

TERMS AND CONDITIONS FOR THE PROVISION OF SERVICES

Please read these terms and conditions (Conditions) carefully as they apply (to the exclusion of any other terms and conditions) to the supply of the Equipment and/or Services by us to you. They include important sales and product information relating to the Equipment and Services and form the basis of any agreement between us should you wish to proceed with an order.

1. INTERPRETATION

1.1 In these Conditions:-

"Acceptable Use Policy" means the Company's acceptable use policy for use of the Services as notified to the Customer and available on the Website;

"Commitment Balancing Figure" means an amount being 25% of the difference between the Customer's committed plan spend as set out in the Order Form and the actual spend by the Customer on calls during the Spend Measurement Period;

"Commitment Period" means the period set out in the Order Form from the Service Commencement Date (or such shorter period as stated on the Order Form) and each subsequent period of 12 months following the end of the Commitment Period until cancelled by either party in accordance with clause 2;

"Company" means BNS Telecom Limited (registered in England and Wales under number 3228233);

"Contract" means the contract for the provision of the Services subject to these Conditions;

"Customer" means the person set out in the Contract;

"Customer Equipment" means any equipment (including without limitation cabling, wiring, personal computers, network interface cards and network interface adapters) not forming part of (but which may be connected to) the Equipment and used by the Customer in conjunction with any Equipment in order to obtain or use the Services;

"Equipment" means such equipment as may be provided by the Company to the Customer from time to time in relation to the Services including all mobile telephones, handsets, switches other mobile products, routers, network cabling or other telecommunications, infrastructure and equipment and connected to the Network;

"Fixed Call Charge" means the charge agreed and set out in the Customer's chosen tariff as notified to the Customer by the Company and payable by the Customer in relation to any call made pursuant to the capped calls Service;

"Leasing Company" means the company identified in the Order Form which has purchased the Equipment on behalf of the Customer and with whom the Customer has entered into a leasing agreement for the purchase of the Equipment;

"Minimum Period" means a period of sixty (60) months from the Service Commencement Date or such shorter period as stated on the Order Form;

"Network" means the telecommunications system operated and maintained by the Company;

"Order Form" means the Company's order form completed by (or on behalf of) the Customer and accepted by the Company to order the Services and Equipment subject to the Contract;

"Permitted Duration" means (in respect of the capped calls Service), a duration of 60 minutes per call;

"Price Guide" means all and any information relating to the Company's charges for the Services, available on request from the Company;

"Seat" means (in respect of IP hosting Services) each user terminal at the Customer's site, forming part of the Equipment and having a broadband connection to the PSTN to which the IP hosting Services will be provided;

"Services" means the Services as set out in the Order Form which the Customer agrees to purchase from the Company, being one or more of the lines and calls services, broadband services, wial services, installation services and Service Care, mobile services and/or IP hosting services;

"Service Care" means the standard of maintenance to be provided by the Company in respect of the repair or reinstatement of lines or Equipment in respect of any failure of or faults to the same, as specified in the Order Form, being either Standard Care, Prompt Care, Total Care or Custom Care as the same as defined on the Website;

"Service Charter" means the Company's charter for the provision of the Services available on the Website or upon request;

"Service Commencement Date" means (subject always to appropriate credit checks), the date set out in the Order Form, or if no date is specified means the earlier of:

1. the date each Service is available for use by the Customer; or
2. the date the Customer first uses a Service.

"Service Provider" such mobile service provider and network made available by the Company;

"Spend Measurement Period" means a period of 12 months from the Service Commencement Date and each subsequent period of 12 months from the anniversary of the Service Commencement Date during the Commitment Period;

"Website" means the Company's website at www.bnstele.com.

1.2 In these Conditions:-

1.2.1 a "person" includes any person, partnership, firm, company (as defined in Section 735 Companies Act 1985), body corporate or corporation (as defined in Section 740 Companies Act 1985) or organisation; and

1.2.2 any reference to a statutory provision includes a reference to any modification from time to time in force.

2. COMMENCEMENT AND DURATION

2.1 The Contract shall commence on the Service Commencement Date.

2.2 The Contract shall continue for the Minimum Period and then until terminated in accordance with clause 21.

3. BASIS OF CONTRACT

3.1 The Company shall sell and the Customer shall purchase the Services set out on the Order Form subject to these Conditions, which supersede any other terms and which govern the Contract to the exclusion of any terms and conditions which the Customer purports to apply or which are implied by trade, custom or course of dealing.

3.2 Any variation to these Conditions is of no effect unless agreed in writing by a director of the Company.

3.3 These Conditions constitute the entire agreement between the Customer and Company for the provision of the Services.

3.4 The Company's employees or agents are not authorised to make any representation concerning the Equipment or Services unless confirmed in writing by a director of the Company, and the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such unconfirmed representation (unless such representation is made fraudulently), and any such unconfirmed representation is followed or acted upon entirely at the Customer's own risk.

