; or

to post or send the same or similar messages in multiple use net or news groups; or

to post or send off-topic items to a use net or news group; or

to send or provide unsolicited commercial messages or communications in any form; or

to falsify user information; or

to act in a way which threatens the integrity or security of any computer system; or

with a view to avoiding incurring or paying charges for such usage; or

with a view to degrading the use of services by third parties; or

to violate general standards of internet conduct and usage such as denial of service attacks, web-page defacement, and port and network scanning; or

to disclose passwords; or

to violate any restrictions on the size of e-mails; or

to forge addresses; or

to share network connections in a manner enabling third parties to access and use such connections;
or

other than in accordance with the acceptable use policies of any connected networks; or

in a way that may pose a threat to the safety of persons or may pose a hazard which would impair or prevent the operation of equipment; or

in a way which is likely to impede the activities of authorised persons responding to an emergency.

purchase all USIMs for use with the Service from Gamma (notwithstanding that such USIMs may be provided free of charge by Gamma for use with other data services).

pay Gamma the Charges as separately advised in writing to the Company or as posted on the Company's account on the Gamma Portal, which, subject to the provisions of paragraphs 12 to 14 inclusive below, may be amended from time to time under the general provisions for price variations contained in this Addendum.

If Gamma becomes liable to pay any additional fees, costs or charges to the government, a regulatory authority or self-regulatory authority and such fees costs or charges are directly attributable to the provision of the Service, USIMs to the Company under these terms and conditions, Gamma will be entitled to pass through such fees, costs and charges to the Company.

The Company may, in product and marketing literature, refer simply to the fact that the Service is being provided over the Gamma network, provided that this statement is made without further embellishment or comment. Otherwise no use of any kind will be made of the Gamma name, or of any Gamma trade mark.

The Service must not be branded or promoted under any Primary Access Network Provider or Alternative Access Network Provider Marks. The Company will not (and will ensure that its employees, sub-contractors, agents, consultants, Customers and End Users do not) use, modify, obstruct or alter in any way any of the Primary Access Network Provider or Alternative Access Network Provider Marks, or act in any way or make any omission which could (in the reasonable opinion of the Primary Access Network provider or Alternative Access Network providers) bring the Primary Access Network provider or Alternative Access Network providers or the business of the Primary Access Network provider or Alternative Access Network providers into disrepute in any manner, or (in the reasonable opinion of the Primary Access Network provider or Alternative Access Network providers) otherwise damage the brand or reputation of the Primary Access Network provider or Alternative Access Network providers . All Intellectual Property Rights in the Primary Access Network Provider or Alternative Access Network Provider Marks, the Primary Access Network Provider or Alternative Access Network Provider Networks and the Primary Access Network Provider or Alternative Access Network Provider Technology are and will remain the absolute property of the Primary Access Network provider or Alternative Access Network providers and/or their licensors.

In the event that this Addendum is terminated, whether by Gamma or the Company and whether or not for cause, or that a request is received by Gamma to port a number pertaining to the Service to another provider or if any instances of the Service are otherwise cancelled before the expiry of the minimum contract term, the balance of any rental or other payment which would have or had been paid for the remaining period of the term becomes payable immediately.

The parties agree that the Service does not constitute a mobile service and is solely to be used to provide backup data over the mobile spectrum. Notwithstanding this, Gamma shall on reasonable request from the Company provide porting functionality on a reasonable endeavours basis.

If any sub-reseller, agent or representative is appointed by the Company, the Company will procure compliance by such party with all the requirements of this Addendum.

Gamma may provide required settings to the Company from time to time which the Company will ensure are included in the settings of devices.

In the event that Gamma incurs significant additional costs as a result of the failure of the Company to initiate and maintain the appropriate support systems (including arrangements for the support and maintenance for devices not purchased from Gamma) Gamma reserves the right to invoice the Company for such additional costs and the Company will pay any such invoice within 10 days of receipt of invoice.

Security Requirements

The Company and Gamma will ensure systems that interface and or interact with the Gamma network comply with industry security standards, and secure protocols, including but not limited to:

SSL (Secure Socket Layer) - to a standard of at least SSL3, or any higher standard in force in the telecommunications industry; and

SSH (Secure Shell) - to a standard of at least SSH2, or any higher standard in force in the telecommunications industry; and

IPSec (Internet Protocol Security) - to current Internet Engineering Task Force (IETF) and Certification Authority standards.

The Company and Gamma will take all reasonable measures to protect the other party's systems and services from unauthorised access, malicious attacks, malware or any other threat that may impact the other party's information and systems.

The Company and Gamma will take reasonable measures to ensure the availability, stability and continuity of any system that interfaces or communicates with the other party in any way.

Any breach in the Company's or Gamma's security which does or has the potential to affect the other party must be reported to the other party immediately and, where required, any applicable regulator including but not limited to Ofcom.

In the event that either party requires greater security, acting reasonably, both parties will use reasonable endeavors to assist.

USIMs

Gamma for the supply of the USIMs detailed therein in accordance with the conditions specified therein and the terms of this Schedule.

Gamma agrees to supply the USIMs, which will conform to all of the requirements of the Specification.

The Company will be liable to pay Gamma for all USIMs ordered in accordance with the terms of payment set out in the Base Agreement.

Upon delivery of the USIMs to the delivery site the Company will inspect the exterior of the packaging of the USIMs to determine if the USIMs appear to be in undamaged condition.

Acceptance of the Delivery quantity will be deemed to have occurred if Gamma is not notified of any discrepancy in delivery quantity or of damage to the exterior of the packaging of the USIMs by the Company within 2 Business Days of Delivery.

