

## Sesui Terms and Conditions

### CONTEXT

- 0.1 Sesui is a leading provider of cloud communications services and solutions. The Customer wishes to use Sesui's services in its business operations.
- 0.2 The parties have agreed to document the terms and conditions applicable to the provision of services, solutions, and support by Sesui to the Customer.

### 1. INTERPRETATION

- 1.1 In this Agreement, the following defined terms have the following meanings:

<b>ADR Notice</b>	as set out in clause 9.3
<b>Agreement</b>	these Terms, the Schedules (including any Service Level Agreement), the Annexes, and the Customer Order Form together.
<b>Business Day</b>	any day other than a Saturday, Sunday or recognised public holiday in the relevant jurisdiction.
<b>Call Plan</b>	any routing or management of calls to the Service, as may be configured on or by the Company's Network.
<b>Company Portal</b>	any website operated by and registered to Sesui from time to time, the main company portal being <a href="http://www.sesui.com">www.sesui.com</a> .
<b>Company's Network</b>	any part of the infrastructure, software, programming and information associated with the design, operation or functionality of the Service.
<b>Customer</b>	the individual, company or body with whom Sesui makes this Agreement and includes successors and permitted assigns.
<b>Customer Order Form</b>	the form, identified as <b>Form SES01xx</b> supplied by Sesui in respect of a request for the Service and signed by the Customer (or a duly authorised representative of the Customer) or acknowledged by the Customer (or a duly authorised representative of the Customer) in writing (including by email) including any subsequent amendment or additions made to the Service provided by Sesui which are requested by the Customer in writing and which are accepted by Sesui in writing (including email).
<b>Data Protection Legislation</b>	means the General Data Protection Regulation (EU) 2016/679, the Data Protection Act 2018, and all laws and regulations applicable to the processing of Personal Data

under or in relation to this Agreement, as may be amended from time to time.

<b>Date of Execution</b>	the initial ready for service date (which shall be communicated by Sesui to the Customer in writing) or the first invoice date for Rental, whichever is the later.
<b>Disposal</b>	the method of eradicating or transferring all Stored Data.
<b>Dispute Notice</b>	as set out in clause 9.
<b>Dormant CLI</b>	A telephone number that receives an average of fifteen (15) minutes call traffic or less within three (3) consecutive months.
<b>DS&amp;P</b>	data security and protection.
<b>ECNP</b>	Electronic Communications Network Provider.
<b>EFM</b>	Ethernet First Mile, including circuit and related hardware.
<b>Facility</b>	includes any line, equipment, tower, mast, antenna, tunnel, hole, pit or pole used in connection with a Service.
<b>Fair Usage Policy</b>	<p>The policy in place to protect one or more clients from overloading Sesui's systems and impacting service performance for all clients.</p> <p>Compliance is defined as when a client's caller minutes (the total minutes from all callers into a client's service via the Sesui platform) are less than 4 times a client's talk time minutes (the total minutes of a client's agents/operators talking with callers via the Sesui platform) over a consecutive 3 month (quarterly) period.</p>
<b>Hardware</b>	IP telephones, telecommunications lines, network cabling, EFM, broadband and other hardware as may be specified in a Customer Order Form.
<b>IGSOC</b>	Information Governance Statement of Compliance.
<b>Initial Period</b>	for a Service will be a minimum period of 12 months or as set out in the Service Level Agreement or Customer Order Form. Any period set out in the Customer Order Form shall take precedent over any period included in the Service Level Agreement and these Terms. Where the Service has been renewed following the Initial Period, the period set out in the Service Level Agreement shall take precedent over the period set out in these Terms.

<b>Intellectual Property Rights</b>	all inventions and rights to inventions, rights in goodwill, rights in confidential information including, patents, registered designs, design rights, database rights and copyrights, know-how and trademarks (whether registered or not) and all other forms of ownership including industrial and intellectual property rights in all documents or operating programmes for software operated systems whether in legible form or machine readable form and the goodwill therein and applications for any of the same with any rights or forms of protection of a similar nature and having equivalent or similar effect to any of them which may subsist anywhere in the world whether owned by or licensed to Sesui relating to the Service or to the Numbers and / or to associated or accompanying literature and documentation together with any application by or on behalf of Sesui for any such rights.
<b>ISMS</b>	information security management system as may be amended from time to time by Sesui at its sole discretion.
<b>Numbers</b>	a telephone number.
<b>Personal Data Breach</b>	means a breach of security leading to the destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data.
<b>Personal Data, Data Subject, Controller, Processor and Process</b>	shall be interpreted in accordance with applicable Data Protection Legislation.
<b>Premises</b>	the place to and from which Sesui agrees to provide the Service and Hardware.
<b>Regulatory Restriction</b>	<ul style="list-style-type: none"> <li>a) legal or regulatory restrictions; or</li> <li>b) restrictions due to domestic or foreign government policy; or</li> <li>c) other restrictions imposed on telecommunication operators in relation to providing telecommunication services (including, without limitation, licensing requirements and restrictions relating to reselling services), which operate such that the Agreement or any action taken or required to be taken in accordance with the Agreement, including without limitation the provision of the global Service to the Customer, contravenes or may contravene any provision of any applicable law in force in the jurisdiction where the global Service are being used or the global Service are being supplied or used.</li> </ul>