3.5 Any typographical, clerical or other error or omission in any document or information issued by the Company shall be subject to correction without any liability on the part of the Company.

3.6 The Customer acknowledges that the Services and Equipment are being purchased as part of a business to business transaction and that the Consumer Protection (Distance Selling) Regulations 2000 do not apply.

4. QUOTATIONS, ORDERS AND SERVICE LIMITATIONS

4.1 A quotation by the Company is not an offer. Quotations are valid for 30 days only and subject to withdrawal or revision at any time before acceptance of the Customer's order by the Company.

4.2 No Order Form submitted by the Customer by whatever means is accepted by the Company until the Company confirms its written acceptance or (if earlier) the Company supplies the Services to the Customer.

4.3 The Customer must ensure that the terms of any order are included on an Order Form (including any specification) and are complete and accurate and that the Company is provided with any necessary information relating to the provision of Services within sufficient time to enable the Company duly to perform the Contract.

4.4 The Customer reserves the right to make any changes in the specification of the Equipment or Services or any line number which are required for such Equipment or Services to conform with any applicable law or, where the Equipment, or Services are to be supplied to the Customer's specification, which do not materially affect their quality or performance.

4.5 The Customer acknowledges that provision by the Company of specific telephone numbers is not guaranteed until connection to the Network is complete and the provision of Services has commenced.

4.6 The Customer acknowledges that if the Services and Equipment are fully operational, 999/112/101 public emergency calls can be accessed. However, the Customer acknowledges that if there is Service outage or power failure for any reason, such outage or failure may prevent access to 999/112/101 dialling and it may or not be possible for emergency operators and authorities to identify the location and phone number of the Customer. It will be necessary to state location and phone number details promptly and clearly as emergency operators and authorities may not have this information. Emergency operators and authorities may or may not be able to identify the phone number in order to return the call if it is unable to be completed, is dropped or disconnected or it is not possible to speak. The Customer acknowledges and agrees to inform potential users of the above limitations and accepts that it should always maintain alternative means of accessing 999/112/101 emergency services.

5. AGREEMENT FOR THE SALE AND PURCHASE OF EQUIPMENT

5.1 The Company's obligation to sell and supply Equipment shall cease as and from the date of any notice to terminate the Contract (although the Company may thereafter sell and supply Equipment at its discretion), is served by either party in accordance with clause 21.

5.2 Following the provision of or any upgrade to Equipment or disconnection of such Equipment from the Network the Company reserves the right to request the safe return of such Equipment which has not been purchased and paid for in full by the Customer from the Customer to the Company and the Customer shall use all reasonable endeavours to comply with such request.

5.3 The Company reserves the right to charge the Customer any applicable replacement or repair charges as set out from time to time in the Price Guide for any Equipment that is not returned to the Company in accordance with the provisions of this clause 5.

5.4 The Customer shall not resell any Equipment provided to it by the Company pursuant to this Agreement without the consent of the Company or the Leasing Company (where applicable) until title to such Equipment has passed to the Customer in accordance with clause 18 or (where applicable) any agreement with the Leasing Company.

5.5 Until title to the Equipment passes to the Customer, the Customer must keep the Equipment in good repair and the Customer shall be responsible for any loss or damage to the Equipment, whether purchased directly from the Company or via a leasing arrangement with the Leasing Company. In the event of any fault or failure in the Equipment following its delivery, the Customer shall be responsible for its repair and shall be liable to pay the charges to the Company in respect of the Equipment regardless of whether it is in working order following delivery and accordingly, the Customer is advised to purchase a Service Care package in respect of the Equipment.

5.6 In respect of Mobile Services, where the Customer signs a Contract for a Minimum Period of five years or more, the Company may, at its discretion, replace any mobile handsets covered by the Contract every two years, but shall not be obliged to do so.

6. CUSTOMER EQUIPMENT

6.1 The Company shall have no liability where any inability to use the Services is due to incompatibility between Customer Equipment and the Equipment or services, or for any loss or damage arising directly or indirectly from use of the Customer Equipment whether or not the Company shall have recommended the use and/or performance of such Customer Equipment.

6.2 Unless otherwise agreed in writing, the Customer is responsible for ensuring that the Customer Equipment is programmed, equipped, compatible and connected for use of the Services in accordance with the Company's reasonable instructions and complies with law, applicable standards and any other instructions or safety and security procedures applicable to the use of Customer Equipment.

6.3 Where the Customer Equipment has least cost routing software, the Company may reprogram such Customer Equipment, or may supply such Equipment as is necessary in order to facilitate connection to the Network.

6.4 The Customer shall provide a suitable place and conditions for the Equipment (including a continuous mains electricity supply and connection points at the Customer's own expense where required) at the Customer's site or in such other locations as may be nominated by the Customer so as to enable the Company to supply and continue to supply the Services (without cost to the Company) and shall prepare such site or location at its own expense in accordance with the Company's reasonable instructions.

