

Terms & Conditions for the Provision of Services Lines and Calls

Please read these terms and conditions carefully as they apply (to the exclusion of any other terms and conditions), to our provision of services to you. They include important information relating to the provision of 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:-

“**Call Commitment Balancing Figure**” means an amount being 25% of the difference between the Commitment Plan Spend and the actual spend by the Customer on calls during the Spend Measurement Period;

“**Call Commitment Benefits**” means those discounts and reductions applied to the Charges under the Call Commitment Plan and as identified in this Contract and on the Order Form;

“**Call Commitment Plan**” means the commitment by the Customer to the Company to the Commitment Plan Spend in respect of the Commitment Plan Lines for the duration of the Call Commitment Period in return for the application by the Company of the Call Commitment Benefits;

“**Charges**” means the charges for the provision by the Company of Equipment and Services during the Minimum Period (and any continuation thereof) as amended from time to time in accordance with clause 6;

“**Call Commitment Period**” means a period of sixty (60) months 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 Call Commitment Period until cancelled by either party in accordance with clause 13;

“**Commitment Plan Lines**” means those lines and numbers of the Customer (and any subsidiary of the Customer as agreed by the Company) which are included in the Call Commitment Plan;

“**Commitment Plan Spend**” means the level of spend in each Spend Measurement Period during the Call Commitment Period to which the Customer commits as set out on the Order Form;

“**Company Equipment**” means such equipment owned or used by the Company as is necessary to provide the Services;

“**Company Network**” means the telecommunications system operated and maintained by the Company;

“**Contract**” means the contract for the purchase of Purchased Equipment and provision of the Services subject to these Conditions;

“**Conditions**” means the terms and conditions set out below;

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

“**Custom Care**” means a fault repair service tailored to meet the Customer’s requirements as agreed between the parties;

“**Customer**” means the person set out in the Contract;

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

“**Equipment**” means one or more of the Company Equipment, the Customer Equipment and the Purchased Equipment as applicable;

“**Law**” means any law, statute or regulation, guideline or code of conduct (whether or not having the force of law) in any jurisdiction to which a party is from time to time subject;

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

“**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 Purchased Equipment subject to the Contract;

“**Price Guide**” means all and any information relating to Charges for the Services, available on request from the Company;

“**Prompt Care**” means a fault repair service operating between 0800hrs and 1700hrs, Mondays to Saturdays, excluding bank or other public holidays under which the Company will aim to respond to a fault report within six hours of its receipt and, if the fault is not cleared within the six hour period, advise the Customer of the progress being made towards resolving it;

“**Purchased Equipment**” means any equipment purchased by the Customer from the Company in connection with the provision of the Services;

“**Service Commencement Date**” means the earlier of:-

(i) the date the relevant Service is available for use by the Customer; or

(ii) the date the Customer first uses the Services;

“**Service Care**” means either Standard Care, Prompt Care, Total Care or Custom Care;

“**Services**” means the provision by the Company of such of the Company’s Equipment and related services to enable the Customer to make or receive telephone calls using one or more of any access code, calling line identity, dedicated leased line and a third party’s exchange line to route selected telephone calls over and via the Company Network and shall include (where requested on the Order Form by the Customer), the provision by the Company of such services to enable the Customer to receive a telephone call from a third party at no expense to the third party and/or the operation of a Call Commitment Plan;

“**Site**” means the site (or sites) at which any Company Equipment and/or Purchased Equipment shall be located or to which the Services shall be provided;

“**Spend Assessment Date**” means the date specified by the Company on the Order Form as the date in each year on which the Company will measure the Commitment Plan Spend against the actual spend of the Customer;

“**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 Call Commitment Period;

“**Standard Care**” means the fault repair service operating between 0800hrs and 1700hrs, Mondays to Fridays, excluding bank or other public holidays, under which the Company will aim to respond to a fault report received before 1700hrs on one working day by the end of the next working day;

“**Survey**” means any survey or other investigations carried out by or on behalf of the Company that the Company in its absolute discretion deems necessary prior to the provision of the Services; and

“**Total Care**” means the fault repair service operating 24 hours per day, seven days per week, including bank and other public holidays, under which the Company will aim to respond to a fault report within six hours of its receipt and, if the fault is not cleared within the six hour period, will advise the Customer of the progress being made towards resolving it.

