

BNS TELECOM MOBILE AGREEMENT - TERMS AND CONDITIONS

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:-

“Agreement”	means the BNS Telecom Mobile Agreement between BNS Telecom and the Customer and which includes these Conditions;
“BNS Telecom”	means BNS Telecom Limited (registered in England and Wales under number 3228233);
“Call Charge”	means a predetermined charge for a unit of time costed at the rates set out in the Price List published by BNS Telecom from time to time, and which are available on-line or upon request from BNS Telecom;
“Connection 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 or a minimum of £25 per Mobile Product per month (whichever is the greater);
“Connection Commitment Benefits”	means those discounts and reductions applied to the Charges under the Connection Commitment Plan and as identified in this Agreement and on any order accepted by BNS Telecom;
“Connection Commitment Plan”	means the commitment by the Customer to BNS Telecom to the Commitment Plan Spend in respect of the Commitment Plan Products for the duration of the Connection Commitment Period in return for the application by BNS Telecom of the Connection Commitment Benefits;
“Connection Commitment Period”	means a period of thirty-six (36) months from the Commencement Date (or such shorter period as stated on this Agreement or otherwise agreed with BNS Telecom) and each subsequent period of 12 months following the end of the Connection Commitment Period until cancelled by either party in accordance with clause 12;
“Charges”	means collectively, the Call Charges, Connection Charges and the Line Rental Charge payable by the Customer;
“Commencement Date”	Means the date of this Agreement;
“Commitment Plan Products”	means those Mobile Products, Sim Cards and other Equipment which are included in the Connection Commitment Plan;
“Commitment Plan	means the level of spend in each Spend Measurement Period during

Spend”	the Connection Commitment Period to which the Customer commits as set out on the order and being a minimum of £25 per month per Mobile Product (£300 per Mobile Product in each Spend Measurement Period);
“Conditions”	means the terms and conditions set out below;
“Connection”	means the connection of the Mobile Product and/or Sim Card to the Network;
“Connection Charge”	means the amount to be charged by BNS Telecom for Connection of each Mobile Product to the Network;
“Credit Limit”	means a monthly financial limit on charges incurred by the Customer under this Agreement as detailed in this Agreement or otherwise set out in the Price List;
“Data Protection Legislation”	means the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any amendments or replacements to them;
“Disconnection Notice”	means a notice to disconnect one or more Mobile Products or items of Equipment from the Network;
“Equipment”	means any tangible material (excluding a Sim Card), supplied by BNS Telecom to the Customer or which is connected to the Network on the Customer’s behalf, including but not limited to mobile phones, other mobile products, connecting cables, data cards and other apparatus;
“Equipment Subsidy”	means the subsidy applicable to any Mobile Product and/or item of Equipment for the relevant Minimum Period set out in the Price List;
“Groupworker Service”	means the Service more particularly described in the Price List which uses certain wireless extension technology and that enables certain devices pursuant to the terms of this Agreement to operate as part of the Customer’s wireless virtual private network;
“Invoice Date”	means the date as appears on the invoice raised by BNS Telecom;
“Line Rental Charge”	means the relevant charges for access to the Network and provision of those Services as set out in the Agreement and any additional Services requested by the Customer;
“Minimum Holding”	means the Customer’s minimum holding of Equipment as set out in the Agreement;
“Minimum Period”	means in respect of each Mobile Product or other item of Equipment, the term stated in the Agreement from the Commencement Date or the date of supply of new or upgraded Mobile Products or Equipment, or the date of a port or migration (whichever is the later) that the Customer agrees to take the

	Services in respect of such Mobile Product and/or Equipment, from BNS Telecom;
“Mobile Product”	means the mobile products and applicable Equipment provided by BNS Telecom to the Customer for use on the Network pursuant to this Agreement;
“Network”	means any telecommunications network made available through BNS Telecom;
“Price List”	means the price list applicable to this Agreement as varied by BNS Telecom from time to time;
“Service”	means the telecommunications services including airtime and Groupworker Services provided by BNS Telecom by means of the Network;
“Service Charter”	means BNS Telecom’s charter for the provision of the Services available on-line at www.bnstele.com or upon request;
“Service Provider”	means Vodafone Limited;
“Sim Card”	means the Subscriber Identity Module, which is a unique card containing information which, when used with a Mobile Product, enables access to the Services;
“Spend Assessment Date”	means the date specified by BNS Telecom on this Agreement as the date in each year on which BNS Telecom will measure the Commitment Plan Spend against the actual spend of the Customer;
“Spend Measurement Period”	means a period of 12 months from the Commencement Date and each subsequent period of 12 months from the anniversary of the Commencement Date during the Connection Commitment Period;
“System”	means the cellular GSM UK Network;
“Termination Fee”	means the Connection Commitment Balancing Figure to the end of the Connection Commencement Period in respect of each Mobile Product, item of Equipment or Sim Card disconnected from the Service, BNS Telecom’s administration fee as set out on its website from time to time and if applicable, any additional fees which may arise as a result of charges imposed by the Service Provider;
“Termination Notice”	means the notice to terminate this Agreement served pursuant to clause 11 which should be submitted in accordance with the Termination Notice process and using the Termination Notice Form or as may otherwise be made available to the Customer by the BNS Telecom Customer Services Desk;

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 Agreement”, “the Services” or any payment includes any part of any of them.