6.5 The Customer acknowledges and accepts that the provision of telecommunications services can never be fault free, and that optimal Service provision will only be achievable by using the Equipment provided (or otherwise recommended) by the Company and in the manner recommended by the Company. Failure by the Customer to do so may impair the performance or functionality of the Service or may result in it becoming unavailable.

7. CUSTOMER'S OBLIGATIONS

7.1 The Customer undertakes that throughout the term of the Contract it shall comply with the Service Charter and Acceptable Use Policy and in particular shall:

7.1.1 not permit or suffer its employees to act or omit to act in anyway, which may injure or damage any persons' property or in any way, which may cause the quality of the Service or any aspect of it to be suspended;

7.1.2 not use or allow its employees to use the lines and/or Equipment or have access to the Service or Network for any improper, immoral or unlawful purpose;

7.1.3 comply with all statutory requirements in relation the use of the lines, Equipment and the Service;

7.1.4 not use the lines, Equipment nor the Services for any purpose other than that for which it was designed or intended, or for self provision of a wireless telecommunications service; and

7.1.5 notify the Company immediately (and to confirm in writing) on becoming aware that any Equipment has been lost or stolen or that any person is making improper or illegal use of the line or Equipment of the Services;

7.1.6 be responsible for any charges incurred as a result of unauthorised use of any line or Equipment, or the information contained within a sim card, up until such point as the Company is notified of such unauthorised use;

7.1.7 not damage or tamper with the line or Equipment so as to invalidate any warranty provided by the manufacturer and shall pay the standard charges levied by the Company from time to time applicable to repair work on the line or Equipment which is outside (in scope or time) the warranty provided by the manufacturer or any Service Care plan; and

7.1.8 not damage or tamper with any software supplied in connection with the Services so as to invalidate any warranty provided by the suppliers of the same; and

7.1.9 use the lines and Equipment and any software supplied with them solely in connection with the Services at all times in accordance with any user guide or other reasonable instructions of any manufacturer or supplier of the same or reasonable instruction of the Company and not copy (save as permitted by law) reverse engineer or modify the software in any way.

7.2 **The Customer agrees:**

7.2.1 that any Equipment provided by the Company for the purpose of providing the Services shall remain the property of the Company or the Leasing Company (where applicable) and the Customer shall be responsible for its proper use. If any part of such telecommunication apparatus is lost or destroyed, (except for fair wear and tear) the Customer shall pay the Company its replacement value. The Customer shall not interfere with or permit any third party to interfere with such telecommunication apparatus.

7.2.2 if any line is not being used for commercial purposes which includes chargeable calls or data transmission during the first 90 days following the date of connection then the Company shall be entitled to charge, claw back or adjust any payments, tariffs or discounts made or given in respect of that line.

7.3 The Customer agrees when using the Equipment to send SMS text messages (where applicable):

(a) that any indirect access to a device which is not connected to the Network may incur additional inter-connect charges in respect of the transfer of messages to another mobile network operator service and the Company reserves the right to invoice the Customer for, and the Customer agrees to pay, such charges.