1.2 In these Conditions:-

1.2.1 any gender includes any other gender;

1.2.2 headings shall not affect interpretation;

1.2.3 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;

1.2.4 any reference to a statutory provision includes a reference to any modification or re-enactment of the provision from time to time in force; and

1.2.5 references to “the Contract”, “the Services” or any payment includes any part of any of them.

2. BASIS OF SERVICES PROVISION

2.1 The Company shall sell and the Customer shall purchase the Purchased Equipment and 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.

2.2 No terms or conditions endorsed upon, delivered with or contained in the Customer’s order or other document will form part of the Contract simply as a result of such document being delivered to the Company or referred to in the Contract.

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

2.4 These Conditions constitute the entire agreement between the Customer and Company for the supply of the Purchased Equipment and the provision of the Services.

2.5 The Company’s employees or agents are not authorised to make any representation concerning the Purchased Equipment or Services unless confirmed by the Company in writing, 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).

2.6 Any advice or recommendation given by the Company or its employees or agents to the Customer as to the application or use of the Purchased Equipment and Services which is not confirmed in writing by a director of the Company is followed or acted upon entirely at the Customer’s own risk.

2.7 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.

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

3. QUOTATIONS, ORDERS AND SPECIFICATIONS

3.1 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.

3.2 Each order for Purchased Equipment and Services by the Customer is an offer by the Customer to purchase the Purchased Equipment and Services subject to these Conditions. To order Purchased Equipment and Services, the Customer must comply with and submit the Company’s standard Order Form.

3.3 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 Equipment and/or the Services to the Customer.

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

3.5 Notwithstanding clause 3.2, if at its discretion the Company accepts an order for Services placed other than on its standard Order Form (a “Customer Order Form”) or if the Company installs a Service without having received from the Customer and/or accepted either the Company’s standard Order Form or a Customer Order Form, the Services (and any applicable Purchased Equipment) shall be provided in accordance with the terms of the Contract.

3.6 The Company reserves the right to make any changes in the specification of the Purchased Equipment, Company Equipment or Services which are required for such equipment or Services to conform with any applicable Law or, where the Purchased Equipment, Company Equipment or Services are to be supplied to the Customer’s specification, which do not materially affect their quality or performance.

3.7 Subject to satisfactory Survey, the Company shall use its reasonable endeavours to connect any Company Equipment so that the Services are available 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 Services by the requested service date.

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

4. CUSTOMER EQUIPMENT

4.1 The Company shall have no liability 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.

4.2 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 any other instructions or safety and security procedures applicable to the use of Customer Equipment.

4.3 The Customer must ensure that all Customer Equipment is in good working order and complies with applicable standards, approval and any relevant Law. The Company may require the Customer to disconnect (in which case the Customer must do so promptly) or may itself disconnect any Customer Equipment if in the Company’s reasonable opinion:-

4.3.1 it does not conform to applicable standards, approvals or any relevant Law for the time being in force; or

4.3.2 it may cause injury to any person or material damage to property; or

4.3.3 it may materially impair the quality of any Services provided by the Company.

4.4 The Company has no liability whatsoever where any inability to use the Services is due to incompatibility between Customer Equipment and the Company Equipment, Purchased Equipment or Services, or for any breakdown or failure in Customer Equipment.

4.5 In the event that the Customer Equipment has least cost routing software, the Company may reprogram such Customer Equipment in order to facilitate connection to the Company Network.

4.6 In the event that the Customer Equipment does not have least cost routing software, the Company may supply such Company Equipment as is necessary in order to facilitate connection to the Company Network.

5. CANCELLATION AND DELAY

5.1 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.

5.2 If the Customer extends or delays the Contract or fails to take delivery of any Purchased Equipment or Company Equipment at the agreed time or (if no time is agreed) within a reasonable 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.

5.3 The Company reserves the right to defer the date of delivery or 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 Purchased Equipment or Services delivered or supplied prior to such cancellation by the Company or the Customer.

6. CHARGES

6.1 The Charges for the Purchased 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.

6.2 The Company reserves the right at any time before delivery or performance to amend the Charges for the Purchased Equipment or Services to take into account any variation in cost to the Company.

6.3 The Charges are exclusive of any applicable VAT.

6.4 Charges for the Services are as referred to in the Price Guide or as otherwise agreed in writing (including the Order Form). Notwithstanding the aforesaid, Charges are subject to confirmation by the Company. 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 the Charges by the amount of such costs. Where the Customer does not accept such increased Charges, the Contract will come to an end.