2. COMMENCEMENT AND DURATION

- 2.1 This Agreement shall commence on the Commencement Date, being the date that it is signed by both parties subject to appropriate credit checks on the Customer being completed by BNS Telecom. In the event that such credit checks on the Customer reveal adverse entries, this Agreement shall be terminated, at the discretion of BNS Telecom, in accordance with clause 13.3.2.
- 2.2 This Agreement shall continue for the Minimum Period and thereafter until the same is terminated by either party in accordance with clause 13.

3. AGREEMENT FOR THE SALE AND PURCHASE OF EQUIPMENT

- 3.1 BNS Telecom agrees to use its reasonable endeavours to ensure that all Mobile Products and Equipment when delivered is in full working order; and performs in accordance with the manufacturer’s description and specification.
- 3.2 BNS Telecom’s obligation to sell and supply Mobile Products and Equipment shall cease as and from the date of any Termination Notice (although BNS Telecom may thereafter sell and supply Mobile Products and Equipment at its discretion), served by the Customer in accordance with clause 13.
- 3.3 Following the provision of or any upgrade to Mobile Products or Equipment or disconnection of such Mobile Products and Equipment from the Network BNS Telecom shall reserve the right to request the safe return of such Mobile Products and Equipment from the Customer to BNS Telecom Ltd and the Customer shall use all reasonable endeavours to comply with such request. The Customer shall keep the Mobile Products and Equipment in good working order during the period of use by the Customer.
- 3.4 BNS Telecom reserves the right to charge the Customer any applicable replacement or repair charges as set out from time to time in the Price List for any Equipment that is not returned to BNS Telecom in accordance with the provisions of this clause 3.
- 3.5 The Customer shall not resell any Mobile Products and/or Equipment provided to it by BNS Telecom pursuant to this Agreement without the consent of BNS Telecom until title to such Mobile Products and/or Equipment has passed to the Customer in accordance with clause 6.1.
- 3.6 Where the Customer is a sole trader, partnership or another organisation not being a limited company, and the Customer purchases Mobile Products and/or Equipment from BNS Telecom and pays for such Equipment by instalments, the Customer’s purchase of such Mobile Products and/or Equipment may be covered by consumer credit legislation, which may provide the Customer with additional rights, such as the right to cancel the purchase. Where this is relevant, details shall be set out in the Agreement.

4. **AGREEMENT FOR THE SALE AND PURCHASE OF SERVICES**

4.1 The Customer agrees:-

4.1.1 That any telecommunications apparatus (not being the Mobile Products or Equipment) provided by BNS Telecom for the purpose of providing the Service shall remain the property of BNS Telecom 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 BNS Telecom its replacement value. The Customer shall not interfere with or permit any third party to interfere with such telecommunication apparatus.

4.1.2 If any Connection 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 BNS Telecom shall be entitled to charge, claw-back or adjust any payments, tariffs or discounts made or given in respect of that Connection.

4.1.3 The Customer agrees when using SMS Services:

(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 BNS Telecom reserves the right to invoice the Customer for, and the Customer agrees to pay, such charges.

(b) that whilst each Mobile Product or item of Equipment is capable of receiving SMS text messages which may originate from a variety of sources, BNS Telecom has no knowledge of, involvement with, or liability for the specific content of any SMS text messages sent to the Customer's Mobile Products and/or Equipment, which originate from such sources.

4.2 BNS Telecom will endeavour to supply a reliable repair service for Services rendered by BNS Telecom. BNS Telecom will not be responsible for any repairs or Equipment failing to work, when a third party has been responsible for undertaking such work requested by or on behalf of the Customer.

4.3 BNS Telecom will not be responsible for any loss of Service or business, arising from the act or omissions of any third party. BNS Telecom is only the supplier of the Services and will not be responsible for any damages as a result of third party acts or omissions which are beyond the control of BNS Telecom.