If upon inspection the Company detects any USIMs with a Defect, the Company will inform Gamma, in response to which Gamma will promptly after receiving replacement USIMs from Gamma's supplier of USIMs, provide suitable replacements (that meet the Specification) for the relevant defective USIMs.

Title in the USIMs will remain with Gamma and will not pass to the Company. Risk of loss or damage to the USIMs will pass to the Company upon Delivery.

Gamma represents and warrants that each USIM will conform to the Specification. If any USIM fails to conform to the Specification then Gamma will, free of charge, replace the defective USIM with a new USIM ("Replacement") where Defects appear under proper use within the USIM Warranty

Period provided that:

such Defects have arisen from faulty workmanship, materials or design; and

the Company makes the defective USIMs available for collection by Gamma within a reasonable time of notifying Gamma of the Defects, or, if requested by Gamma, the Company returns such USIMs to Gamma at Gamma's reasonable expense.

Any Replacements will be delivered by Gamma free of charge, to the delivery address notified by the Company to Gamma and on the date agreed for their Delivery.

Gamma represents and warrants to the Company that it is the unencumbered owner of the USIMs and the USIMs at the time of Delivery will be new and of recent manufacture.

Gamma represents and warrants that:

it has the right to grant the Company the license to use the Software;

the Software, when supplied by Gamma, does not contain any virus; and

the media on which the Software is provided will be free from defects in workmanship and materials during normal use.

Except in relation to warranties which the parties cannot by law exclude, all other warranties, whether express or implied, are hereby excluded.

As between the Company and Gamma, save as expressly provided in these terms, Gamma will be the owner or the licensee of the Intellectual Property Rights in the USIM subject to the following:

Grant of Licence. Gamma grants the Company a non-exclusive, non-transferable, royalty free, non-sublicensable (except as specified below) licence to use the Software, solely for the purpose of subscriber identification and provision of services in connection with the Services.

Copies. Subject to paragraph 37(d) of this Addendum, the Company will have no right to copy, in whole or in part, the Software (except as permitted by law) and will not sublicense, sell, offer for sale, lease, loan, transfer or otherwise disseminate the Software, in whole or in part.

Modifications, Reverse Engineering. The Company agrees that, except as permitted under the Copyright Designs and Patents Act 1988, only Gamma will have the right to alter, maintain, enhance or otherwise modify the Software. The Company agrees not to modify, adapt, disassemble, decompile, reverse engineer, or reverse assemble the Software or any part thereof in any form whatsoever, or otherwise attempt to derive the source code or create derivative works therefrom, translate in part or in whole the object code of the Software by any means and in any form, and will not authorise any parent, subsidiary, affiliated entities, or third party to do any of the above.

Sub-licence. The Company may sub-license the Software contained in any USIM to any End User of the USIM solely to the extent necessary to receive and utilise via a device the Service.

Gamma will retain ownership of all Intellectual Property Rights in the Documentation. Gamma hereby grants to the Company a non-exclusive, irrevocable, royalty free and perpetual license to use and copy any element of the Documentation that is required by the Company to enable it to use, install, repair and maintain the USIM. The Company agrees that the Documentation will be treated as the confidential property of Gamma or its suppliers.

The Company will:

not provide or make any part of the Documentation available to any person save as permitted under these terms; and

when making permitted copies transfer to each copy any copyright or other notice of proprietary rights on the Documentation.

Gamma will use reasonable endeavors to procure that its USIM supplier will indemnify and keep indemnified the Company against any costs, damages, liabilities, losses or expenses incurred by the Company arising from any legal actions, claims or demands brought against the Company by any third party arising from the Company's (or its subcontractors' or agents') possession, use or sale of the USIM and/or the provision of any services or the results of any services which infringe the Intellectual Property Rights of a third party (a "Claim"), provided that the Company:

gives Gamma written notice of any Claim within 2 Business Days of first becoming aware of such Claim;

gives its permission, on receipt of a written request, for its name to be used in proceedings (such permission not to be unreasonably withheld or delayed) and will provide all assistance reasonably required by Gamma in defending any Claim at Gamma's expense; and

makes no admission of liability without Gamma's prior written consent (such consent not to be unreasonably withheld or delayed).

Gamma or its USIM supplier will have the sole control of the defence of any Claim and all negotiations for settlement or compromise so long as the settlement or compromise is being negotiated in accordance with paragraphs 40 to 44 hereof.

If a Claim is made, Gamma may, at its option and expense:

replace or modify the infringing material contained in each part of the USIM or any product provided as part of the services so that it is non-infringing, provided that any replacement or modification functions and performs at least as well as the infringing material and complies with any relevant specification or other requirements of these terms. Gamma will ensure that no interruption to the operation of the USIM or provision of the Service occurs during modification or replacement; or;

obtain the right for the Company lawfully to possess and use the relevant part of the USIM and the Documentation and to exercise the rights granted under these terms.

Paragraphs 40, 41 and 42 will not apply to the extent that a Claim is based on:

any unauthorised modification of the USIM,

use by the Company of the USIM for purposes other than that it was designed for,

use in conjunction with other equipment or software not manufactured or approved by Gamma or its USIM supplier (which when combined with the USIM causes the infringement), or

if the infringement results from compliance by Gamma with any part of the Specifications that is a requirement or specification of the Company (for example a trade mark of the Company or software code written by the Company).

To the extent that a third party makes a claim of infringement based on the exceptions specified in paragraph 43 against Gamma or the Company, the Company will indemnify Gamma in respect of any cost, loss or damage arising out of such action, subject to the same conditions (*mutatis mutandis*) as are specified in paragraphs 40 and 42.