- (b) that to the extent that each item of Equipment is capable of receiving SMS text messages which may originate from a variety of sources, the Company has no knowledge of, involvement with, or liability for the specific content of any SMS text messages sent to the Equipment, which originate from such sources.
- 7.4** The Customer undertakes to use the Equipment and Services in accordance with such conditions and/or instructions as may be notified in writing to the Customer by the Company from time to time and in accordance with law and the Contract. The Company may from time to time vary the technical and/or operational procedures for use of the Services.
- 7.5** The Customer shall not sell or transfer any telephone number provided to the Customer by the Company for use with the Services.
- 8. CANCELLATION AND DELAY**
- 8.1** No order may be cancelled by the Customer except with the Company's written agreement and on terms that the Customer shall indemnify the Company against all loss (including loss of profit), costs, (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.
- 8.2** If the Customer extends or delays the Contract or fails to take delivery of any Equipment at the agreed time then the Customer shall indemnify the Company against all loss (including loss of profit), costs (including the cost of storage and all labour and materials used), damages, charges and expenses incurred by the Company as a result of such extension, delay or failure.
- 8.3** The Company reserves the right to defer the date of performance or to cancel the Contract without liability to the Customer if it is prevented from or delayed in carrying on its business by any cause beyond the Company's reasonable control which includes but shall not be limited to Act of God, explosion, flood, tempest, fire or accident, war or threat of war, terrorist actions, sabotage, insurrection, civil disturbance or requisition, acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary, local or other authority, import or export regulations or embargoes, strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party), difficulties in obtaining raw materials, labour, fuel, parts or machinery, power failure or breakdown in machinery). In such circumstances, the Customer may also give written notice to cancel the Contract if the cause in question continues for a continuous period in excess of 180 days but in any event shall remain liable to pay for Equipment or Services delivered or supplied prior to such cancellation by the Company or the Customer.
- 8.4** If the Company is unable to provide any Service which is the subject of the Contract for any reason then this shall not entitle the Customer to terminate the provision of any other Services that are the subject of the Contract.
- 9. CHARGES**
- 9.1** The charges for the Equipment and the provision of Services are the Company's quoted charges or, where no charges have been quoted (or a quoted Charge is no longer valid), the charges listed in the Company's Price Guide at the date of delivery of Equipment or provision of Services will be applied.
- 9.2** The charges for Service Care shall be free in respect of the first 12 months of the Contract and thereafter shall be £22 per line, handset or Seat (as applicable) per annum which is covered by Service Care subject to a minimum annual charge of £100 per annum per site covered by the Service Care Contract.
- 9.3** Where the Customer provides the Customer with a new broadband/PSSTN line, the Customer agrees to pay a monthly line rental charge of £12.22 per line.
- 9.4** For the purpose of calculating the charges, the Company shall round up the time spent on each call to the nearest minute.
- 9.5** In respect of mobile or lines and calls Services, the Customer agrees to pay minimum charges of £25 per month per handset.
- 9.6** The Customer is encouraged to request electronic invoices. The Customer shall be liable to pay a charge of £5 in respect of any copy invoice it requests and £1.99 per invoice in respect of any paper invoice it requests.
- 9.7** The charges are exclusive of any applicable VAT.
- 9.8** If following any survey (or other investigation) the Company concludes that it will incur unusual additional costs in providing the Services, the Company shall be entitled, on notification to the Customer, to increase its Charges by the amount of such costs. Where the Customer does not accept such increased charges, the Company may terminate the Contract pursuant to clause 21.2.2.
- 9.9** Without prejudice to clause 9.8 the Company may increase or implement new charges by giving the Customer 30 days' written notice. Without limitation such notice may be contained in billing information provided to the Customer by the Company. Within 7 days of notification the Customer may give notice to the Company to terminate the Contract. If the Customer does not terminate in such period the Customer is deemed to have accepted the increase/new charges. In addition, the Company may increase the Charges annually in accordance with any corresponding increase in the Retail Prices Index on written notice to the Customer.
- 9.10** Failure to access the Network and Services at any time shall not relieve the Customer of its obligation to pay the charges so long as the Contract remains in force.
- 10. PAYMENT OF THE CHARGES**
- 10.1** Upon signature of the Contract by the Customer, the Customer shall pay the charges for the Services for the first three months of the Contract in advance and such advance payment shall be non-refundable by the Company in the event that the Contract is terminated. Payment of the charges for the Equipment (unless otherwise stated in the Order Form or agreed in writing by a director of the Company) shall become due on delivery and/or installation of the Equipment (subject to any terms of payment agreed by the Customer with the Leasing Company where applicable) and payment of the charges for Services (unless otherwise stated in the Order Form or agreed in writing by a director of the Company) shall be paid by direct debit or such other means of electronic funds transfer as the Company shall decide and (save in respect of the first three months of the Contract) shall be due 14 days after the date of the Company's invoice. For non-direct debit or other agreed electronic funds transfer payments the Customer shall pay an additional charge of £2.75 plus VAT per line or Seat per month until a direct debit mandate or other agreed electronic funds transfer arrangement is fully operational and where payment is made by cheque, the Customer shall pay an additional charge of £10 plus VAT per invoice. Unless otherwise agreed by the Company, call charges are payable in arrears and line rental charges and any installation/initial charges are payable in advance.
- 10.2** The Customer authorises the Company to alter the Customer's direct debit instructions according to the relevant charges from time to time applicable to the Services. On proper termination of the Contract the Customer shall be responsible for the cancellation of any direct debit instructions or other authorisations for periodic payment to the Company. Except on proper termination of the Contract the Customer acknowledges that it must inform the Company immediately if it proposes to cancel any direct debit instructions. Cancellation of any direct debit instruction shall entitle the Company to suspend and/or terminate the Contract without notice.
- 10.3** Payment by the Customer or on its behalf shall be made without any deduction or set off.
- 10.4** The Company reserves the right to claim interest and compensation for debt recovery costs under the Late Payment of Commercial Debts (Interest) Act 1998 and the Late Payment of Commercial Debts Regulations 2002.
- 10.5** In addition to the Company's rights in clause 10.4, any default in payment will be subject to a late penalty fee per invoice which will be included with the Customer's next invoice for charges.
- 10.6** Despite any provision allowing credit, payment is due and payable to the Company immediately upon cancellation or termination of the Contract.
- 10.7** The Company shall be entitled to payment for all instalments of Equipment delivered to the Customer whether under a blanket order or otherwise.
- 10.8** If the Customer fails to make any payment on the due date then charges for all Equipment or Services provided or agreed to be provided to the Customer shall be immediately due and payable without demand and the Company may:-
- 10.8.1** cancel the Contract or suspend performance to the Customer in accordance with clause 21.2.2; and/or
- 10.8.2** appropriate any payment made by the Customer to such of the Equipment or Services (or the goods or services supplied under any other contract between the Customer and the Company) as the Company thinks fit.
