

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 made available on the Website;

"Agreement" means the agreement for the provision of the Services, including the details of the Customer and the Customer service requirements completed by (or on behalf of) the Customer and accepted by the Company to order the Services and Equipment subject to these Conditions;

"Call Recording" means the service made available by the Company (at the request of the Customer) to record all calls made by or to the Customer using the Network, and subject to payment of such additional charges as identified in this Agreement or the Price Guide as applicable;

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

"Commitment Period" means the period set out in the Agreement from the Service Commencement Date and each subsequent period of 12 months following the end of the Commitment Period until cancelled by either party in accordance with clause 20;

"Company" means BNS Telecom Limited or such associated or subsidiary company forming part of the BNS Telecom group of companies (registered in England and Wales under number 3228233);

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

"Customer Equipment" means any equipment 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 provision of the Services including all mobile telephones, sim cards, handsets, docking stations, switches, other mobile products, Software, routers, network cabling or other telecommunications, infrastructure and equipment and connected to (or operating across), the Network;

"Leasing Company" means the company identified in the leasing documents, which has obtained the Equipment on behalf of the Customer and with whom the Customer has entered into a leasing agreement for the provision of the Equipment;

"Loyalty Points Scheme" means the Customer loyalty scheme operated by the Company that allows Customers to accrue "points" through their use of the Services using identified call tariffs;

"Minimum Period" means a period of eighty seven (87) months (or such period as stated in the Agreement), from the Service Commencement Date;

"Network" means the telecommunications system operated and maintained by (or on behalf of) the Company or its associated Service Providers;

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

"Product Support" means the level of support to be provided by the Company in respect of the Equipment as specified in the Agreement or as otherwise requested by the Customer during the period of the Agreement at the price specified in the Price Guide;

"Remote Business Support" means first line telephone and remote functionality and diagnostic support (including where practicable remote fault resolution), between 0900 and 1700, Monday to Friday (excluding public holidays), and as more particularly detailed on the Website. Remote Business Support does not cover Equipment, Customer Equipment or attendance at Customer premises.

"Seat" means each individual user or user terminal, to which the Services will be provided;

"Services" means the range of services as set out in the Agreement (or subsequently included), which the Customer requests from the Company;

"Service Care" means the standard of service care to be provided by the Company in respect of the repair or reinstatement of connectivity or Equipment in respect of any failure of or faults to the same, as specified in the Agreement, or as otherwise requested by the Customer during the period of the Agreement at the price specified in the Price Guide;

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

(a) The date each Service is available for use by the Customer; or

(b) The date the Customer first uses a Service-;

"Service Provider" such third party service providers and networks made available by the Company in the provision of the Services;

"Software" means such software as may be provided by (or on behalf of) the Company to the Customer from time to time in relation to the provision of the Services and used by the Customer in accordance with the Software Licence;

"Software Licence" means the licence agreement to be entered into by the Customer granting certain rights to use the Software;

"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.bnspc.com.

1.2 In these Conditions:-

1.2.1 a "person" includes any person, partnership, firm, company, body corporate or organisation (whether or not having separate legal personality); and

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

2. COMMENCEMENT AND DURATION

2.1 The Agreement shall commence on the Service Commencement Date.

2.2 The Agreement shall continue for the Minimum Period and then until terminated in accordance with clause 20.1

3. BASIS OF AGREEMENT

3.1 The Company shall sell and the Customer shall purchase the Services set out in the Agreement subject to these Conditions, which supersede any other terms and which govern the Agreement 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 this Agreement is of no effect unless agreed in writing by a director of the Company.

3.3 This Agreement constitutes the entire agreement between the Customer and the 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 obtained as part of a business to business transaction and that the Consumer Protection (Distance Selling) Regulations 2000 do not apply.

3.7 The Customer acknowledges and agrees (on behalf of itself and its directors and officers), that personal data (including name and address details), may be submitted to a credit reference agency and such personal data will be processed by and on behalf of the Company.

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 Agreement submitted by the Customer by whatever means is accepted by the Company until the Customer 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 in the Agreement (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 Agreement.

4.4 The Company 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 Where the Customer has requested that its existing telephone numbers or services be ported to the Company's Network, the Customer shall be responsible for obtaining a live Port Authorisation Code (PAC) and/or a Migration Access Code (MAC) from its existing supplier. The Customer is responsible for terminating its contract with its existing supplier and for the payment of any termination fee, where applicable.

4.7 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 may 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.

4.8 The Customer acknowledges and agrees that the Services and Equipment are not suitable for use in routing building alarm calls to alarm maintenance companies, availability of emergency facilities or volume telemarketing services and the Customer is responsible for ensuring that all such services are maintained through or otherwise transferred to a separate line or network connection, and will be responsible for any costs incurred by the Company arising from a failure to operate or transfer such services to a separate line or network connection.

