

## **BARCLAY DIGITAL SERVICES:**

### **SCHEDULE A: SPECIFIC TERMS – MOBILE PHONE SUPPLY March 2018**

#### **1. INTRODUCTION**

**1.1** This page sets out the Specific Terms on which (together with the General Terms and Order Terms forming part of the Agreement between us) we, Barclay Digital Services Limited, a company incorporated in Northern Ireland under registered company number NI624500, whose registered office is at, 248 Upper Newtownards Road, Belfast, County Antrim, BT4 3EU (“**we**” or “**us**”) provide mobile telecommunications devices, (“**Products**”) and associated services (with the particular exception of our mobile device management service, or payment protection plan, which are dealt with by way of separate specific terms), including support services (“**Services**”) to you as our client (“**you**”), as may be more specifically set out within the relevant Order Terms.

**1.2** Unless otherwise defined herein, any terms used in these Specific Terms shall have the meaning attributed to them in the General Terms.

**1.3** These Specific Terms apply to the Agreement between you and us for the supply of the Deliverables. Please note that by ordering any such Deliverables from us, you agree to be bound by the terms of our Agreement. Where we provide any products or services to you other than the Deliverables the provision of such products or services shall be governed by the relevant Additional Terms applying to such products or services.

**1.4** You should print a copy of these Specific Terms or save them to your computer for future reference.

**1.5** We may amend these Specific Terms from time to time as set out within the General Terms. Every time you sign a new Order Form for the provision of Deliverables please check these Specific Terms and the General Terms to ensure that you understand the terms which will apply to our Agreement at that time. These Terms were most recently updated on **1 March 2018**.

#### **2. DEFINITIONS & INTERPRETATION**

**2.1** The following terms shall have the following meanings in these Specific Terms:

“**Agreement**” means the agreement between us for the provision of the Deliverables;

“**Charges**” means the total charges provided for under the Order Form and the Proposal and otherwise provided for under the Agreement, to be paid on the dates specified by us in the Proposal (or otherwise stipulated by us) in return for the supply of the Deliverables;

“**Clause**” means a clause of these Specific Terms;

“**Deliverables**” means the Products and the Services together;

“**Extended Term**” has the meaning given in Clause 12.1;

“**Initial Term**” means the initial term set out within the Order Form, which shall, in any event, be no less than 12 months or the term of any agreement in place between you and us;

“**Incentives**” means any redemptions or similar promotional deals offering you a financial or commercial incentive or rebate when you enter into an Agreement with us, as may be further specified within the relevant Order Terms, including any “Buy Out Sum” that may be paid to you to allow you to break your pre-existing contract with a third party, “Cashback” sum, “Hardware Fund”, “Line Credit”, or the provision of Products free of charge, at a discounted rate from the ordinary retail price or under a payment plan allowing you to pay for the Products by way of periodic instalments;

“**General Terms**” means our general terms and conditions for the supply of products and services, which shall apply to the Agreement between us in addition to these Specific Terms and any Order Terms;

“**Liquidated Damages**” has the meaning given in Clause 9.1;

“**Mobile Network Service(s)**” means the provision of airtime, SMS, MMS and/or data, together with any other services identified in this Contract, by means of the Systems offered by the Company.;

“**Order Form**” means the order form provided by us in connection with the Deliverables;

**“Order Terms”** means, in respect of the provision of the Deliverables, the Proposal and the Order Form;

**“Our Representative”** means your account manager as set out within the Order Form;

**“Proposal”** means the proposal submitted to you by us in respect of the supply of the Deliverables;

**“Service Operator”** means any mobile network operator

**“Specific Terms”** means, in respect of the provision of the Deliverables, the terms and conditions in this Schedule A;

**“Support Services”** means the support services specified in our “Service SLAs” document, the timings for delivery of which shall be, for the avoidance of doubt, indicative only, as well as the other account management services we provide;

**“Upgrade”** means any upgrade or improvement to your existing package, agreed at the outset of any agreement;

**“Your Representative”** means the person duly authorised by you to act on your behalf for the purposes of the Agreement and identified to us by you under Clause 4.2;

### **3. SUPPLY**

**3.1** Following signature of the Order Form, and in consideration for payment by you of the Charges, we shall provide the Deliverables to you in accordance with the Agreement.