<b>Renewal Period</b>	shall apply at the end of the Initial Period if no renewal or cancellation instructions are received, from the customer, and shall run for a period of 12 months unless terminated in accordance with the terms of this Agreement.
<b>Rental</b>	recurring Service charges excluding one-off charges and unbundled minute charges.
<b>Retention Period</b>	the Customer instructed period during which time Sesui will retain and protect Stored Data.
<b>Rules</b>	the rules of the London Court of International Arbitration, which can be located at: - <a href="http://www.iccwbo.org/products-and-services/arbitration-and-adr/arbitration/icc-rules-of-arbitration/">http://www.iccwbo.org/products-and-services/arbitration-and-adr/arbitration/icc-rules-of-arbitration/</a>
<b>Schedule</b>	a schedule to these Terms.
<b>Service</b>	the cloud communications service (including where applicable software as a service, "SaaS") and other services referred to in a Customer Order Form forming part of this Agreement, and "Services" shall be construed accordingly.
<b>Service Level</b>	such commitments as to provision of the Service by Sesui as may be agreed between the parties from time to time, and "Service Level Agreement" shall be construed accordingly.
<b>Service Provider</b>	a service provider from whom Sesui acquires any services for the purpose of providing the Service to the Customer.
<b>Service Term</b>	the Initial Period set out in the Agreement and any Renewal Period or Periods, for that Service and commences on the Date of Execution.
<b>Sesui</b>	Sesui Limited whose registered office is at Magdalen Centre, The Oxford Science Park, Oxford, OX4 4GA. Registered in the UK under company number: 0497 5554.
<b>Sesui Platform</b>	multi-sited architecture of servers and software configured to provide the Service.
<b>Stored Data</b>	any data which is stored by Sesui, under instruction from the customer and through use of the Services provided by Sesui, as laid out in the Customer Order Form and irrespective of whether the data contains personal and / or sensitive personal information.
<b>Terms</b>	these terms and conditions.

**VAT** value added tax or any equivalent tax chargeable in the UK.

- 1.1 a reference to this Agreement includes all its parts described in clause 1, the Schedules, the Annexes, the Customer Order Form, and includes any amendment to or replacement of them;
- 1.2 a reference to a statute or other law includes regulations and other instruments under it and amendments, re-enactments or replacements of any of them;
- 1.3 the singular includes the plural, and vice versa;
- 1.4 "includes", "including", "for example", "such as" and similar terms are not used, and are not to be interpreted as, words of limitation.

## **2. COMMENCEMENT AND DURATION OF AGREEMENT**

- 2.1 This Agreement commences on the date that an acknowledgement in writing (including email) of agreement to the Customer Order Form from a duly authorised representative of the Customer, is given by Sesui. This Agreement will continue unless terminated by either party in accordance with the Terms of this Agreement.

## **3. PROVISION OF THE SERVICE AND HARDWARE**

- 3.1 Sesui will:
  - (a) provide the Customer with the Service detailed in the Customer Order Form on the conditions set out in the Agreement, for the avoidance of doubt including any special conditions agreed in writing by both parties on the Customer Order Form;
  - (b) exercise the reasonable skill and care of a competent telecommunications service provider in providing the Service and if required in determining how best to provide the Service to the Premises;
  - (c) use its reasonable endeavours to provide the Service by the date set out in the Customer Order Form for the avoidance of doubt all such dates are estimates and time is not of the essence in this Agreement;
  - (d) comply with all laws and regulations enforceable at law relevant to the provision of the Service;
  - (e) provide any Hardware specified in the Customer Order Form in accordance with the provisions of Schedule 1.

## **4. COMPANY PORTAL**

- 4.1 Sesui shall, for the duration of this Agreement, provide to the Customer web access to their call information via the Company Portal and the Customer shall have a right to access and use the Company Portal to the extent necessary and for the following purposes only:
  - (a) viewing and downloading call detail records, statistical information and billing data stored on the Company Portal only in relation to the calls made to or by the Customer;
  - (b) changing any part of the Service as the Customer deems appropriate regarding any telephone numbers allocated to the Customer by Sesui.

- 4.2 The Customer shall only amend, alter or change any parts of the Service in accordance with their training and authorisation level and/or as provided in writing from time to time by Sesui to the Customer.
- 4.3 Changes made by the Customer to their Service which cause any reduction in the Service Level are the sole responsibility of the Customer and Sesui will not be liable for any financial penalties incurred by any third party as a result of these actions.
- 4.4 Sesui accepts no liability for any amendments made by Customer to the Call Plans, call routing or calls management system.

## **5. MAINTENANCE AND FAULTS**

- 5.1 Subject always to clause 3.1(b) above Sesui shall maintain the Service in accordance with the provisions of this Agreement.
- 5.2 Sesui may:
  - (a) suspend the Service in the event that any routine maintenance is likely to cause any impairment or suspension of the Service in which case Sesui shall give the Customer reasonable written notice of such maintenance / suspension;
  - (b) where a fault or impairment occurs to the Service, Sesui shall use its reasonable endeavours to repair such fault or impairment as quickly as reasonably possible, once the fault or impairment has been brought to Sesui's attention in writing by the Customer;
  - (c) where any fault or impairment (including damage to Hardware) is not caused by Sesui or its suppliers, Sesui will levy a reasonable charge for restoring the Service and / or replacing such damaged Hardware.