4.4 BNS Telecom may amend the tariffs as set out in the Price List and this Agreement by giving written notice to the Customer or in accordance with clause 18.1 and the Customer agrees to such amended charges. Where the change is due to a change in the rates payable by or to BNS Telecom, BNS Telecom will provide as much notice as possible. In all other cases, BNS Telecom will provide four (4) weeks' notice.

5. **SALES ORDER**

5.1 Any quotation made by BNS Telecom is not an offer. Quotations are valid for 30 days only and are subject to withdrawal or revision at any time before acceptance of the Customer's order by BNS Telecom .

- 5.2 Each sales order for Mobile Products and/or Equipment or Services by the Customer is an offer by the Customer to purchase the Mobile Products, Equipment or Services (as applicable) subject to these terms. To order Mobile Products, Equipment or Services, the Customer must comply with and submit BNS Telecom's standard order form.
- 5.3 No order form submitted by the Customer by whatever means is accepted by BNS Telecom until BNS Telecom confirms its written acceptance or (if earlier) BNS Telecom supplies the Mobile Products, Equipment or Services to the Customer.
- 5.4 The Customer must ensure that the terms of any order included on a sales order form (including any specification) are complete and accurate and that BNS Telecom is provided with any necessary information relating to the provision of the Mobile Products, Equipment or Services within sufficient time to enable BNS Telecom duly to perform its obligations under this Agreement.
- 5.5 Notwithstanding clause 5.2, if, at its discretion, BNS Telecom accepts an order for Mobile Products, Equipment or Services placed other than on its standard order form or if BNS Telecom installs a Service or delivers Mobile Products and/or Equipment without having received from the Customer and accepted an order form, the Services, Mobile Products and Equipment shall be provided in accordance with the terms of this Agreement.
- 5.6 At any time after the Commencement Date, the Customer may by means of a sales order request a change or variation to the Services but BNS Telecom shall not be obliged to accept such a change/variation.
- 5.7 The Customer undertakes to use its reasonable endeavours to keep BNS Telecom informed whenever reasonably practicable of likely future sales orders.
- 5.8 BNS Telecom undertakes to use all reasonable endeavours to fulfil the sales order as soon as reasonably practicable and if possible by the requested dates for delivery/ commencement but a failure to do so shall not constitute a breach of this Agreement.
- 5.9 As and from the date of any Termination Notice BNS Telecom shall have no obligation to fulfil any sales order, but may at its discretion choose to do so, and for the avoidance of doubt any Mobile Products, Equipment or Services supplied following receipt of the Termination Notice by BNS Telecom Limited will be charged to the Customer at their full price as appears on the Price List without the benefit of any Equipment Subsidy.

6. DELIVERY AND RISK OF EQUIPMENT

- 6.1 Title to the Mobile Products and Equipment shall remain with BNS Telecom until the later of:-
 - 6.1.1 payment in full by the Customer for such Mobile Products and Equipment; and
 - 6.1.2 the Minimum Period is completed in respect of such Mobile Products and Equipment.
- 6.2 Notwithstanding clause 6.1, risk in the Mobile Products, Equipment and Sim Cards will pass to the Customer upon delivery and the Customer will be liable for any loss or damage of the same from the time when the Mobile Products, Equipment and Sim Cards are delivered to the delivery location specified in the sales order unless the damage is caused by the negligence of BNS Telecom or any third party used by BNS Telecom.

- 6.3 A 20 % re-stocking fee will be charged for non-defective Mobile Products and Equipment returned by the Customer. Returning Mobile Products and Equipment must be accompanied by all accessories and original undamaged outer packaging for a credit note to be issued.
- 6.4 BNS Telecom reserve the right to charge carriage in circumstances where the Customer refuses to accept delivery of goods supplied by BNS Telecom in response to a duly authorised order received from the Customer.
- 6.5 Ownership of the Sim Cards shall at all times remain vested in BNS Telecom or the Service Provider.