### **4. CUSTOMER OBLIGATIONS**

**4.1** You shall co-operate with us in all matters relating the provision of the Deliverables and, in particular, co-operate with us in all matters relating to billing of the Charges due under the Agreement, including providing us with full and timely access to any online billing system which you may operate, and providing us with any purchase order numbers or details which you may require in connection with any invoices we may wish to submit in respect of the Charges;

**4.2** Upon signing the Order Form, you shall confirm to us the name of the person appointed as Your Representative for the purposes of the Agreement. Your Representative shall have the authority to bind you in all matters relating to the Agreement.

**4.3** Upon your signing of the Order Form, we shall also confirm to you the person nominated as Our Representative for the purposes of the Agreement. Our Representative shall be your first point of contact for any queries in relation to the subject matter of this Agreement.

**4.4** If our performance of any of our obligations under the Agreement is prevented or delayed by any of your, or your agents’, sub-contractors’, consultants’ or employees’, acts or omissions, we shall not be liable for any costs, charges or losses sustained or incurred by you that arise directly or indirectly from such prevention or delay.

**4.5** You shall be liable to pay us, on demand, all reasonable costs, charges or losses sustained or incurred by us (including without limitation any direct, indirect or consequential losses) that arise directly or indirectly from your fraud, negligence, failure to perform or delay in the performance of any of you obligations under the Agreement, subject to our confirming such costs, charges and losses to you in writing.

### **5. CHARGES – YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

**5.1** Although the method for calculation of the Charges outlined in your Order Form will be, subject to Clause 5.2 and 5.3 below, fixed for the Initial Term of the Agreement, we reserve our right to alter our prevailing rates for provision of the Deliverables at any time and without prior notice.

**5.2** Where you agree with us to downgrade or otherwise reduce, in any way (including through the removal of bolt-ons, any other value added services, or any monetary reduction), during: (a) the Initial Term of this Agreement, you shall pay us on demand, following the expiry of the Initial Term, a sum calculated as the sum total of difference between the amount that we actually received in total Monthly Charges over the remainder of the Initial Term from the date such

change became effective less the amount that we would have otherwise received in total monthly Charges (such monthly Charges to be calculated as the mean average of the monthly Charges paid or liable to be paid for each month over the Initial Term prior to the date of your changing your tariff) over the remainder of the Initial Term from the date such change became effective, assuming your tariff had remained unchanged, which resulting figure shall be paid in addition to an administrative fee of £100 (excluding VAT) per telephone number in respect of the work (calculated on a time and material basis) involved in reducing the tariff with us, checking your bill reflects any reduction, and calculating and raising an invoice, in acknowledgement of our reasonably incurred administrative costs (“**Calculation Fee**”); or, (b) any Extended Term, where your contract with us continues into the relevant Extended Term, following the expiry of the relevant Extended Term, a sum calculated as the sum total of difference between the amount that we actually received in total Monthly Charges over the remainder of the relevant Extended Term from the date such change became effective less the amount that we would have otherwise received in total monthly Charges (such monthly Charges to be calculated as the mean average of the monthly Charges paid or liable to be paid for each month over the relevant Extended Term prior to the date of your changing your tariff with us) over the remainder of the Initial Term from the date such change became effective, assuming your tariff had remained unchanged, which resulting figure shall be paid in addition to a Calculation Fee of £100 (excluding VAT) per telephone number, calculated as set out above.

**5.3** If you wish to upgrade during the term of your Agreement you will be required to enter into a new Agreement with us with a new agreed tariff and Monthly Charge. Any remaining months left from the term of the old Agreement will be added onto the term of the new Agreement, once the relevant Order Form is signed. No Upgrades will otherwise be permitted during the term of the Agreement.

## **6. THE PRODUCTS**

**6.1** You shall be responsible for the safe keeping and safe use of any Products provided to you during the Initial Term. In particular, you agree during the Initial Term to use all Products with reasonable care in accordance with their relevant operating specifications or manufacturer’s instructions, and not to use any Products we have supplied under the Agreement in conjunction with any equipment which we, or the Product manufacturers, did not supply or otherwise approve of in advance.