## **6. CHARGES**

- 6.1 Unless otherwise stated in the Agreement, any Rental is invoiced monthly in advance and call charges and any ad-hoc maintenance or similar charges are invoiced monthly in arrears. Set-up and any other one-off charges including any charges for Hardware will be invoiced on completion of the work. Unless otherwise stated in the Agreement, payment terms are 14 days from the date of invoice. Sesui may suspend the provision of Service in the event of any delay in payment, in accordance with clause 14.2(a). Sesui may, without prejudice to its other rights, charge interest and seek compensation in accordance with the revised late payment of Commercial Debts (Interest) Act 1998 as amended.
- 6.2 Charges for Rental (including Hardware, if rented) and for Hardware (if purchased as a separate item) will be invoiced for each Service itemised in the Agreement for the full Service Term. Upon the termination of any Service any Rental associated with the remaining Service Term will be charged in full, as a single charge and shall be invoiced immediately on termination of the Service and payable by the Customer within 30 days of termination of the Service.

- 6.3 The tariff and charges for the Service are set out in this Agreement and may be varied from time to time by Sesui on 30 days written notice to the Customer.
- 6.4 Sesui may require a deposit or other security for payment of its charges.
- 6.5 Charges will be based on Sesui's records.
- 6.6 All charges in this Agreement exclude VAT or other applicable sales tax which will be added to the invoice at the prevailing rate from time to time.
- 6.7 The Customer hereby agrees that in the event (for whatever reason) that Sesui fails to receive from its carriers any monthly call revenue properly due to Sesui in respect of the Service, then Sesui shall have no liability to make any out payments deriving therein to the Customer unless and until the carrier pays such revenue to Sesui. Sesui shall use its reasonable endeavours to attempt to recover such monthly call revenue.
- 6.8 The Customer hereby agrees to repay Sesui any charges or fines related to Regulatory Restrictions in the event that Sesui is required to pay any Regulatory Restriction charges or fines in connection with the Customer's Service. Such repayment shall be made by the Customer to Sesui within 10 Business Days of Sesui notifying the Customer in writing of the amount to be repaid.

## **7. LIMITATION OF LIABILITY**

- 7.1 This clause 7 sets out the entire financial liability of Sesui (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:
- (a) arising under or in connection with this Agreement;
  - (b) in respect of any use made by the Customer of the Service, Hardware, and Documentation or any part of them; and
  - (c) in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 7.2 Nothing in this agreement excludes the liability of Sesui:
- (a) for death or personal injury caused by Sesui's negligence;
  - (b) for fraud or fraudulent misrepresentation; or
  - (c) for any liability which, by law, cannot be excluded or limited.
- 7.3 Subject to clause 7.2, Sesui shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for:
- (a) any pure economic loss, loss of business, profit, goodwill or similar losses; or
  - (b) loss or corruption of data or information; or
  - (c) for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement.

- 7.4 Subject to clauses 7.2 and 7.3 Sesui shall not be liable for any losses or damages sustained as a result of:
- (a) the failure of any independent contractors' telecommunications equipment including any software;
  - (b) the Customer's negligence or default;
  - (c) a fluctuation in mains voltage;
  - (d) faults of any ECNP software, line or equipment;
  - (e) electrical interference generated in or radiated by electric, electronic or other similar equipment or materials not supplied by Sesui;
  - (f) the lack of availability or poor quality of any internet services; or
  - (g) the failure of any equipment which has not been provided by Sesui or the failure of any equipment which is outside the control of Sesui.
- 7.5 Subject to clauses 7.2, 7.3, and 7.4, Sesui's maximum total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the lesser of (i) a sum equivalent to 150% of the charges paid or payable under this Agreement in the 12 months immediately preceding the incident giving rise to the liability, or (ii) a maximum sum of £1m.
- 7.6 Should any third party bring any claim against Sesui relating to the Customer's use of the Service and/or Hardware, the Customer shall fully indemnify Sesui for any costs and / or losses incurred by Sesui as a result.

## **8. MATTERS BEYOND THE REASONABLE CONTROL OF EITHER PARTY**

- 8.1 If either party is unable to perform any obligation under this Agreement because of a matter beyond that party's reasonable control such as lightning, flood, exceptionally severe weather, fire, explosion, war, civil disorder, industrial disputes, acts of local or central government or other competent authorities or events beyond the reasonable control of that party's suppliers, the party will have no liability to the other for failure to perform.
- 8.2 If as a result of a matter beyond the reasonable control of a party, the affected party is unable to do or delayed in doing what it has agreed under this Agreement, it shall continue performing those obligations under this Agreement that are not affected by the matter beyond its reasonable control and in performing those obligations shall use reasonable efforts to deploy its resources so that (when taken with obligations to third parties) there is no undue discrimination against the third party.
- 8.3 If the affected party is unable to do or delayed in performing any of its obligations under this Agreement because of a matter beyond its reasonable control, the other party shall be released to the equivalent extent from its obligations to make payment for such services or facilities or complying with its obligations in relation to them.
- 8.4 If an event beyond a party's reasonable control occurs, that party must:



- (a) give the other party notice of the event promptly and an estimate of the non-performance and delay;
- (b) take all reasonable steps to overcome the effects of the event (but this does not require the settlement of industrial disputes or other claims on unreasonable terms); and
- (c) resume performance as soon as practicable after the event no longer affects either party.

8.5 If any of the events detailed in clause 8.1 above continue for more than 3 months either party may serve notice on the other terminating the affected service(s).

## **9. DISPUTE RESOLUTION**

9.1 If a dispute arises between the parties to this Agreement, the parties will use their reasonable endeavours to settle the dispute in accordance with this clause 9.

