

Service Schedule for the provision of network products and services

The supply of Products /Services under this Schedule is subject to the provisions of the eir evo Master Terms and Conditions for the Supply of Goods and Services and all definitions not defined in this Schedule shall have the meaning ascribed to them in the eir evo Master Terms and Conditions for the Supply of Goods and Services at www.eirevo.ie/masterterms (the “eir evo Master Terms”). Any acceptance by eir evo of any of the Customer Orders for the Products and Services is subject to the terms of the Agreement. This Schedule forms part of the Agreement which includes the eir evo Master Terms, the Order(s) and the Charges.

1. GENERAL

1.1 In this Schedule, the following expressions shall have the following meanings:

“**Location**” means the Customer premises or such other location as eir evo may approve in writing from time to time and at which the Products will be kept and all or some of the Services may be performed;

“**Maintenance Services**” means any maintenance services which eir evo may agree to provide to the Customer from time to time in connection with the Products;

“**Products**” means third party manufactured Goods and accessories supplied by or behalf of eir evo including the physical media upon which the Third Party Software and/or the eir evo Software, if any, are stored, and any Replacement Parts and shall include any item comprising any of the foregoing as the context admits or the case may require;

“**Replacement Parts**” means any replacement parts for the Products that may be supplied to the Customer as part of the Maintenance Services;

“**Services**” means any network services to which eir evo may agree to provide to the Customer from time to time including technical consultancy, installation, monitoring and managed services and including Maintenance Services.

1.2 Headings are for ease of reference only and do not form part of and shall not be construed as forming part of this Schedule. Any reference in this Schedule to any statute shall be construed as a reference to such statute as amended, extended, consolidated or re-enacted from time to time and references to a statutory provision shall extend to any subordinate legislation made under it.

2. DELIVERY

2.1 The Customer will provide eir evo with all documentation and other information as may be deemed necessary by eir evo to perform the Services and deliver the Products.

2.2 eir evo will use reasonable commercial efforts to deliver the Products and perform the Services within the time indicated by eir evo but eir evo will not be liable to the Customer for any loss or damage of whatsoever nature for late or non-delivery of the Products or late or non-performance of the Services. Unless otherwise agreed in an Order, delivery of the Products and performance of the Services will be performed on a Business Day.

2.3 The method of packaging and the choice of carrier of the Products are at the sole discretion of eir evo.

2.4 All risk in and to the Products shall pass to the Customer on the earlier of (i) delivery thereof to the Location or (ii) if the Customer requests eir evo to store the Products on the Customer’s behalf, the date on which the Customer make any such request, and the Customer shall insure the Products accordingly. eir evo accepts no liability of whatsoever nature howsoever arising for storing the Equipment on the Customer behalf following the Customer’s request to store the Equipment on the Customer’s behalf.

2.5 Orders placed by the Customer with eir (if accepted by eir evo will be delivered only after the Products have first been delivered to eir evo. eir evo may dispatch orders in part from time to time, and payments for each part of an Order so dispatched shall become due thirty (30) days from the date of invoice unless otherwise agreed in writing.

2.6 The Customer is not entitled to return any Products to eir evo without eir evo’s prior express consent. No claim in respect of shortages of or damage to the Products will be entertained by eir evo unless made in writing and received by eir evo within three (3) Business Days from date of delivery of the Products.

2.7 The Customer is responsible for the proper disposal of any and all packaging in connection with the Products.

3. RETENTION OF TITLE

3.1 Notwithstanding delivery and passing of risk to the Customer, the property in and legal and beneficial title to the Products will not pass to the Customer, and the Customer will keep the Product as bailee and trustee for eir evo returning same upon request, until the price of the Product and any other amount on whatever account owing from the Customer to eir evo is paid in full.

- 3.2** Until such time as the property and legal and beneficial title in the Product passes to the Customer, the Customer must keep the Product separate from the Customer's other goods or the goods of third parties and properly stored, protected, insured and identified as eir evo's property.
- 3.3** Until such time as the property and legal and beneficial title in the Product passes to the Customer, on the happening of any termination event as set out in clause 13 of the eir evo Master Terms (whether it leads to termination or not) or if eir evo has reasonable cause to believe that any such termination event is likely to occur, then, without prejudice to any other rights or remedies, eir evo reserves the right to:
- 3.3.1** enter onto without prior notice the Location or any of the Customer's premises where the Product is or may be, and to repossess and dispose of any such Product so as to discharge any sums owed by the Customer to eir evo and such shall not constitute trespass;
- 3.3.2** require the Customer not to re-sell or part with possession of any Product owned by eir until the Customer has paid in full all sums due to eir evo on any account; and/or
- 3.3.3** withhold delivery of any undelivered Products, stop any Products in transit, suspend performance of the Services (if any) and require payment in advance of any further deliveries of Products ordered by the Customer or Services to be performed by eir evo.
- 3.4** The Customer is not entitled to pledge, charge, encumber or otherwise permit the creation of any lien or encumbrance, whether by way of security or otherwise for any indebtedness over, any of the eir evo Products, but if the Customer does so, all money owing by the Customer to eir evo will (without limiting any other right or remedy of eir evo) forthwith become due and payable.