7. **SERVICE DELIVERY**

- 7.1 The Customer acknowledges that BNS Telecom is entirely dependant on its suppliers and the Service Provider in relation to the quality of Services, including, line clarity and call interference, 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 affect the provision of Services.
- 7.2 BNS Telecom may, where reasonable from time to time and without notice suspend the Services and provision of customer services in accordance with the Service Charter in any of the following circumstances (provided that it shall use reasonable endeavours to restore the affected Services, as soon as reasonably practicable):
 - 7.2.1 during technical failure, modification or maintenance of the Network and/or Systems by which the Services are provided; and
 - 7.2.2 if the Customer fails to comply with the terms of this Agreement after being given written notice of its failure (including but not limited to failure to pay any sums due) until such failure to comply is remedied; and
 - 7.2.3 if the Customer allows anything to be done which in BNS Telecom's reasonable opinion may seriously effect the operation of the Services, the Network, or the System or attainment of the Service Charter; and
 - 7.2.4 if in the reasonable opinion of BNS Telecom, the Service is being used in a manner prejudicial to the interest of the Customer, BNS Telecom and/or the Service Provider; and
 - 7.2.5 at its discretion BNS Telecom may suspend any Mobile Product, Sim Card and/or item of Equipment from making calls (other than to the emergency services) and disconnect the Mobile Products and/or Equipment if BNS Telecom has reasonable cause to suspect fraudulent use of any payment method, the Sim Card, the Mobile Product or the Equipment itself, or the device is identified as having been stolen.
 - 7.2.6 as a result of an emergency or upon instruction by emergency services or any government or appropriate authority (including the Service Provider) or for the Customer's own security.
- 7.3 During any period of suspension arising from the circumstances detailed in clause 7.2.2 to 7.2.5 inclusive, the Customer shall remain liable for all charges levied in accordance with this Agreement.

- 7.4 If BNS Telecom agrees at its sole discretion to re-instate the Service following a suspension or disconnection, the Customer may be liable for a re-connection fee in accordance with clause 14.1, if the suspension or disconnection is due to the default of the Customer.
- 7.5 The Customer should be aware that the current statutory provisions relating to wireless telegraphy and telecommunications services apply to the use of Services via the Mobile Products, Equipment and Sim Card and in addition the Customer must generally observe the Wireless Telegraphy Acts of 1949 to 1967, the Telegraphy Act 1984, and all other relevant legislation, statutory instruments, and comply with any directions made by Ofcom or such other applicable regulatory body, and the Customer shall:-
- 7.5.1 not use or allow others to use the Service for any improper or immoral or unlawful purpose;
 - 7.5.2 not act or omit to act in any way in which may injure or damage any personal property or the Network or howsoever cause the quality of the Service to be impaired.
 - 7.5.3 comply with any reasonable instructions issued by BNS Telecom which concern the Customer's use of the Service, Mobile Products, Equipment and/or Sim Card or connected matters.
 - 7.5.4 provide BNS Telecom with all such necessary information that BNS Telecom may reasonably require and;
 - 7.5.5 only use the Mobile Products, Equipment and Sim Card supplied under this Agreement, which is approved for use with the Network.
- 7.6 BNS Telecom reserves the right to make any changes to the specification of the Mobile Products, Equipment or Services which are required to conform with any applicable law, regulation or code of conduct or to comply with the Service Provider's instructions.
- 7.7 The Customer acknowledges that provision by BNS Telecom of specific telephone numbers is not guaranteed until connection to the network is complete and the provision of Services has commenced. The Customer acknowledges that it may be necessary for BNS Telecom to change any Mobile Product numbers from time to time where it is necessary to do so by law or to comply with a reasonable request of the Service Provider.

8. DISCONNECTION OF EQUIPMENT

- 8.1 Upon receipt of a Disconnection Notice BNS Telecom will disconnect the relevant Mobile Products and Equipment from the Service and/or the Network (as applicable) in accordance with the Disconnection Notice upon the expiry of 30 days from the date of receipt of the Disconnection Notice. The Agreement will remain in full force and effect in relation to all other Mobile Products and Equipment and in relation to the provision of Services to such other Mobile Products and Equipment.
- 8.2 In the event that the Customer serves a Disconnection Notice on BNS Telecom to take effect (and resulting in Mobile Product and/or Equipment disconnections) prior to the expiry of the Minimum Period for the particular Mobile Product and/or Equipment concerned, the Customer will pay to BNS Telecom the applicable Termination Fee in accordance with clause 13.4 in respect of such Mobile Product and/or disconnected Equipment.

8.3 In the event of the Network providing call data after the disconnection of any Mobile Product or Equipment the Customer will be liable for all outstanding charges payable by BNS Telecom to the Service Provider in respect of that Mobile Product or Equipment at any time after the disconnection date.

9. **CHARGES AND PAYMENT TERMS**

9.1 The charges and tariffs payable by the Customer to BNS Telecom for Mobile Products, Equipment and Services are as set out in the Agreement or Price List as applicable.

9.2 The charges are exclusive of Value Added Tax.

9.3 Call charges are payable monthly in arrears and subscription charges (including any applicable subscription charge for mobile extension) are payable monthly in advance.

9.4 The charges detailed in the Agreement are available subject to the Customer achieving the Minimum Holding within three months of the Commencement Date and maintaining the Minimum Holding for the duration of this Agreement.

9.5 Where the number of items of Mobile Products or other Equipment connected to the Services falls below the Minimum Holding for a consecutive period of three months, BNS Telecom reserve the right to amend the charges accordingly.