9.2 If any dispute arises out of or in connection with this Agreement, including any question regarding the existence, scope, validity or termination of this Agreement or this clause 9 (and including any tort or statutory claims) the Parties agree to first use reasonable endeavours to resolve any dispute by prompt discussion in good faith at a managerial level appropriate to the dispute in question. This procedure shall commence when either party gives notice (Dispute Notice) to the other setting out the issues in dispute and referring to this clause and, unless the Parties agree otherwise in writing, shall be treated as having been exhausted if the dispute has not been resolved within 10 Business Days after receipt of the Dispute Notice.

9.3 If the Parties cannot reach a resolution under clause 9.2 they agree to attempt to settle it by mediation in accordance with the Centre for Dispute Resolution ('CEDR') Model Mediation Procedure.

- (a) To initiate mediation, a Party must give notice in writing an advised dispute resolution notice (ADR notice) to the other Parties to the dispute requesting mediation. A copy of the request should be sent to CEDR.
- (b) If the dispute is not resolved within 42 days (or such other period as the Parties may agree in writing) of the giving of the ADR notice, or if one of the Parties refuses to participate in mediation, either party may require that the dispute be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration which Rules are deemed to be incorporated by reference into this clause 9, save that the Parties, notwithstanding anything in those Rules, preserve their right to appeal or refer to the English courts on questions of law.
- (c) The number of arbitrators shall be 1.
- (d) The place of the arbitration shall be London and the proceedings of the arbitration shall be governed by the laws of England and Wales.

- 9.4 This Agreement shall be governed by and construed in accordance with the law of England and Wales. The Parties agree that information concerning any arbitration, including, without limitation, information concerning any arbitration award, shall be treated as confidential and not disclosed to any third parties without the consent in writing of all of the Parties unless:
- (a) the information has come into the public domain other than through the fault of the party disclosing it;
  - (b) disclosure is required by law or by any securities exchange or regulatory or governmental body having jurisdiction over the party disclosing the information, whether or not the requirement has the force of law;
  - (c) disclosure is necessary in order to establish or protect any legal right of the party disclosing the information; or
  - (d) the disclosure is limited to the directors and officers, professional advisers, auditors, bankers or insurers of the person disclosing the information, acting as such, or to a person intended to be called as a witness in the arbitration by the person disclosing the information, for the purpose of preparing his testimony, but provided that in any such case a written confidentiality undertaking in a form equivalent to this clause has first been obtained from that person.
- 9.5 A copy of the Sesui Code of Practise on Complaint Handling and Dispute Resolution can be found at [www.sesui.com](http://www.sesui.com), or requested from [support@sesui.com](mailto:support@sesui.com)

## **10. TERM AND TERMINATION**

- 10.1 This Agreement shall continue for the Initial Period. If neither party terminates the Agreement within the Initial Period then it shall automatically continue for the Renewal Period and subsequent Renewal periods.
- 10.2 The Customer may terminate the Agreement and or a Service no earlier than the last day of the Initial Period or Renewal Period as the case may be and shall do so in writing no later than 3 calendar months prior to the last day of the Initial period or Renewal period as the case may be. For the notice of termination to be accepted by Sesui, the Customer must confirm Disposal instructions relating to any Stored Data that may reside on Sesui systems when the Agreement or Service is terminated.
- 10.3 Sesui may terminate this Agreement and / or any Service at any time on 3 calendar months written notice to the Customer.
- 10.4 Either party may terminate the provision of a Service in the event of a material breach of the terms of this Agreement relating to the provision of such Service, such breach being capable of remedy by the other party, but which breach remains un-remedied 30 days after notice has been given of such breach.
- 10.5 Either party may terminate the provision of a Service forthwith in the event of a material breach of the terms of this Agreement relating to the provision of such Service, where such breach is incapable of remedy.

## **11. USE OF THE SERVICE**

- 11.1 The Customer must not use the Service and must take reasonable steps to ensure that the Customer Service is not used:
- (a) (in a way that does not comply with the terms of any legislation or any licence applicable to the Customer or that is in any way unlawful or fraudulent or, to the knowledge of the Customer, has any unlawful or fraudulent purpose or effect; or in connection with the carrying out of a fraud or criminal offence against Sesui or any other telecommunications operator or at all;
  - (b) in a way that in Sesui's reasonable opinion could materially affect the quality of any telecommunications service including the Service provided by Sesui; or
  - (c) by any other third party and is used only by the Customer as an End User.
- 11.2 For Customers within the Health Sector, all parties must comply fully with IGSOB and / or DS&P and all related requirements covering access (e.g. login control; single system usage; deactivation), local data storage and data / information transfer consent.
- 11.3 The Customer shall, with the signed Customer Order Form, provide Sesui with:
- (a) full details relating to Stored Data including the purpose for which and the manner in which any data will or will be processed in accordance with their obligations under the Data Protection Legislation and clause 16;
  - (b) the required Retention Period;
  - (c) the required Disposal method once the Retention Period has expired.

Failure to provide the required details set out in this clause at the same time as the signed Order Form may result in the activation of the Service without data capture facilities being enabled until such time as the as the details are provided in full.