- 10.9** The Company is entitled to set off sums owed by the Company to the Customer against sums owed by the Customer to the Company.
- 10.10** The Customer shall promptly inform the Company of any issues associated with any invoices or statements received from the Company. The Company will only consider such issues if written notification has been provided within 30 days of the date of the relevant invoice or statement. Failure by the Customer to notify any issues within the 30 day period shall be considered to be a waiver of the Customer's right to dispute such invoice or statement.
- 11. PROVISION AND SUSPENSION OF THE SERVICES**
- 11.1** The Customer acknowledges that the Company is entirely dependant on its supplier and (where relevant) the Service Provider in relation to the quality of Services, including, line clarity and call interference availability of the Network or other network to which the Customer or the person being called is connected, the geographic extent of the Service coverage, and local geography, topography, atmospheric conditions and/or other causes of physical electromagnetic interference that may from time to time adversely effect the provision of Services. The Company shall not be liable to the Customer or third party on the event of a failure of the Services arising from a failure of any network or connection infrastructure (including Customer Equipment).
- 11.2** The Company may, where reasonable from time to time and without notice suspend the Services and provision of customer services in accordance with the Service Charter.
- 11.3** During any period of suspension arising from the Customer's acts or omissions, the Customer shall remain liable for all charges levied in accordance with the Contract.
- 11.4** Where, in accordance with the Contract the Company suspends performance of or access to the Services pending compliance by the Customer with the Contract, such suspension may result in one or more of the following actions:-
- 11.4.1** call-barring may be implemented, restricting calls to and/or from the Customer's system;
- 11.4.2** lines, Equipment and Services may be designated "temporarily out of service"; and
- 11.4.3** disconnection of the Services and the Customer's ability to access the Network.
- 11.5** The Customer acknowledges that following a suspension of Services resulting in disconnection under clause 11.4, the telephone numbers previously made available to the Customer by the Company may no longer be available and a re-connection charge of £25 for each line affected (subject to a minimum charge of £100 per Customer) shall be levied by the Company.
- 12. IP HOSTING SERVICES**
- 12.1** Where the Customer purchases IP hosting Services, the call package bundle set out in the Order Form comprises part of such Services. As part of the call package chosen, the Customer will receive the call package minutes set out in the Order Form.
- 12.2** The level of call package minutes comprised in the Call Package shall be applied in each month against the duration of all calls made across the Network from all Seats of the Customer. Any call time exceeding the call package minutes will be charged at the Company's normal call tariff as set out in the Price Guide.
- 12.3** Call package minutes can be utilised by the Customer against calls to UK local geographic, UK national geographic and selected UK mobile destinations and selected international destinations where these are included within the Customer's call package. The Customer must comply with the Acceptable Use Policy when using the call package minutes.
- 13. BROADBAND SERVICES**
- 13.1** The Company will use its reasonable endeavours to provide any broadband Services to the Customer up to the data transmission speed requested by the Customer. However the Company cannot guarantee this. In particular, the speed of the Customer's connection and download times may be slower if the Company Network or the Internet is congested and the success of broadband provision is reliant upon many factors including the distance of the Customer from the broadband exchange and the Company shall not be liable for any failure to provide the broadband Services at the level required by the Customer which is due to external factors, and in such circumstances the Customer may:
- 13.1.1** cancel the broadband Services (but this shall not affect any other Services which are the subject of the Contract and the Contract shall remain in force in respect of any such other Services pursuant to clause 22.6); or
- 13.1.2** request an upgrade to the broadband Services subject to payment by the Customer of an additional cost.
- 13.2** The Company accepts no responsibility in respect of the use of any domain name by the Customer and any dispute between the Customer and any other individual or organisation regarding a domain name must be resolved between the parties concerned and the Company will take no part in any such dispute.
- 13.3** The Customer acknowledges that all static IP addresses allocated to it by the Company are offered on a rental basis only and remain the property of the Company at all times.
- 13.4** The Customer may request upgrades to the broadband Services from time to time, but any upgrade to the Services provided by the Company will involve an increase to the charges payable by the Customer.
- 14. INSTALLATION SERVICES**
- 14.1** Subject to satisfactory survey by the Company, the Company shall use its reasonable endeavours to install and connect the Equipment by any requested service date. An order may be cancelled by the Company without liability if the results of any survey are, in the Company's reasonable opinion, unsatisfactory or if it is not technically feasible to implement and/or support the installation Services by the requested service date.
- 14.2** At the Customer's request the Company may agree, subject to payment of the Company's charges and satisfactory survey, to use for the provision of the installation Services, cabling and/or wiring already installed at the site. Where the Customer makes such request the Customer warrants that it has full title to such cabling and/or wiring and that such cabling and/or wiring and their installation meet all applicable standards and specifications notified to the Customer by the Company. The Customer will provide such written confirmation and/or information in relation to such cabling and/or wiring as the Company reasonably requires.
- 14.3** On successful completion of any tests carried out by the Company to ensure the Equipment is ready for use the Company may require the Customer to sign a form confirming satisfactory completion of the installation Services. Where the Customer's representative does not sign such form within two working days of being requested to do so, satisfactory completion of the installation Services shall be deemed to have occurred.
- 15. SERVICE CARE**
- 15.1** The Company shall provide the level of Service Care set out in the Order Form throughout the Minimum Period for the charges set out in the Order Form.
- 15.2** The Company shall supply the Service Care to the Customer subject to these Conditions. The Customer acknowledges that the charges in respect of Service Care does not include work necessary to repair or reinstate the Equipment where loss or damage to the Equipment is caused by:-
- 15.2.1** the negligence, misuse, attempted or actual repair, unauthorised adjustment of or tampering with the Equipment by the Customer or any third party;
- 15.2.2** any event or circumstance beyond the Company's reasonable control;
- 15.2.3** accidental or wilful disconnection of the Equipment;
- 15.2.4** faults of a minor or intermittent nature which do not significantly affect the operation of the Equipment;
- 15.2.5** fault in, or other problem associated with, any telecommunications equipment not forming part of the Equipment; and
- 15.2.6** the Customer's failure to comply with any provisions of these Conditions.
- In the event that such damage is so caused and the Customer requests the Company to repair or reinstate the Equipment, the Customer shall (unless otherwise agreed in writing by the Company) pay the Company's standard call out and/or repair charges.
- 15.3** The Customer shall promptly notify the Company's Service Centre by telephone or e-mail of any failure of or fault in the Equipment.
- 15.4** If a fault in the Services is reported by the Customer, in accordance with the applicable Service Care plan, and:-
- 15.4.1** the Company makes arrangements to visit the Customer's site and is unable to obtain the necessary access to the site; or
- 15.4.2** the Company undertakes work to correct the fault but finds no fault present, or finds that a fault has been caused by the act or omission of the Customer; or