**6.2** Any Products we provide to you should, as applicable, comply with the standards set by the Telecommunications Act 1984 (**Act**) and any subsequent or related legislation. We shall not be under any obligation to connect or keep connected any equipment if it does not comply with the Act or if in our reasonable opinion it is likely to cause death, personal injury, and damage or to impair the quality of the Services we provide. You agree to use all applicable Products in accordance with the Act.

**6.3** In construing clause 5.2 of the General Terms, title to the Products shall be deemed to pass to you upon the expiry of the Initial Term provided that all outstanding Charges due under the Agreement at that date have been paid in full, and no liability is otherwise outstanding from you to us under the terms of any Agreement between us.

## **7. INCENTIVES**

**7.1** From time to time we may offer you Incentives to enter into an Agreement. Where we do the nature and value of any such Incentives shall be set out within the relevant Order Terms.

**7.2** Without limiting any of our other rights or remedies, if you, at any time, fail to perform or delay in performing any of your obligations under any contract with us (including where any Charges are outstanding, or where you purport to terminate/break the Agreement during the Initial Term or any Extended Term), we reserve the right to, acting in our discretion: (a) withhold any Incentives otherwise due to you under the Agreement, (b) otherwise set-off any amount owing to you by us against the payment of any Incentives (in accordance with clause 8.12 of the

General Terms), or (c) claim repayment of the value of any Incentives paid to you pursuant to any Agreement (as outlined within Clause 9.1 for example). Such failure shall also disqualify you from receiving any Incentives to which you may have been entitled in the future were it not for your failure to perform or delay in performing any of your obligations under the Agreement.

**7.3** Where, as part of any Incentive, we offer you a fixed price line rental via cash-back or line credit, this fixed price is dependent on the Service Provider not increasing the price of its services. Where the price of the services is increased by the Service Provider, this is done independently of the Agreement. The amount of payments you receive as part of any Incentive will remain static for the duration of the Agreement and you will remain liable to the Service Provider for any increased charges.

**7.4** You shall also be liable to repay any Incentives paid to you where it has not been possible to fully fulfil your order for the Deliverables for reasons outside of our control (including due to any failure of the Service Provider, for example, a failure to provide adequate connections for the Products), and you are entitled or permitted to, and elect to, terminate the Agreement as a result.

## **8. CHANGE CONTROL**

**8.1** Either party may submit written requests for changes to the Agreement (or any part thereof) to the other party during the term of the Agreement. We shall advise you of the likely impact of any such change, including, but not limited to, any effect on the Charges.

**8.2** The parties shall in good faith discuss changes proposed in accordance with Clause 8.1 as soon as reasonably practicable. Until such time as a change control document is agreed (such agreement not to be unreasonably withheld or delayed by either party) and signed by both parties, covering such change, including any change to the Charges and/or the Order Terms, both parties shall continue to perform their respective obligations under the Agreement as if such change had not been requested.

## **9. LIQUIDATED DAMAGES – YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

**9.1** If you purport to terminate/break the Agreement, or where we terminate the Agreement due to the occurrence of any of the circumstances outlined in clause 12.2 of the General Terms or pursuant to our rights of termination outlined in this Schedule A (“**Our Termination**”), during: (a) the Initial Term, you shall pay us on demand a sum calculated as the sum total of the remainder of all total monthly Charges, (such monthly Charges to be calculated as the mean average of the monthly Charges paid or liable to be paid for each month over the Initial Term prior to the date of your purporting to terminate/break the Agreement or ceasing to pay any Charges due thereunder, or upon Our Termination, whichever occurs first) for each remaining month (or parts thereof) of the Initial Term from the date of your purporting to terminate or break the Agreement, or ceasing to pay any Charges due thereunder, or upon Our Termination, whichever occurs first, which resulting figure shall be paid in addition to (i) a sum calculated at the outstanding value of any Incentives provided to you, (ii) an administrative fee of £100 (excluding VAT) per telephone number in respect of the work (calculated on a time and material basis) involved in transferring each telephone number you have taken out under the Agreement in acknowledgement of our reasonably incurred administrative costs (“**Administrative Fee**”), or, (b) any Extended Term, where your contract with your Network Provider continues into the relevant Extended Term, you shall pay us on demand a sum calculated as the sum total of the remainder of all total monthly Charges (such monthly Charges to be calculated as the mean average of the monthly Charges paid or liable to be paid for each month over the Initial Term and any previous or current Extended Term(s) prior to the date of your purporting to terminate/break the Agreement or ceasing to pay any Charges due thereunder, or upon Our Termination, whichever occurs first) for each remaining month (or parts thereof) of the relevant Extended Term from the date of your purporting to terminate or break the Agreement, or ceasing to pay any Charges due thereunder, or upon Our Termination, whichever occurs first, which resulting figure shall be paid in addition to (i) a sum