- 11.4 In line with the Retention Period provided with the Customer Order Form, Sesui shall maintain Stored Data for the agreed Retention Period unless alternative actions are specified by the Data Protection Legislation or by modified instructions from the Customer received in writing. Sesui shall apply appropriate protection to Stored Data within both the live Customer account and within the Sesui archive throughout the Retention Period and once the Retention Period has expired, will delete Stored Data in accordance with Disposal instructions from the Customer and, secure deletion guidance provide by appropriate regulatory body.
- 11.5 The Customer will fully indemnify Sesui against any claims or legal proceedings, which are brought or threatened against Sesui by a third party where a Service is used in breach of this Agreement.

## **12. INTELLECTUAL PROPERTY RIGHTS**

12.1 The Customer hereby agrees and recognises that all Intellectual Property Rights in connection with the Service are and shall remain the property of Sesui and the Customer shall not cause or permit anything to be done (or not done) which may damage or endanger the Intellectual Property Rights and shall indemnify Sesui against any loss suffered by Sesui by reason of any misuse by the Customer of the Intellectual Property Rights.

The Customer shall:

- (a) Not use any trademark of Sesui so as to prejudice its distinctiveness or validity or the goodwill of Sesui or its company name therein nor in any way use the name or any part of the name or any logo or getup of Sesui or the trade names or any part of the trade names of any part of the Service on or in connection with any telecommunications service facility or product other than the Service save as provided above.
- (b) Not use any trademark or trade name so resembling any trademark or trade name of Sesui as may cause confusion in the minds of members of the general public.
- (c) Ensure that all references to and use of any Intellectual Property Rights are approved in writing by Sesui and contain an acknowledgement in the form approved in writing by Sesui of its ownership of the same.
- (d) Keep Sesui promptly and fully notified of any actual, threatened or suspected infringement of or any action, claim or demand or proceedings in relation to any of the Intellectual Property Rights which may come to its attention and shall render to Sesui all assistance which Sesui reasonably requires in connection therewith including taking or resisting any proceedings.

12.2 Service messages recorded by Sesui and made available in support of the Service, remain the property of Sesui and may only be used, after cessation of the Service, with the prior written permission of Sesui. Service messages recorded by the customer or a designated 3<sup>rd</sup> Party and made available in support of the Service, remain the property of the Customer and will be transferred via email to the Customer upon written request within 3 months of cessation of the Service. Sesui reserve the right to destroy all messages after 3 months of cessation of the Service.

12.3 Subject to clause 16.8, at the end of the Retention Period and if no alternative instructions have been provided by the Customer in writing, the actions set out in the Disposal instructions will be carried out. The Disposal instructions may:

- (a) provide Sesui with formal notification that Stored Data may be destroyed; or
- (b) provide Sesui with appropriate media to enable the transfer of selected data files; or
- (c) confirm that all required Stored Data will be transferred, from Sesui systems, using provided access methods within a stated period (not to exceed 5 working days). After the stated period Sesui reserve the right to destroy all Stored Data related to the ceased Service; or

- (d) request Sesui to retain Stored Data for an additional stated period and provide Sesui with appropriate justification in line with prevailing Data Protection Legislation.

Sesui reserves the right to levy a charge for any work it undertakes in respect of clauses 12.3 (a) – (d) inclusive.

### **13. OBLIGATIONS OF CUSTOMER RELATING TO THE PROVISION OF THE SERVICE**

13.1 The Customer shall:

- (a) ensure that all equipment connected to the Service by, or on behalf of the Customer is technically compatible with the relevant Service(s) and that both its Premises and equipment comply with all relevant regulatory conditions (including any applicable legislation);
- (b) ensure that the details provided to Sesui in order to enable Sesui to provide the Service is complete and accurate;
- (c) ensure that all equipment connected to the Service complies with and is used in accordance with all reasonable procedures (including security and safety procedures) and possesses all approvals, necessary to allow it to be connected to the Service;
- (d) not alter, tamper, reverse engineer, repair or attempt to repair the Service or cause, or allow, a third party to do any of these acts. For the avoidance of doubt the Customer may alter its services via the Company Portal, in accordance with the terms of the Agreement;
- (e) be solely responsible for selecting, supplying and maintaining its own facilities and equipment and the purpose(s) for which it acquires and uses the Service;
- (f) be solely responsible for the content and security of any data or information which it sends or receives using the Service and warrants that it, and its employees, contractors and agents will not use the Service for any purpose that may be unlawful, illegal or defamatory; and
- (g) notify Sesui in writing one month in advance of any activity that may cause their traffic volumes to increase by more than 30% in any given periods. Failure to notify Sesui in accordance with this clause shall release Sesui from any stated Service Level Agreements and / or agreed performance metrics.
- (h) comply with the prevailing Fair Usage Policy. Sesui reserves the right to levy a charge for non-compliance at the rate of 1ppm for every minute above the ratio defined in the Fair Usage Policy.

### **14. SUSPENSION OR CANCELLATION OF SERVICE**

14.1 Sesui may without notice suspend, limit or cancel the provision of Service, which for the avoidance of doubt includes suspension of the right to access the Company Portal by the Customer at any time:

- (a) in the event of an emergency or whenever Sesui or its Service Providers consider it necessary or reasonable in order to provide resources to emergency and other essential services;

- (b) if the supply of a Service is or is to become unlawful;
- (c) if in the opinion of Sesui the provision of a Service or continued provision of a Service is liable to cause death or personal injury or damage to property;
- (d) if Regulatory Restrictions apply to the supply and/ or the use of a Service;
- (e) the Customer's use of a Service interferes with the efficiency of Sesui's, or a Service Provider's, network and the Customer fails to rectify the situation; or
- (f) if the Customer has breached any of the terms of this Agreement, including, without limitation, the obligation to pay any sums due, if ordered to do so by any competent authority;
- (g) failure to notify Sesui in accordance with clause 13 (g) above.