9.6 The Service Provider retains the right to each Customer Connection as detailed in this Agreement and has expressly allowed BNS Telecom to invoice the Customer on the Service Provider's behalf. The Service Provider reserves the right to assume responsibility for billing the Customer at the rates agreed by BNS Telecom when exercising its rights as detailed in an agreement between BNS Telecom and the Service Provider or at the request of the relevant network provider.

9.7 Payment for all Services will be as follows:-

9.7.1 Direct Debit payment for all charges payable under this Agreement is compulsory unless otherwise agreed in writing by BNS Telecom;

9.7.2 Direct Debit payments will be collected within 14 days of the invoice date unless agreed otherwise;

9.7.3 additional charges for non-Direct Debit payment is £2.50 + VAT per Mobile Product per month until a Direct Debit mandate is fully operational;

9.7.4 should payment by Direct Debit be stopped due to the actions or inactions of the Customer, a charge of £2 + 2% of the value of the corresponding invoice will be charged;

9.7.5 an additional 4% surcharge, based on the invoice value, is charged for any credit card payment;

9.7.6 if the Customer fails to pay any part of the aforesaid charges within 30 days from the invoice date BNS Telecom reserves the right to charge interest at the highest rates permitted by law calculated from the 30th day until the date payment is made.

9.8 The Customer shall not be entitled to offset any sums that it owes to BNS Telecom under this Agreement.

- 9.9 Without prejudice to any other rights of BNS Telecom, in the event of the Customer failing to pay any sums due to BNS Telecom on time or at all, BNS Telecom shall be entitled to:
- 9.9.1 reclaim from the Customer all costs and expenses (including reasonable legal costs) incurred in the collection of overdue amounts from the Customer; and
 - 9.9.2 suspend the provision of the Service, and/or disconnect Mobile Products and Equipment from Service, until such time that all payments due (including all interest) has been paid and satisfied in full.
- 9.10 BNS Telecom reserves the right to review any Credit Limit applied to this Agreement.
- 9.11 BNS Telecom may require from the Customer a deposit as security for the payment of charges. The Customer may request the return of any deposit paid at the expiry of the Minimum Period but the decision to return any deposit prior to termination of the Agreement will be at the discretion of BNS Telecom. BNS Telecom reserves the right to set off any deposit against the charges.
- 9.12 If the parties agree that payments by the Customer to BNS Telecom are to be made by credit card and if payment of charges are not made on the due date, BNS Telecom is authorised to debit the Customer's nominated credit card company with all charges due and payable to BNS Telecom.
- 9.13 BNS Telecom reserve the right to withhold or withdraw Equipment Subsidy on any invoices that remain unpaid.
- 9.14 The Customer agrees to pay the following charges from time to time, where relevant:-
- 9.14.1 For the purchase of any hardware, or airtime there is a £5.00 minimum order charge.
 - 9.14.2 A charge of £2.50 per invoice is chargeable if the Customer requests a copy invoice when the original has already been sent.
 - 9.14.3 Carriage charges are also chargeable, please refer to the Price List available on BNS Telecom's website or from the BNS Telecom Customer Services. Prices are subject to change.

10. **OBLIGATIONS OF THE CUSTOMER**

- 10.1 The Customer undertakes that throughout the term of this Agreement it shall:-
- 10.1.1 not permit or suffer its employees to act or omit to act in any way, 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;
 - 10.1.2 not use or allow its employees to use the Mobile Product and/or Equipment or have access to the Service or Network for any improper, immoral or unlawful purpose;
 - 10.1.3 comply with all statutory requirements in relation to the use of the Mobile Products, Equipment and the Service;
 - 10.1.4 provide BNS Telecom with such information as BNS Telecom reasonably request in connection with this Agreement;

- 10.1.5 not use the Mobile Products, Equipment and the Services or any purpose other than that for which it was designed or intended, or for self provision of a wireless telecommunications service; and
 - 10.1.6 notify BNS Telecom immediately (and to confirm in writing) on becoming aware that any Mobile Product, Sim Card or Equipment has been lost or stolen or that any person is making improper or illegal use of the Mobile Product, Sim Card or Equipment or the Services;
 - 10.1.7 be responsible for any charges incurred as a result of unauthorised use of any Mobile Product, Sim Card or Equipment, or the information contained within a Sim Card, up until such point as BNS Telecom is notified of such unauthorised use;
 - 10.1.8 not damage or tamper with the Mobile Products, Equipment or Sim Card so as to invalidate any warranty provided by the Mobile Product or Equipment manufacturer and to pay the standard charges levied by BNS Telecom from time to time applicable to repair work on Mobile Products or Equipment which is outside (in scope or time) the warranty provided by the manufacturer of the Mobile Products or Equipment; and
 - 10.1.9 not damage or tamper with any software supplied with the Mobile Products, Sim Cards or Equipment so as to invalidate any warranty provided by the supplier of the same; and;
 - 10.1.10 use the Mobile Products, Sim Cards and Equipment and any software supplied with them in accordance with any user guide or other reasonable instructions of any manufacturer or supplier of the same or reasonable instruction of BNS Telecom and not copy (save as permitted by law) reverse engineer or modify the software in any way.
- 10.2 This Agreement 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 BNS Telecom for all claims, losses and expenses arising out of breach of the terms of this Agreement by any subsidiary or group companies.