6.5 Other than as set out in clause 6.4 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 such notification the Customer may give notice to the Company to terminate the Agreement. If the Customer does not terminate in such period the Customer is deemed to have accepted the increase/new Charges. The Company may decrease charges at any time without notice and the Customer shall have no right to terminate the Agreement.

6.6 The Customer acknowledges that the Charges for the Services are comprised of a number of components, including (but not limited to), standard per minute costs, minimum call charges, connection costs, call configuration costs and minimum call times, as detailed in the Price Guide. The Customer further acknowledges that the Charges levied for the Service components are subject to change and any increase or decrease in such component Charges payable or recovered by the Company as a result of changes implemented by the Company or third party suppliers shall be applied to the account of the Customer following notification of such changes by the Company.

7. PAYMENT OF THE CHARGES

7.1 Payment of the Charges for the Purchased Equipment (unless otherwise agreed in writing by a director of the Company) shall become due on delivery and/or installation of the Purchased Equipment and payment of the Charges for Services (unless otherwise 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 shall be due 14 days after the date of the Company’s invoice.

7.2 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.

7.3 Time of payment is of the essence.

7.4 For the purposes of this Contract, payment is received when the Company receives it in cleared funds.

7.5 Payment by the Customer or on its behalf shall be made without any deduction or set off.

7.6 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.

7.7 Despite any provision allowing credit, payment is due and payable to the Company immediately upon cancellation or termination of the Contract.

- 7.8 The Company shall be entitled to payment for all instalments of Purchased Equipment delivered to the Customer, whether under a blanket order or otherwise.
- 7.9 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 cancel the Contract or suspend deliveries or performance to the Customer in accordance with clause 8; and/or
- 7.9.1 appropriate any payment made by the Customer to such of the Purchased Equipment or Services (or the goods or services supplied under any other contract between the Customer and the Company) as the Company thinks fit.
- 7.10 The Company is entitled to set off sums owed by the Company to the Customer against sums owed by the Customer to the Company.

8. SERVICES PROVISION AND USE OF THE SERVICES

- 8.1 The Company shall provide the Services in accordance with the Contract.
- 8.2 The Customer must promptly supply the Company with all information and materials reasonably required by the Company to supply the Services.
- 8.3 The Company shall use the reasonable skill and care of a competent telecommunications service provider in providing the Services. However the Customer accepts that it is technically impracticable to provide the Services entirely free of faults and the Company does not undertake to do so.
- 8.4 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.
- 8.5 The Customer must not use or allow anyone to use the Services:-
- 8.5.1 to send or receive a communication which is offensive, abusive, indecent, obscene or menacing;
- 8.5.2 to cause annoyance, inconvenience or needless anxiety to anyone;
- 8.5.3 to violate or infringe the rights of any person;
- 8.5.4 in breach of the Contract; or
- 8.5.5 in breach of Law.
- 8.6 The Customer shall not sell or transfer any telephone number provided to the Customer by the Company for use with the Services.
- 8.7 The Company may at its discretion suspend the Services and/or terminate the Contract if the Customer is in breach of the Contract. The Customer must indemnify and hold harmless the Company against all liabilities, claims, damages, losses and proceedings arising out of or in any way connected with any use of the Services in contravention of the Contract, or the Law.
- 8.8 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:-
- 8.8.1 call-barring may be implemented, restricting calls to and/or from the Customer's system;
- 8.8.2 lines and Services may be designated "temporarily out of service"; and
- 8.8.3 disconnection of the Services and the Customer's ability to access the Company Network.
- 8.9 Following a suspension of Services and a rectification by the Customer in accordance with the Contract, the Company shall use its reasonable endeavours to resume access to the Services for the Customer within a reasonable time. The Customer acknowledges that the period of time to enable Services to be resumed is dependent upon the manner of suspension employed by the Company and, as a minimum, periods for resumption of Services would be as follows:-
- 8.9.1 call-barring - 8 hours;
- 8.9.2 lines temporarily out of service - 48 hours; and
- 8.9.3 disconnected lines - 14 days.
- 8.10 The Customer acknowledges that following a suspension of Services resulting in disconnection under clause 8.8, 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 may (at the discretion of the Company) be levied by the Company in accordance with the Price Guide.
- 8.11 The Customer shall provide a suitable place and conditions for the Company Equipment (including a continuous mains electricity supply and connection points at the Customer's own expense where the Company Equipment require such services) at the Customer's Site or in such other location 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.
- 8.12 The Company shall provide (or procure the provision of) such level of Service Care in relation to the Services as the Customer has requested on the Order Form.
- 8.13 If a fault in the Services is reported by the Customer, in accordance with the applicable Service Care plan, and:-
- 8.13.1 the Company make arrangements to visit the Site and are unable to obtain the necessary access to the Site; or
- 8.13.2 the Company undertake work to correct the fault but find no fault present, or find that a fault has been caused by the act or omission of the Customer; or
- 8.13.3 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.