14.2 Sesui may suspend, limit or cancel the provision of a Service at any time by written notice (including by email) to the Customer:

- (a) if the Customer defaults in the due payment of any charges for a Service;
- (b) if a Service Provider ceases to supply, or gives Sesui notice of its intention to cease to supply, services necessary for Sesui to supply a Service to the Customer; or
- (c) if a third party holding an encumbrance takes possession of the whole or a substantial part of the undertaking or property of the Customer or the Customer becomes unable to pay its debts when they are due or enters into, or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors generally.
- (d) breach of the Fair Usage Policy.

14.3 Where provision of a Service has been suspended under clause 14.2(a), re-supply may be subject to the payment by the Customer of a re-supply charge which will be advised to the Customer by Sesui prior to the Service being re-supplied.

14.4 If Sesui cancels a Service; it may enter the Premises and remove any Facility and Hardware belonging to Sesui connected with that Service. If Sesui is unable to gain access to the Premises it may recover the value of the Facility and/or Hardware from the Customer as a debt due to Sesui.

14.5 Sesui reserves the right to de-activate any Dormant CLI from the Sesui network, or, if retained, charge £5 per number per month.

14.6 For telephone numbers hosted for the Customer by Sesui and registered on the Sesui Platform, Sesui reserves the right to apply a £10 per number charge to port Customer specified telephone numbers to an alternative service provider.

## **15. CONFIDENTIALITY**

- 15.1 The Customer shall and shall procure that its officers, employees and agents shall preserve the confidentiality of all commercial and other information provided by Sesui relating to the Service which comes to the attention of the Customer including without limitation all know-how, customer lists, specifications, details of launch dates of any telecommunication services or products and pricing information relating thereto ("Confidential Information") and shall not through any failure to exercise all due care and diligence or otherwise by any act or omission disclose or cause or commit to be disclosed any Confidential Information to any third parties save;
- (a) to the extent that such disclosure is strictly to enable the Customer to perform or comply with any of its obligations under this Agreement; or
  - (b) to the extent that it is required by law that the Customer do so; or
  - (c) where the information has come into the public domain otherwise than through a breach of any of the terms of this Agreement.
- 15.2 Neither the Customer nor any of its officers, employees or agents shall be entitled to make use of any Confidential Information other than during the continuance of this Agreement and then only so as to enable it or them to carry out the Customer's obligations pursuant to this Agreement.
- 15.3 Nothing in the Agreement shall prevent Sesui disclosing any of the Customer's confidential information to its employees, sub-contractors, advisers and other consultants on a 'need to know' basis provided those persons are aware of the confidential nature of the information and in accordance with the Data Protection Legislation.

## **16. DATA PROTECTION**

- 16.1 In the event that Sesui Processes Customer Personal Data under this Agreement, the parties record their intention that Sesui is the Processor and the Customer is the Controller of such Personal Data. Annex 1 attached to a relevant Customer Order Form sets out the subject-matter and duration of the Processing of Customer Personal Data, the nature and purpose of the Processing, the type of Personal Data and the categories of Data Subjects. The parties may amend Annex 1 from time to time by written agreement.
- 16.1 Each party shall comply with its obligations under applicable Data Protection Legislation. Except as required by applicable law, Sesui shall Process Customer Personal Data only in accordance with the Customer's documented instructions and shall not transfer Customer Personal Data outside of the European Economic Area without the Customer's consent. The Customer warrants that it shall not instruct Sesui to Process Customer Personal Data where such Processing would be unlawful. Sesui shall inform the Customer if, in its opinion, an instruction infringes Data Protection Legislation.
- 16.2 Sesui shall ensure that individuals engaged in the Processing of Customer Personal Data under the Agreement are subject to obligations of confidentiality in respect of such Personal Data. Sesui shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the

risk involved in Processing Customer Personal Data pursuant to this Agreement as may be further described in the ISMS which is available from Sesui upon request.

- 16.3 Sesui may engage such other processors ("Sub Processors") as Sesui consider reasonably appropriate for the Processing of Customer Personal Data in accordance with the terms of this Agreement (including in connection with support, maintenance and development and the use of third party data centres) provided that Sesui shall notify Customer of the addition or replacement of such Sub Processors and the Customer may, on reasonable grounds, object to a Sub Processor by notifying Sesui in writing within 5 days of receipt of notification, giving reasons for the Customer's objection. The parties shall cooperate to reach agreement on the engagement of Sub Processors. Sesui shall require all Sub Processors to enter into an agreement compatible with this clause 16 and Sesui shall remain responsible and liable for Sub Processors' acts and omissions.
- 16.4 In the event that any Data Subject exercises its rights under applicable Data Protection Legislation against the Customer, Sesui shall use reasonable commercial efforts to assist the Customer in fulfilling the Customer's obligations as Controller following a written request from the Customer. Sesui may charge the Customer on a time and materials basis in the event that Sesui considers, in its reasonable discretion that such assistance is onerous, complex, frequent or time consuming.
- 16.5 Upon discovering a Personal Data Breach, Sesui shall notify the Customer as soon as reasonably practicable and shall assist the Customer to the extent reasonably necessary in connection with notification to the applicable supervisory authority and Data Subjects, taking into account the nature of Processing and the information available to Sesui.
- 16.6 In the event that the Customer considers that the Processing of Personal Data performed pursuant to this Agreement requires a privacy impact assessment to be undertaken, following written request from the Customer, Sesui shall use reasonable commercial endeavours to provide relevant information and assistance to the Customer to facilitate such privacy impact assessment. Sesui may charge the Customer for such assistance on a time and materials basis.
- 16.7 Unless otherwise required by applicable law, following the termination or expiry of this Agreement, Sesui shall delete all customer Personal Data (including all stored call recordings and fax copies), unless at the customer's prior confirmed written request all stored Personal Data is to be transferred at the current charges.
- 16.8 Where requested by the Customer, Sesui shall make available all information necessary to demonstrate its compliance with this clause 16 and shall