4. PRICE AND PAYMENT

- 4.1** Unless a definite price had been expressly agreed between the Customer and eir evo for the execution of an Order, eir evo's list price prevailing at the date of delivery shall apply.
- 4.2** All Product Orders (accepted by eir evo), whether shipped in full or in part, shall be invoiced as soon as the Products are dispatched to the Customer.
- 4.3** All Orders for Services (accepted by eir evo), shall be invoiced in full upon completion of the installation or upon an agreed set of Project Milestones outlined in the Project Plan or Statement of Work.
- 4.4** Prices are exclusive of VAT and any other taxes and duties due.
- 4.5** Accounts with overdue balances may be placed on credit hold. This means that no further Products will be shipped and no Services will be performed until the account is brought into order. Credit facilities may be withdrawn without prior notice at the sole discretion of eir evo.
- 4.6** Unless an alternative currency and method of payment is agreed in writing by eir evo, payment shall be made in euro within 30 days of date of the Due Date. Payment shall not be treated as having been made until the amount in question has been irrevocably cleared and credited to eir evo's bank account. Interest on late payments may be applied and charged by eir evo in accordance with clause 3.3 of the eir evo Master Terms.

5. INTELLECTUAL PROPERTY RIGHTS

All Intellectual Property rights in or to the Services, the Products, the Third Party Software and the eir evo Software are as set out in the eir evo Master Terms.

6. WARRANTY

- 6.1** The Product and Third Party Software carry only the warranty (if any) of the relevant manufacturer and the Customer is only entitled to the benefit thereof only to the extent that eir evo has the power to transfer it to the Customer and the third party supplier agrees. Without prejudice to the foregoing, in no circumstances will eir evo's liability to the Customer for any breach of warranty exceed the price paid by the Customer to eir evo for the Product or Service in respect of which the claim is made.
- 6.2** eir evo warrants that:
- 6.2.1** it is the owner of the eir evo Software; and
- 6.2.2** it has the ability and capacity to provide the Services and the Services will be provided by personnel who are appropriately experienced or trained.
- 6.3** Unless otherwise agreed by eir evo, no commitment or warranty is made in respect of the Third Party Software other than a right for the Customer to use the Third Party Software. eir evo disclaims any responsibility or liability in relation to or in connection with the Third Party Software.
- 6.4** eir evo does not warrant that the eir evo Software will be uninterrupted or error free.

- 6.5** In the event of any breach of warranty by eir evo in connection with the eir evo Software, the Customer's sole and exclusive remedy shall be, in the sole discretion of eir evo, either the replacement or repair of the eir evo Software or a refund of any money paid by the Customer to eir evo for the eir evo Software, or in the event of any breach of warranty in connection with the Services, the Customer's sole and exclusive remedy shall be the re-performance of the Services.
- 6.6** Other than the representations and warranties expressly provided under this Schedule and in the eir evo Master Terms, eir evo expressly disclaims all warranties, conditions, representations, statements, terms and provisions, whether express or implied by statute, common law, custom or trade, or otherwise in connection with this Schedule to the maximum extent permissible by law. Without prejudice to the generality of the foregoing, all terms implied pursuant to sections 13-15 of the Sale of Goods and Supply of Services Act, 1893 and 1980 and section 39 of the Sale of Goods and Supply of Services Act, 1893 and 1980 are hereby excluded and eir evo and the Customer agree that is fair and reasonable. The Customer confirms that it enters into the Agreement in the course of trade.

7. VARIATION AND CANCELLATION OF ORDERS

- 7.1** Once accepted by eir evo, Orders may not be varied or cancelled without eir evo's prior written consent. The Customer will reimburse eir evo for all loss suffered by eir evo as a result of variations or cancellations of Orders.
- 7.2** Any agreed variations or cancellations will be subject to a restocking charge of 15% of the value of the Products or Services varied or cancelled. Any Products which may be returned and accepted by eir evo in its sole discretion for credit must be returned in a saleable condition, unopened and in the original packing and complete with all accessories, manuals, etc.