15.4.3 the Company agrees to attend a site outside the normal working hours appropriate to the applicable Service Care plan, the Company may charge the Customer in respect of such actions in accordance with the Price Guide.

16. CALL COMMITMENT

16.1 On application by the Customer to enter into a commitment plan, and acceptance by the Company of the specific commitment plan option applicable to the Services, the Company shall, apply the commitment benefits to the Charges for the calls element of the Services incurred by the Customer during each Spend Measurement Period in the lines forming part of the commitment plan.

16.2 The Customer may request that additional lines be included as part of its commitment plan. Any line requested by the Customer to be withdrawn from the commitment plan will revert to the charges applicable to such line in accordance with the Price Guide and any benefits applied by the Company in respect of that line or lines will be terminated, provided always that the obligations of the Customer under the commitment plan shall continue unless terminated in accordance with clause 16.4.

16.3 The Company will measure the Customer's spend on the commitment plan on an annual basis against the actual spend made by the Customer and if the actual spend is less than the commitment plan spend, the Customer shall pay the Commitment Balancing Figure.

16.4 Either party may cancel any commitment plan by giving to the other 28 days notice in writing. Where the commitment plan is cancelled by the Customer prior to the end of the agreed commitment period, the Customer agrees to pay to the Company the Commitment Balancing Figure in respect of each full or part (on a pro-rata basis) Spend Measurement Period, remaining in the Commitment Period, and acknowledges that the charges of the Company applicable to the Contract shall then be applied and any benefits applied in respect of that plan will be terminated.

16.5 The Commitment Balancing Figure shall be paid by way of liquidated and ascertained damages and such sum is accepted by the parties as being a genuine pre-estimate of the net losses likely to be suffered by the Company in such an event.

17. CAPPED CALLS

17.1 The capped calls Service and where subscribed to by the Customer applies to direct dialled voice calls only made by the Customer to local and national geographic numbers and is only available to Customers with a commitment plan spend of greater than £50 per month. The charges payable by the Customer in respect of each call made pursuant to the capped calls Service shall not exceed the Fixed Call Charge.

17.2 Any call time exceeding the Permitted Duration will be charged as set out in the Customer's tariff as notified by the Company.

17.3 The Company may withdraw the capped calls Service at any time on notice to the Customer.

17.4 The Company will charge the Customer for using the capped calls Service. The Customer will be charged (subject to clause 17.1) at the rates specified in the Order Form or as published in the Price Guide. In choosing the capped calls Service the Customer acknowledges and agrees that:

17.4.1 connection charges are non-refundable; and

17.4.2 charges are calculated from data recorded by the Company and not from the Customer's own records;

18. RISK AND PROPERTY

18.1 The Company may refer the Customer, where appropriate, to the Leasing Company to arrange a leasing agreement for the purchase of the Equipment, but the Company does not guarantee that the Leasing Company will offer a lease purchase arrangement to the Customer nor that the terms of any arrangement shall be agreeable to the Customer.