11. **LIMITATION OF LIABILITY**

The Customer's attention is particularly drawn to this clause.

- 11.1 The following sets out the entire financial liability of BNS Telecom (including any liability for the acts or omissions of its employees, agents or subcontractors) to the Customer in respect of any breach of this Agreement, any representation, statement or act or omission (including negligence) arising under or in connection with the Agreement in respect of any contemplated performance or lack of performance.
- 11.2 BNS Telecom shall not be liable to the Customer or be deemed to be in breach of the Agreement by reason of any delay in performing or failure to perform any of its obligations if the delay or failure was due to any cause beyond the reasonable control of BNS Telecom.
- 11.3 BNS Telecom 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 Mobile Products or Equipment supplied by BNS Telecom to the Customer. However, BNS Telecom is not the

service provider in respect of the Services and does not manufacture the Mobile Products or Equipment and therefore, save for as provided in clause 11.4 below, all warranties, conditions or other terms implied by statute, common law, trade usage or otherwise are excluded to the fullest extent permitted by law.

- 11.4 Without prejudice to clause 11.3 above, defects in Mobile Products and Equipment supplied by BNS Telecom to the Customer which do not arise as a result of the Customer's acts or omissions and occur within the manufacturer's warranty period, and always provided that the Customer returns such Equipment to BNS Telecom as soon as practicable after noticing such fault, BNS Telecom shall return such Mobile Products and Equipment to the manufacturer or Service Provider (as applicable). The manufacturer or Service Provider shall (at their option) repair or replace such Mobile Products and Equipment without charge. Where Mobile Products or Equipment become faulty after the expiry of the manufacturer's warranty period, BNS Telecom shall arrange for such Mobile Products and Equipment to be returned to the manufacturer or Service Provider to be repaired or replaced at the Customer's cost, to be charged at the manufacturer or Service Provider's standard list price for such repair or replacement.
- 11.5 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 the provisions of this clause 11.
- 11.6 Nothing in this Agreement excludes or omits BNS Telecom's liability for death or personal injury caused by BNS Telecom's negligence or for fraudulent misrepresentation.
- 11.7 Subject to clauses 11.3 and 11.6:-
- 11.7.1 BNS Telecom shall not be liable to the Customer for any loss of profit, loss of production, financial loss, deletion of goodwill or any indirect loss, damage, costs or expenses whatsoever which arise out of or in connection with this Agreement, its contemplated performance or lack of performance or any suspension of Services in accordance with clause 9; and
- 11.7.2 subject to clause 11.7.1, BNS Telecom's total liability and contract (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 Agreement shall be limited to the charges incurred by the Customer in respect of Services and Equipment provided by BNS Telecom in any 12 month period.

12. **CONNECTION COMMITMENT**

- 12.1 The Customer shall enter into a Connection Commitment Plan with BNS Telecom.
- 12.2 On application by the Customer to enter into a Connection Commitment Plan, and acceptance by BNS Telecom of the specific Connection Commitment Plan option requested, BNS Telecom shall (subject to the Commitment Plan Spend as measured on the Spend Assessment Date), apply the Connection Commitment Benefits to the Charges incurred by the Customer during each Spend Measurement Period in respect of the Commitment Plan Products.
- 12.3 The Customer may, during the Connection Commitment Period, request that additional Mobile Products be included as part of the Connection Commitment Plan and BNS Telecom shall amend the Commitment Plan Products and Commitment Plan Spend accordingly. Any

Mobile Product, Sim Card or other Equipment requested by the Customer to be withdrawn from the Commitment Plan will become subject to the payment by the Customer of the Connection Commitment Balancing Figure in accordance with clause 12.5 provided always that the obligations of the Customer under the Connection Commitment Plan in respect of any remaining Mobile Products, Sim Cards and Equipment shall continue unless terminated in accordance with clause 12.5.