contribute to audits conducted by the Customer or another auditor mandated by Customer.

- 16.9 Sesui shall, in providing the Service, comply with its ISMS policies and procedures, copies of which can be made available upon written request. These documents may be amended from time to time by Sesui at its sole discretion.

## **17. VARIATION**

17.1 Should the Customer make a request that Sesui make any variation to the Service ("Variation Request"), the request must be in writing. For the avoidance of doubt a Variation Request can be sent by email but Sesui is under no obligation to agree to any Variation Request. If a Variation Request involves a change to the scope of the Service during the first 12 months of this Agreement and an increase in charges under this Agreement with a value in excess of £5,000, Sesui will raise a new Customer Order Form for the Customer's approval and signature. If a Variation Request involves a change to the scope of the Service during the first 12 months of this Agreement and an increase in charges under this Agreement with a value of less than £5,000, Sesui will send the Customer a quotation by email for the Customer's acceptance (which can also be by email). If Sesui agrees to the Variation, this Agreement will be varied from the date that Sesui confirms the Variation in writing to the Customer.

17.2 Sesui may vary this agreement at any time to:-

- (a) comply with any legal or statutory obligations, including but not limited to, any requirements from time to time under the Telecommunications Act 1984; the Communications Act 2003 and any other relevant and applicable legislation;
- (b) comply with applicable regulatory requirements;
- (c) comply with any final order, provisional order, direction, notice, specification, designation or consent made by any regulatory authority relating to the Service;
- (d) change the charges payable under this Agreement;
- (e) introduce new Service features;
- (f) withdraw Service features;
- (g) introduce new or improved Service Levels;  
maintain the integrity or security of the Service;
- (h) protect the use of Sesui's name and Trademarks; or if agreed by both parties in writing.

## **18. ASSIGNMENT**

18.1 The Customer may not transfer any of its rights or obligations under this Agreement, without the prior written consent of Sesui.

18.2 Sesui may transfer its rights or obligations to any third party or associated person or company under this Agreement

## **19. GENERAL NOTICES**

19.1 All notices, approvals, consents and other communications must be in writing and sent to the postal addresses, email addresses or fax numbers specified on

the Customer Order Form or such other postal address, fax number or email address as the parties may notify to the other in writing from time to time.

19.2 Notices sent:

- (a) by hand are deemed to be received when delivered;
- (b) by post to an address in the UK are deemed to be received by the third Business Day after posting;
- (c) by post to an address outside the UK are deemed to be received by the fifth Business Day after posting;
- (d) by fax are deemed to be received at the time of transmission or if not on a Business Day then at 9am on the next Business Day;
- (e) by email are deemed to be received one hour after transmission if on a Business Day if not then at 9am on the next Business Day.

**20. SEVERANCE**

20.1 If any clause or part of any clause is held by a court of competent jurisdiction to be invalid or unenforceable, that clause or part of a clause is to be regarded as having been deleted from this Agreement and this Agreement otherwise remains in full force and effect.

**21. WAIVER OF RIGHTS**

21.1 A condition of this Agreement, or a right created by it, may only be waived by a party by giving written notice to the other party.

21.2 A waiver of a breach of this Agreement does not waive any other breach.

**22. WARRANTIES**

22.1 The Customer and Sesui each warrant to the other that entering into and performing its obligations under this Agreement does not breach any of its contractual obligations to any other person.

22.2 The Customer warrants that it has not relied on any representations or warranties by Sesui other than those contained in this Agreement.

22.3 Except for the express warranties set out in this Agreement, all other conditions, warranties or other terms express or implied are hereby expressly excluded to the fullest extent permitted by law.

**23. NO THIRD PARTY RIGHTS**

23.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no third party shall have the benefit of or the right to enforce any term of this Agreement.

**24. ENTIRE AGREEMENT**

24.1 This Agreement constitutes the entire agreement between the parties and supersedes all previous written and oral agreements relating to its subject matter.

24.2 The parties acknowledge and agree that:

- (a) the parties have not been induced to enter into this Agreement, by any representation, warranty, or other assurance not expressly incorporated into it; and
- (b) in connection with this Agreement, the only rights and remedies of the Customer in relation to any representation, warranty or other assurance are for breach of this Agreement and that all other rights and remedies are excluded.

24.3 Nothing contained in clauses 24.2 (a) and (b) above shall affect the rights or remedies of the parties in respect of any fraudulent misrepresentation and / or gross misconduct.

## **25. NOTICE OF WITHDRAWAL OF THE SERVICE**

25.1 Where Sesui intends to withdraw the Service in its entirety and not offer a similar version, Sesui will give the Customer such notice as is required under the applicable regulatory requirements and Sesui will refund any charges paid in advance in respect of any period which ends after the date of withdrawal.