8. MAINTENANCE SERVICES

- 8.1** The Maintenance Services do not include any maintenance of the Products which is necessitated as a result of any cause other than fair wear and tear including without limitation:
- 8.1.1** accident, transportation, neglect, misuse or default by the Customer, the Customer's employees, agents or any third party; or
 - 8.1.2** any fault in any attachments or associated equipment (whether or not supplied by eir evo) which do not form part of the Products; or
 - 8.1.3** any Force Majeure Event, electrical mains power surge, or any similar occurrence; or
 - 8.1.4** any attempt by any person other than eir personnel or their authorised agents to move, remove, modify, adjust, repair or maintain the Products.
- 8.2** The Maintenance Services do not include the provision of services other than at the Location; maintenance of any attachments or associated equipment (whether or not supplied by eir evo) which do not form part of the Products; or maintenance of any Products excluded by eir evo from time to time and notified to the Customer by eir evo.
- 8.3** The Customer will be responsible for reporting all faults in the Products to eir evo in a timely manner and will be responsible for requesting Maintenance Services, as required. In addition the Customer's responsibilities include, without limitation:
- 8.3.1** reading and observing the environmental and electrical conditions in which the Products should be maintained;
 - 8.3.2** maintaining in good condition the accommodation of the Products, the cables and fitting associated therewith and the electricity supply thereto;
 - 8.3.3** taking all reasonable precautions to ensure that eir evo personnel are provided with a safe working environment when carrying out Maintenance Services at the Location;
 - 8.3.4** not making any modification to the Products without eir evo's prior written consent;
 - 8.3.5** keeping and operating the Products in a proper and prudent manner in accordance with eir evo's or the manufacturer's operating instructions and ensure that only employees trained and skilled in the use of the Products are allowed to operate it;
 - 8.3.6** ensuring that the external surfaces of the Products are kept clean and in good condition and carry out any minor maintenance of the Products recommended by eir evo from time to time;
 - 8.3.7** save as aforesaid, not attempting to adjust, repair, modify or maintain the Products and shall not request, permit or authorise anyone other than eir evo to carry out any adjustments, repairs, modifications or maintenance to the Products; not removing the Products from the Location without prior written notification to eir evo;
 - 8.3.8** not using in conjunction with the Products any accessory, attachment or additional equipment other than that which has been supplied by or approved in writing by eir evo;
 - 8.3.9** being responsible for identifying problems and replacing accessories and supplies including but not limited to analogue telephone sets, batteries, toner, paper and tapes; and

8.3.10 ensuring that all external network elements have adequate lightning protection as specified by the network provider.

8.4 The Customer will provide eir with safe and secure remote access to the Products and the Customer will ensure the appropriateness of all security measures where remote access features are used on the Products which allow direct or indirect access, such as firewalls, password protection and virus checking; provide eir evo with full and safe access to the Products at the Location; and make available at the Location such facilities as eir evo may reasonably require in order to provide the Maintenance Services or the Services, including but not limited to, adequate work space, storage and office furniture and equipment.

8.5 The Customer will indemnify and keep fully and effectively indemnified and hold eir evo harmless against any consequences to it or any third party from any unauthorised access to or through the Products, howsoever arising or any loss or damage caused to eir evo or any of its personnel, contractors or third party service providers whilst providing the Services to the Customer at the Location.

9. TERM AND TERMINATION

9.1 Upon expiry of the Minimum Period of Service the Customer or eir evo may terminate this Schedule at any time upon twelve (12) months written notice to the other.

9.2 Upon termination or expiry of this Schedule:

9.1.1 the licence to use the eir evo Software pursuant to paragraph 5 shall cease automatically along with any right to use the Third Party Software and the Customer shall return all copies of any eir evo Software and Third Party Software and/or confirm its deletion from the Customer's systems;

9.1.2 the Customer will pay eir evo all sums due and payable under this Schedule but unpaid at the time of termination; and

9.1.3 both eir evo and the Customer will return or destroy any confidential information of the other party in our possession, custody or control.

9.3 eir evo reserves the right to terminate any right to use the Third Party Software at any time on notice to the Customer.

10. MISCELLANEOUS

10.1 eir evo will only continue to provide the Maintenance Services in respect of Products which are supported by its manufacturer and/or distributor. Upon notification to eir evo from a manufacturer or distributor that any of the Products are no longer being supported, eir evo will continue to support such Products if it is in a position to do so, but reserves the right to terminate the Maintenance Services in respect of such Products on notice to the Customer.