- 12.4 On the Spend Assessment Date, BNS Telecom 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 Connection Commitment Plan, the Customer shall pay the Connection Commitment Balancing Figure.
- 12.5 Where the Connection Commitment Plan is cancelled by the Customer prior to the end of the Connection Commitment Period, the Customer agrees to pay to BNS Telecom the Connection Commitment Balancing Figure or Termination Fee as applicable in respect of each full or part (on a pro-rata basis) Spend Measurement Period, remaining in the Connection Commitment Period, and acknowledges that any Connection Commitment Benefits will be terminated.
- 12.6 The Connection 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 BNS Telecom in such an event.

13. **TERMINATION**

- 13.1 A Termination Notice may be given by either party if the other party is in material breach which is either not capable of remedy or, and the breach is capable of remedy the party in breach shall have failed to remedy the breach within thirty (30) days of written notice specifying the breach and requiring its remedy.
- 13.2 In addition, a Termination Notice may be given by BNS Telecom at any time on the grounds that:
 - 13.2.1 the Customer has persistently failed to pay monies properly due to BNS Telecom under this Agreement; or
 - 13.2.2 the Customer is otherwise materially or persistently in breach of the Agreement; or
 - 13.2.3 bankruptcy or insolvency proceedings are brought against the Customer, or if an agreement with creditors is made, or a receiver or administrator is appointed over any of the Customer's assets, or the Customer goes into liquidation; or
 - 13.2.4 the Service becomes unavailable due to the termination of any of BNS Telecom's arrangements with the Service Provider.
- 13.3 Without prejudice to any other claims or remedies which BNS Telecom may have against the Customer, BNS Telecom may terminate this Agreement by giving notice to the Customer with immediate effect in any of the following circumstances:
 - 13.3.1 if the Customer does or allows to be done anything which in BNS Telecom's opinion will or may have a serious effect on the operation of the Services.
 - 13.3.2 if the Customer fails to meet a reasonable standard of credit worthiness; or
 - 13.3.3 if the Customer provides false or misleading information to BNS Telecom.

13.4 In the event that the Customer wishes to terminate the Agreement during the Minimum Period (other than in accordance with clause 13.1) and subject to BNS Telecom and the Service Provider's approval of such early termination, the Customer shall pay to BNS Telecom any applicable Termination Fee, which takes into account the following:-

13.4.1 that BNS Telecom's standard line rental until the end of the specified term will be charged for each Mobile Product number operated by or on behalf of the Customer;

13.4.2 a reasonable administration fee will be charged;

13.4.3 any Mobile Products or Equipment supplied free of charge subject to Equipment Subsidy or as part of a discount package will be the property of BNS Telecom and will be returned by the Customer or invoiced to the Customer at BNS Telecom's Price List at the time of early termination; and

13.4.4 any commission paid or line rental discount or Equipment Subsidy provided as part of a discount package may be subject to claw back.

14. **CONSEQUENCES OF TERMINATION OR DISCONNECTION**

14.1 Upon the termination of this Agreement or disconnection of a relevant Mobile Product, Sim Card or item of Equipment BNS Telecom shall disconnect the Mobile Product and Sim Card from the System. If BNS Telecom, at their sole discretion, agree to reconnect the Customer following such disconnection and such disconnection arises as a result of circumstances set out in Clauses 13.1, 13.2.1, 13.2.2 or 13.2.3 the Customer shall be liable for a reconnection charge equal to the Connection Charge or a minimum of thirty pounds sterling (£30) in respect of each connection and this Agreement shall be deemed to continue.

14.2 On termination of this Agreement or disconnection of a relevant Mobile Product, Sim Card or item of Equipment, the Customer shall be deemed to have cancelled any Connection Commitment Plan in place in respect of such Mobile Product, Sim Card or item of Equipment and the provisions of clause 12.5 shall apply to such cancellation.

14.3 On termination of this Agreement or disconnection of a relevant Mobile Product, Sim Card or item of Equipment BNS Telecom reserves the right to charge any applicable termination, administration or porting fee in accordance with current Ofcom (or any regulatory body which succeeds Ofcom) regulations when the Agreement ceases and the numbers are moved to another service provider.

14.4 BNS Telecom reserves the right to add to any sums due to it from the Customer on termination, the reasonable costs incurred in recovering any outstanding debt due from the Customer.

14.5 On termination of this Agreement or disconnection of a relevant Mobile Product, Sim Card or item of Equipment, the Customer shall immediately cease use of any software provided to the Customer by BNS Telecom (except where such software is embedded in such Mobile Products or Equipment to which the Customer has title). Within 5 days of such termination or disconnection the Customer shall return, delete or destroy all copies of such software and provide written confirmation to BNS Telecom that such copies have been returned, deleted or destroyed.