## **26. CONFLICT**

26.1 If any conflict arises between these Terms and Conditions and the Service Level Agreement, the Service Level Agreement shall take precedence.

26.2 If any conflict arises between the Customer Order Form, the Schedules (including any Service Level Agreement), the Annexes, and these Terms, the Customer Order Form shall take precedence.

## **27. LAW**

27.1 This Agreement is governed by the law of England and Wales and both parties submit to the exclusive jurisdiction of the courts of England and Wales.

## **Schedule 1**

### **Terms and Conditions (Hardware)**

#### **1. DELIVERY**

- 1.1 Delivery of Hardware as specified in the relevant Customer Order Form shall be made during normal business hours (excluding bank or public holidays). Sesui may levy additional charges for any deliveries made outside such hours at the Customer's request. Any agreed delivery date or time is approximate only and the time of delivery is not of the essence in this Agreement. Sesui reserves the right to make part deliveries.
- 1.2 Sesui will deliver Hardware as near as possible to the Premises as safe hard road permits and to the ground floor only of such Premises. The Customer shall arrange for the unloading of Hardware with reasonable dispatch. If the Customer does not arrange for the unloading, Sesui shall be entitled to charge the costs of unloading.
- 1.3 The Customer shall note any claim for short delivery and/or damage at the time of delivery and shall confirm such claims in writing to Sesui promptly and in any event within five (5) days of delivery. The delivery of Hardware shall be deemed completed unless the Customer provides written notification to Sesui in accordance with this paragraph.
- 1.4 Sesui will use reasonable endeavours to meet any Customer requests to postpone or arrange part delivery of Hardware. The Customer will pay to Sesui any reasonable additional delivery, insurance, storage or other costs caused by Sesui meeting such a request.
- 1.5 Sesui may charge reasonable costs for storage and redelivery if the Customer does not take delivery of Hardware at the agreed date or time or provides inadequate delivery instructions or fails to reasonably provide other information that is required to complete delivery of the Solutions.

#### **2. RISK AND TITLE**

- 2.1 Risk of damage to or loss of Hardware passes to Customer on delivery and before unloading. Hardware shall remain Sesui's property as legal and equitable owner and no property in or title to Hardware shall pass to Customer until the Customer has fully paid the charges due in respect of the Hardware. Whilst the ownership of Hardware remains with Sesui, the Customer shall:
  - (a) store and maintain Hardware in such a manner that Hardware remains readily identifiable as Sesui's property and attach a notice or otherwise mark Hardware in a manner which makes them readily identifiable as Sesui property;
  - (b) not remove, deface or obscure any identifying mark on or relating to Hardware; and
  - (c) maintain Hardware in satisfactory condition and keep it insured against all risks for its full price from the date of delivery.

### **3. WARRANTY**

3.1 Sesui warrants that on delivery, Hardware will be new (except as otherwise specified in a Customer Order Form) and, and for any warranty period specified in the Customer Order Form, will be of satisfactory quality and fit for any particular purpose expressly specified in a Customer Order Form. As the Customer's sole and exclusive remedy for breach of this warranty Sesui shall at its option, (i) in circumstances where Hardware rental charges are included in the Customer's overall monthly rental charge, repair or replace defective Hardware, or (ii) in circumstances where Hardware has been purchased from Sesui as a separate item under the Order in question, repair or replace defective Hardware or provide a refund of any charges paid in respect of Hardware. In circumstances where Hardware has been purchased from Sesui as a separate item under the Order in question, Sesui will also use reasonable endeavours to transfer to the Customer the benefit of any manufacturer or other third party guarantee, warranty or indemnity and the benefit of any additional support or services provided by any party supplying Hardware to Sesui, which in each case will be subject to the applicable third party terms and conditions. In such circumstances, these warranties are in lieu of all other express or implied warranties and once Sesui has delivered Hardware, the Customer's sole remedy for any defects will be to make a claim under any manufacturer or third party warranty. Sesui will only make a claim on behalf of the Customer if the manufacturers' warranty is valid.

3.2 Sesui shall not in any circumstances be liable for a breach of the warranty contained in paragraph 3 unless:

- (a) the Customer gives written notice of the defect to Sesui within seven days of the time when the Customer discovers or ought to have discovered the defect; and
- (b) after receiving the notice, Sesui is given a reasonable opportunity of examining such Hardware and the Customer (if asked to do so by Sesui) returns such Hardware to Sesui's place of business at Sesui's cost for the examination to take place there.

3.3 Sesui shall not in any circumstances be liable for a breach of the warranty in paragraph 3 if:

- (a) the Customer makes any use of a Hardware after giving notice to Sesui under paragraph 3(a);
- (b) the defect arises from the Customer's improper use of Hardware or use of Hardware outside its normal application;
- (c) the Customer failed to follow Sesui's oral or written instructions as to the storage, installation, commissioning, use or maintenance of Hardware or (if there are none) good trade practice;
- (d) the Customer alters or repairs the relevant Hardware without the written consent of Sesui.

### **4. CANCELLATION**

4.1 A Customer may only cancel an Order for Hardware with Sesui's written agreement. On the Customer's request Sesui will inform the Customer of the cancellation charge applicable to the Order (which will depend on the Solution and progress of

the order) and the Customer will then pay that charge if the Customer proceeds to cancel the Order.