9. RISK AND PROPERTY

- 9.1 The Purchased Equipment remains the property of the Company until:-
- 9.1.1 their full price has been received by the Company; and
- 9.1.2 all other sums which are or which become due from the Customer on any account with the Company have been received by the Company.
- 9.2 If payments received from the Customer are not stated to refer to a particular invoice the Company may appropriate such payments to any outstanding invoice.
- 9.3 The Equipment is at the risk of the Customer from the time of delivery.
- 9.4 Until ownership of the Purchased Equipment passes to the Customer, the Customer must:-
- 9.4.1 store it at its own cost at the Site separately from any other goods and in a manner which makes them readily identifiable as the equipment of the Company;
- 9.4.2 not destroy, deface or obscure any identifying mark or packaging of the Purchased Equipment;
- 9.4.3 maintain the Purchased Equipment in a satisfactory condition insured on the Company's behalf for their full price against all risks; and
- 9.4.4 hold the proceeds of insurance referred to in clause 9.4.3 on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdraft account.
- 9.5 The Company may, so as to discharge any overdue payment from the Customer recover or resell the Purchased Equipment.
- 9.6 In order to verify the Customer's compliance with its obligations under clause 9.4 and to exercise its rights under clause 9.5, the Company shall be entitled by its employees or agents without notice to enter the Customer's Site or such other premises where the Purchased Equipment is located.
- 9.7 The Customer's right to possession of the Purchased Equipment (and any other Equipment as applicable) terminates immediately if any of the events set out in clause 12 occur.

10. LIMITATION OF LIABILITY

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION

- 10.1 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.
- 10.2 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:-
- 10.2.1 any implied condition that the Company has or will have the right to provide the Purchased Equipment when the property is to pass; or
- 10.2.2 if the Purchased 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 Purchased Equipment with their description or sample or as to their quality or fitness for a particular purpose.
- 10.3 Where the Purchased 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.
- 10.4 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.
- 10.5 Subject to clauses 10.2 and 10.4:-
- 10.5.1 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 Contract, its contemplated performance or lack of performance or any suspension of Services in accordance with clause 8; and
- 10.5.2 subject to clause 10.5.1, 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.

11. INDEMNITY

- 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 Equipment or Services provided by the Company or their operation or use and whether arising by reason of the negligence of the Company or otherwise.

12. DURATION AND TERMINATION

- 12.1 In relation to the Services, the Contract shall come into effect on the earliest of the dates the Customer signs the Order Form or the Service Commencement Date.
- 12.2 The Contract shall continue in force unless either party terminates the Contract by giving the other party 90 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.
- 12.3 Notwithstanding clause 12.2, the Customer may terminate the Contract in accordance with clause 6.5.
- 12.4 Notwithstanding clause 12.2, the Company may terminate the Contract immediately on written notice if:-
- 12.4.1 any Survey is not, in the Company's discretion, satisfactorily completed;
- 12.4.2 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 12.4.2 the Customer shall include the Customer's direct and/or indirect parent company and "Customer" shall be interpreted accordingly;
- 12.4.3 the Customer makes a material mis-statement in the details the Customer has supplied to the Company to enable the Company to provide the Services;
- 12.4.4 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;
- 12.4.5 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.
- 12.4.6 the Customer fails to meet a reasonable standard of creditworthiness; or
- 12.4.7 any contract between the Company and a third party provider of telecommunications services is terminated where such termination affects the provision of the Services.
- 12.5 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.

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION

- 12.6 On termination of the Contract by reason of the Customer's breach of the Contract or other default, the Customer shall be liable to pay to the Company 25% of the Charges that would otherwise have been payable by the Customer during the Minimum Period. Such sum to be calculated by taking the average monthly Charges incurred during the period from the Service Commencement Date to the date of termination multiplied by the number of months remaining in the Minimum Period. 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.
- 12.7 On termination or expiry of the Contract the Customer must allow the Company promptly to remove the Company Equipment. If the Customer delays prompt removal of the Company Equipment following termination or expiry of the Contract, the Company shall, until such removal is effected, be entitled to continue to charge the Customer and the Customer shall pay such Charges together with any additional costs and expenses caused to the Company by such delay and the Customer shall remain liable for all Charges incurred by the Customer through the use of the Company Network pending transfer of the Services to an alternative provider.
- 12.8 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 (including, without limitation, termination under clause 5.3).