18.2 The Equipment remains the property of the Company or the Leasing Company (as applicable) until:-

18.2.1 their full price has been received by the Company or the Leasing Company; and

18.2.2 all other sums which are or which become due from the Customer on any account with the Company or the Leasing Company have been received by the Company or the Leasing Company.

18.3 The Equipment is at the risk of the Customer from the time of delivery.

18.4 Until ownership of the Equipment passes to the Customer, the Customer must:-

18.4.1 store it at its own cost at its site separately from any other goods and in a manner which makes them readily identifiable as the equipment of the Company;

18.4.2 not destroy, deface or obscure any identifying mark or packaging of the Equipment;

18.4.3 maintain the Equipment in a satisfactory condition insured on the Company's behalf for their full price against all risks; and

18.4.4 hold the proceeds of insurance referred to in clause 18.4.3 on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn account.

18.5 The Company may, so as to discharge any overdue payment from the Customer recover or resell the Equipment.

18.6 In order to verify the Customer's compliance with its obligations under clause 18.4 and to exercise its rights under clause 18.5, the Company shall be entitled by its employees or agents without notice to enter the Customer's site or such other premises where the Equipment is located.

18.7 The Customer's right to possession of the Equipment (and any other Equipment as applicable) terminates immediately if any of the events set out in clause 21 occurs.

19. LIMITATION OF LIABILITY

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION

19.1 The following sets out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents or subcontractors) to the Customer in respect of any breach of these Conditions, any representation, statement or act or omission (including negligence) arising under or in connection with the Contract and in respect of any contemplated performance or lack of performance.

19.2 All warranties, conditions or other terms implied by statute, common law, trade usage or otherwise are excluded to the fullest extent permitted by law but this exclusion does not apply to:-

19.2.1 any implied condition that the Company has or will have the right to provide the Equipment when property is to pass;

19.2.2 if the Equipment is sold to a person dealing as a consumer within the meaning of the Unfair Contract Terms Act 1977, any implied term relating to the conformity of the Equipment with their description or sample or as to their quality or fitness for a particular purpose.

19.3 Where the Equipment or Services are provided under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Customer are not affected by these Conditions.

19.4 Nothing in these Conditions excludes or limits the Company's liability for death or personal injury caused by the Company's negligence or for fraudulent misrepresentation.

19.5 Subject to clauses 19.2 to 19.4:-

19.5.1 the Company shall not be liable to the Customer for any loss of profit, loss of production, financial loss, depletion of goodwill or any indirect loss, damage, costs or expenses whatsoever which arise out of or in connection with the Equipment, the Contract, its contemplated performance or lack of performance or any suspension of Services in accordance with clause 11; and

19.5.2 subject to clause 19.5.1, the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance or lack of performance of this Contract shall be limited to the charges incurred by the Customer in any 12 month period.

19.6 The Company will use all reasonable endeavours to pass on the benefit of any warranties that it receives from the Service Provider or the manufacturer of any Equipment supplied by the Company to the Customer. However, the Company is not the service provider in respect of the Services and does not manufacture the Products or Equipment and therefore, save as provided in clauses 19.2 to 19.4, all warranties, conditions or other terms implied by statute, common law, trade usage or otherwise are excluded to the fullest extent permitted by law.

20. INDEMNITY

20.1 The Customer agrees to indemnify the Company against any damages, losses, costs, claims or expenses incurred by the Company towards a third party arising out of or in connection with the Services provided by the Company or use of Equipment lines or Services by the Customer or their operation or use and whether arising by reason of the negligence of the Company or otherwise.

21. TERMINATION

21.1 The Contract shall continue in force unless either party terminates the Contract by giving the other party 120 days' written notice, or such shorter period as the Company may agree. Such notice period shall not be valid unless it expires on or after the end of the Minimum Period. Subject to clause 22.1 either party may terminate the provision of any line or Equipment by giving the other party 120 days' written notice, or such shorter period as the Company may agree. Such notice period shall not be valid unless it expires on or after the end of the Minimum Period.

21.2 Notwithstanding clause 21.1 the Company may terminate the Contract immediately on written notice if:-

21.2.1 the Customer is the subject of bankruptcy or insolvency proceedings in the United Kingdom or elsewhere, a liquidator, trustee in bankruptcy, receiver or administrator (or equivalent) is appointed over any of the Customer's assets or the Customer enters into any formal or informal composition or arrangement (or equivalent) with the creditors of the Customer or the Company reasonably believes that such events are reasonably likely to occur. For the purposes of this clause 21.2.1 the Customer shall include the Customer's direct and/or indirect parent company and "Customer" shall be interpreted accordingly;

21.2.2 the Customer materially breaches (including without limitation failure to pay any charges promptly) the Contract or any other agreement the Customer may have with the Company or a member of the Company's group;

21.2.3 the Company suspects on reasonable grounds that the Customer may have committed or may be committing:-

(a) a breach of law; and/or

(b) any fraud against the Company or any third party.