15. **CONFIDENTIALITY & DATA PROTECTION**

- 15.1 The parties will each keep confidential any proprietary information and/or any information obtained from the other in connection with this Agreement (including for the avoidance of doubt details of the Customer's employees) which is reasonably identified by either party as commercially confidential or which is obviously confidential in nature and neither will divulge the same to any third party except such of its employees contractors and agents as may need to know the same for the purpose of the implementation of this Agreement and who agree to be bound by the provisions of this clause without consent in writing of the other.
- 15.2 The Customer acknowledges that details of the Customer's or its employees' (as applicable) name, address, telephone and/or Mobile Product numbers and payment record may be submitted to a credit reference agency and to the Service Provider where this is necessary for the performance of this Agreement or to ensure continuation of the Services following expiry or termination of this Agreement for whatever reason.
- 15.3 BNS Telecom operates in accordance with the Data Protection Legislation. The Customer agrees that its details, or details of those using the Mobile Products and Equipment of the Customer, may be used by BNS Telecom for marketing purposes and to inform the Customer and such users from time to time about other wireless telecommunication services or associated technologies, in accordance with the Data Protection Legislation. If the Customer does not want its details, or those of its users to be used in this way then the Customer should contact BNS Telecom at BNS Telecom Ltd, Telecom House, Princess Way, Low Prudhoe, Northumberland, NE42 6NJ.

16. **TRANSFER OF LIABILITY & ASSIGNMENT**

- 16.1 BNS Telecom may at any time assign its rights under this Agreement to the Service Provider and may subcontract the performance of all or part of this Agreement to the Service Provider.
- 16.2 BNS Telecom's acceptance of payment from another person other than the Customer does not imply that BNS Telecom has waived any of its rights in respect of the obligations of the Customer.
- 16.3 The Customer shall not assign or transfer the benefit of this Agreement to any third party without the prior written consent of BNS Telecom, such consent not to be unreasonably withheld or delayed.
- 16.4 The Customer cannot transfer its obligations to pay charges under this Agreement without BNS Telecom's express consent. Any proposed transfer should be notified to BNS Telecom in advance. If a new user of the Mobile Products or Sim Card is accepted by BNS Telecom and enters into a new Agreement, satisfactory to BNS Telecom, then it is BNS Telecom's policy to release the existing Customer from liability for future charges.

17. **DISPUTE RESOLUTION**

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

18. **VARIATIONS**

- 18.1 BNS Telecom may vary all or any of its charges by publishing such variations in its Price Lists. Such variations shall have immediate effect under this Agreement unless otherwise

stipulated therein. BNS Telecom may vary the conditions of this Agreement to take account of new legislation, statutory instrument, government regulations or licenses or similar matters provided that the Customer is notified of any such variances in writing or by publishing such variation at BNS Telecom 's principal place of business.

18.2 It is the policy of BNS Telecom to continually review the charges it makes, its Service Charter and the terms upon which it contracts with Customers in order to maintain a competitive advantage over other providers of similar services and BNS Telecom accordingly reserves the right to vary its processes and tariffs as set out in its Price List, its Service Charter and these terms from time to time in accordance with this policy.

19. **SEVERANCE**

If any of the provisions of this Agreement is or becomes invalid, illegal or unenforceable, the validity or enforceability of the remaining provisions shall not in any way be affected or impaired. In any such circumstances the parties shall negotiate in good faith in order to agree the terms of a mutually satisfactory provision, achieving as nearly as possible the same commercial effect, to be substituted for the provision, which is found to be invalid, illegal or unenforceable.

20. **WAVIER**

The failure or delay by either party to this Agreement to exercise or enforce any right, power or remedy under this Agreement shall not be deemed to operate as a wavier of any such right, power or remedy; nor shall any single or partial exercise by any party operate so as to bar the exercise or enforcement thereof or of any right, power or remedy on any later occasion.

21. **NO THIRD PARTY RIGHTS**

This Agreement 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.

22. **OPERATIVE LAW**

22.1 This agreement shall be governed by English law, and the parties submit to the exclusive jurisdiction of the English courts.

22.2 Clause 22.1 is for the benefit of BNS Telecom only and as a result, BNS Telecom shall not be prevented from taking proceedings in any other courts with jurisdiction, whether concurrently or not.

23. **NOTICES**

23.1 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.

23.2 Notices addressed to BNS Telecom shall be marked for the attention of the Company Secretary.

23.3 Notices shall be delivered personally or sent by first class post or sent by facsimile transmission.

23.4 A notice is deemed to have been received:-

- 23.4.1 if delivered personally, at the time of delivery;
- 23.4.2 if sent by prepaid first class post, on the second working day after posting (exclusive of the day of posting);
- 23.4.3 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.

24. **ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, representation, proposal understanding and agreements whether written or oral relating to the matter of this Agreement.