13. CALL COMMITMENT

- 13.1 Where the Customer enters into a Call Commitment Plan with the Company, the provisions of this clause 13 shall apply to the Contract.
- 13.2 On application by the Customer to enter into a Call Commitment Plan, and acceptance by the Company of the specific Call Commitment Plan option applicable to the Services, the Company shall (subject to the Commitment Plan Spend as measured on the Spend Assessment Date), apply the Call Commitment Benefits to the Charges for the calls element of the Services incurred by the Customer during each Spend Measurement Period in respect of the Commitment Plan Lines.
- 13.3 The Customer may, during the Call Commitment Period, request that additional lines be included as part of the Call Commitment Plan and the Company shall amend the Commitment Plan Lines and Commitment Plan Spend accordingly. Any line requested by the Customer to be withdrawn from the Commitment Plan Lines will revert to the Charges applicable to such line in accordance with the Price Guide and any Call Commitment Benefits in respect of that line or lines will be terminated, provided always that the obligations of the Customer under the Call Commitment Plan shall continue unless terminated in accordance with clause 13.5.
- 13.4 On the Spend Assessment Date, the Company will measure the Commitment Plan Spend against the actual spend made by the Customer and if the actual spend is less than the Commitment Plan Spend agreed by the Customer under the Call Commitment Plan, the Customer shall pay the Call Commitment Balancing Figure.
- 13.5 Either party may cancel the Call Commitment Plan by giving to the other 28 days notice in writing. Where the Call Commitment Plan is cancelled by the Customer prior to the end of the Call Commitment Period, the Customer agrees to pay to the Company the Call Commitment Balancing Figure in respect of each full or part (on a pro-rata basis) Spend Measurement Period, remaining in the Call Commitment Period, and acknowledges that the Charges of the Company applicable to the Contract shall then be applied and any Call Commitment Benefits will be terminated.
- 13.6 The Customer may cancel the Call Commitment Plan by giving the Company 14 days notice in writing during the last 7 days of the Call Commitment Period or the first 7 days of a new Call Commitment Period without incurring liability for the Call Commitment Balancing Figure. The Call Commitment Plan will be terminated at the end of the 14 day notice period, any Call Commitment Benefits will be terminated and the Charges shall revert to those applicable to the Contract in accordance with the Price Guide.
- 13.7 The Call 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.

14. HEALTH AND SAFETY

- The Customer agrees to:-
- 14.1 pay due regard to all information supplied by the Company relating to the use of the Equipment necessary to ensure the Equipment will be safe and without risk to health at all times when they are being set, used, cleaned or maintained by any person;
- 14.2 indemnify the Company in respect of any and all claims arising from the Equipment being unsafe as a result of the Customer's activities;

15. GENERAL

- 15.1 The Company is a member of a group of companies and accordingly the Company may perform any of its obligations or exercise any of its rights by itself or through any other member of its group.
- 15.2 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company, whether or not under the Contract.
- 15.3 If any provision of the Contract (including any provision of clause 9) 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.
- 15.4 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.
- 15.5 Any waiver by the Company of any breach by the Customer is not a waiver of any subsequent breach.
- 15.6 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.
- 15.7 Notices addressed to the Company shall be marked for the attention of the Company Secretary.
- 15.8 Notices shall be delivered personally or sent by first class post or sent by facsimile transmission.
- 15.9 A notice is deemed to have been received:-
- 15.9.1 if delivered personally, at the time of delivery;
- 15.9.2 if sent by prepaid first class post, on the second working day after posting (exclusive of the day of posting);
- 15.9.3 if sent by facsimile transmission, on a working day prior to 4.00pm at the time of completed transmission and otherwise on the next working day.
- 15.10 The Contract does not create, confer or purport to confer any benefit or right enforceable by any person not a party to it by virtue of the Contracts (Rights of Third Parties) Act 1999.

16. ASSIGNMENT

- 16.1 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.
- 16.2 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.

17. ENGLISH LAW

- 17.1 The Contract shall be governed by English law, and the parties submit to the exclusive jurisdiction of the English courts.
- 17.2 Clause 17.1 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.