calculated at the outstanding value of any Incentives provided to you, (ii) an Administrative Fee per telephone number transferred as set out above,

**9.2** If you purport to terminate the Agreement during any Extended Term, or where you give us notice that you do not wish the Agreement to renew into any Extended Term (as set out within Clause 12.1 below), you shall pay us on demand an Administrative Fee per telephone number transferred, as set out in Clause 9.1. The payments to be made under Clauses 9.1 and 9.2 shall be made as liquidated damages (**Liquidated Damages**).

**9.3** By agreeing that these Specific Terms and the General Terms govern the Agreement between you and us, you confirm and we confirm that this sum represents a genuine and reasonable pre-estimate of our loss, based upon our experience of the industry and the nature of the costs we may incur.

**9.4** For the avoidance of doubt, your payment of the Liquidated Damages shall be without prejudice to any of our other rights and remedies and shall not affect your liability to pay any other amount which may be due under the terms of the Agreement, including without limitation, any accrued interest in respect of any overdue payments.

## **10. TERM AND TERMINATION**

**10.1** The Agreement between you and us in respect of the provision of the Deliverables shall come into effect on the date of signing of the Order Form and, subject to the other provisions of the Agreement, shall continue in force for the Initial Term, unless either party serves 3 months' prior written notice upon the other that they do not wish the Agreement to be renewed (such notice to expire no sooner than the end of the Initial Term) be renewed annually thereafter for successive terms of 2 years each (**Extended Terms**), unless and until terminated by either party giving to the other no less than 3 months' prior written notice, such notice to expire no sooner than the end of the relevant Extended Term, or otherwise until the termination of the Agreement in accordance with any of its provisions.

## **11. EFFECTS OF TERMINATION**

**11.1** Termination of the Agreement shall be without prejudice to any rights or liabilities accrued at the date of termination.

**11.2** Upon termination of the Agreement due to your breach of the Agreement, or due to the occurrence of any of the circumstances specified in clause 12.2 of the General Terms, you shall, upon our request, (a) promptly return to us the Products (for termination/break of the Agreement during the Initial Term only), (b) pay the Liquidated Damages, (c) repay any Incentives (or the liquidated value of same) provided to you; and/or (d) pay any other outstanding Charges that may be due under the terms of the Agreement.

**11.3** In the event that you terminate or purport to break the Agreement for any reason we shall not, under any circumstances, be liable for the costs of any alternative supplier or Service Provider you may source.

**11.4** Upon termination of the Agreement for any reason, you shall, at our request, promptly return to us or otherwise dispose of any Confidential Information which you may have in your possession or under your control, and pay to us all outstanding Charges and other payments, including interest, due under the terms of the Agreement.

## **12. GENERAL**

**12.1** Conflict: In the event of any conflict or inconsistency between the constituent parts of this Agreement, they shall prevail in the following order: (a) the Order Form, (b) the Proposal (c) these Specific Terms, and (d) the General Terms.

**12.2** Survival: Without prejudice to the generality of clause 14.8 of the General Terms, the terms of Clauses 1, 2, 4.4, 4.5, 6.4, 7, 9, 10, 11, 12, 13 and 14 shall survive expiry, variation or termination of the Agreement.