21.2.4 the Customer fails to meet a reasonable standard of creditworthiness; or

21.2.5 any contract between the Company and a third party provider of telecommunications services is terminated where such termination affects the provision of the Services.

21.3 If the Company requests the Customer to do so but the Customer fails to return to the Company (or as otherwise notified to the Customer by the Company) the Order Form duly signed by the Customer within 14 days of the Service Commencement Date (or any other date notified to the Customer by the Company) the Company shall be entitled (but not obliged) without notice to terminate the Contract or, without prejudice to its right so to terminate, to downgrade or suspend the Services as it thinks fit.

22. CONSEQUENCES OF TERMINATION

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION

22.1 On termination of the Contract by reason of the Customer's breach of the Contract or other default, or on termination by the Customer of Services to any line or Seat (as applicable) prior to the expiry of the Minimum Period, the Customer shall be liable to pay to the Company by way of agreed damages:

22.1.1 all arrears of charges and interest;

22.1.2 all costs incurred or to be incurred by the Company in the reconditioning or repair of the Equipment where the condition of the Equipment is not in accordance with clause 5;

22.1.3 where the Company has taken possession of the Equipment, all costs incurred by the Company in relation to the repossession of the Equipment;

22.1.4 all charges which would have been payable for the remainder of the Minimum Period less a discount at the rate of 2 per cent per annum for accelerated payment, calculated from the date of payment until the date such payment would otherwise have been made;

22.1.5 all other sums due from the Customer to the Company under this Contract, including without prejudice to this Contract (which shall continue in full force and effect) all claims and liabilities then outstanding or thereafter arising;

Such sums shall be paid by way of liquidated and ascertained damages by the Customer to the Company and such sums are accepted by the parties as being a genuine pre-estimate of the net losses likely to be suffered by the Company in such an event.

22.2 On termination or expiry of the Contract the Customer shall remain liable for all charges incurred by the Customer through the use of the Network pending transfer of the Services to an alternative provider.

22.3 The right to terminate the Contract shall not prejudice any other right or remedy of the Parties in respect of any rights, obligations or liabilities accrued prior to termination.

22.4 The Contract shall also apply to any sales orders placed by any subsidiaries or group companies of the Customer (unless the parties agree in writing otherwise). The Customer agrees that it is the authorised agent of its subsidiary and group companies and will be liable to the Company for all claims, losses and expenses arising out of breach of the terms of the Contract by any subsidiary or group companies.

22.5 Upon the termination of the Contract or disconnection of a relevant line or item of Equipment in respect of any Service:

22.5.1 the Company shall disconnect the line or Equipment from the Network. If the Company at its sole discretion, agrees to reconnect the Customer following such disconnection the Customer shall be liable for a reconnection charge pursuant to clause 11.5 in respect of each connection and the Contract shall be deemed to continue;

22.5.2 the Company reserves the right to charge any applicable termination, administration of porting fee in accordance with current Ofcom (or any regulatory body which succeeds Ofcom) regulations when the Contract ceases and the numbers are moved to another service provider; and

22.6 Termination or cancellation of any Service by either party in accordance with these Conditions shall not affect the provision of any other Services which are the subject of the Contract, and the Contract shall remain in full force and effect in respect of any Services which are not terminated or cancelled.

23. GENERAL

23.1 If any provision of the Contract (including without limitation any provision of clause 19) is found by any competent authority to be invalid, unenforceable or unreasonable, it shall be severed from the remainder of the Contract which shall (subject to termination at the discretion of the Company), continue in full force and effect.

23.2 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract is not a waiver of any of its rights under the Contract.

23.3 Any waiver by the Company of any breach by the Customer is not a waiver of any subsequent breach.

23.4 Any disputes between the parties arising out of or in connection with the Contract shall be determined in accordance with the Service Charter.

23.5 Any notice to be given by either party to the other under these Conditions must be in writing addressed to that other party at its registered office or principal place of business or such other address as may have been notified for these purposes.

23.6 The Company reserves the right to record and monitor any calls made to it by the Customer for training purposes and/or for testing and diagnostic purposes in order for the Company to resolve any faults.

24. ASSIGNMENT

24.1 The Company may assign, subcontract or otherwise transfer the Contract or any part of it and may dispose of or deal in any manner with any of its rights or beneficial interests under it.

24.2 The Customer may not assign the Contract or dispose of or deal in any manner with any of its rights or beneficial interests under it.

25. ENGLISH LAW

25.1 Subject to clause 23.4, the Contract shall be governed by English law, and the parties submit to the exclusive jurisdiction of the English courts.

25.2 Clause 25.1 is for the benefit of the Company only and as a result the Company shall not be prevented from taking proceedings in any other courts with jurisdiction, whether concurrently or not.