4.9 Where the provision and operation of the Services requires a broadband connection and the Customer chooses to obtain this service from the Company, the Customer acknowledges that this service will be subject to additional contract terms.

4.10 Where the Customer has requested Call Recording as part of the Services, the Customer agrees:

4.10.1 to pay all charges applicable to us by the Customer of this Service element;

4.10.2 to notify all participants of calls to which Call Recording is being applied, that the calls are being recorded, and the reasons for such recording;

4.10.3 to comply with all regulations and legislation applicable to use of Call Recording, including (but not limited to), the Regulation of Investigatory Powers Act 2000;

4.11 The Customer acknowledges that recordings made by the Company at the request of the Customer through Call Recording will need to be retrieved by the Customer from the Website on a regular basis and at least every 30 (thirty) days. The Customer further acknowledges that the obligation to retain recordings made available to the Customer through Call Recording remains at all times with the Customer and that the Company will only make Call Recording recordings available to the Customer for a period of 60 (sixty) days from the date a call was made or received by the Customer.

5. PROVISION OF EQUIPMENT AND SOFTWARE

5.1 The Company's obligation to provide Equipment shall cease as and from the date of any notice to terminate the Agreement (although the Company may thereafter provide 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 sell or otherwise transfer any Equipment provided to it by the Company pursuant to this Agreement without the consent of the Company or the Leasing Company (where applicable).

5.5 The Customer must keep the Equipment in good repair and the Customer shall be responsible for any loss or damage to the Equipment, whether obtained directly from the Company through a leasing arrangement or via a leasing arrangement with the Leasing Company. In the event of any loss, damage, fault or failure in the Equipment following the Service Commencement Date, the Customer shall be responsible for its replacement or repair and shall be liable to pay the charges to the Company in respect of the Equipment and accordingly, the Customer is advised to purchase a suitable Service Care and/or Product Support package in respect of the Equipment.

5.6 The Company may, at its discretion, replace any mobile handsets covered by the Agreement every two years with the then equivalent mobile handset in terms of features and performance, but shall not be obliged to do so.

5.7 Where the Company provides Software for use by the Customer in connection with the Services, then subject to clause 5.8 and the Software Licence, the Company grants to the Customer a non-exclusive, non-transferable, terminable licence to use the Software in connection with the Services. The Customer may not sell, transfer, assign or sublicense the Software to any third party nor copy or decompile the Software, and shall use the Software at all times in accordance with the Software Licence.

5.8 The Customer acknowledges that where the Company does not own all rights in the Software, the Customer's use of the Software is conditional upon the Company obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle the Company to licence such rights to the Customer.

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 reconfigure such Customer Equipment, or may supply such Equipment as is necessary in order to facilitate connection to the Network. The Customer shall allow the Company such access to the Customer Equipment as the Company shall require in order to carry out any necessary configuration work.

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 Services or may result in a Service or Services becoming unavailable.

7. CUSTOMER'S OBLIGATIONS

7.1 The Customer undertakes that throughout the term of this Agreement it shall comply with the Acceptable Use Policy and the reasonable instructions of the Company, and in particular shall:

7.1.1 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 Services 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 Services or Network for any improper, immoral or unlawful purpose;

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

- 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;
- 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 or 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 and the Company has acknowledged receipt of such notification to the Customer;
- 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 or Product Support plan;
- 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;
- 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, Software Licence 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; and
- 7.1.10** process any personal data captured during the use of the Services at all times in accordance with the Data Protection Act 1998.
- 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 (as applicable) and the Customer shall be responsible for its proper use. If any part of such Equipment is lost or destroyed, the Customer shall pay the Company its replacement value. The Customer shall not interfere with or permit any third party to interfere with such Equipment.
- 7.2.2** if any element of the Services 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 element of the Services.
- 7.2.3** 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 Agreement. The Company may from time to time vary the technical and/or operational procedures for use of the Services.
- 8. CANCELLATION AND LEAVY**
- 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. For the avoidance of doubt, unless otherwise agreed by the Company in writing any Deposit paid by the Customer, is non-refundable in the event of cancellation by the Customer.
- 8.2** If the Customer extends or delays the proper operation of the Agreement 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 Agreement 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 equipment, power failure or breakdown in equipment). In such circumstances, the Customer may also give written notice to cancel the Agreement 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 Agreement for any reason then this shall not entitle the Customer to terminate the provision of any other Services that are the subject of the Agreement.
- 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 provision of Remote Business Support is included in the charges payable by the Customer. Any enhanced Service Care and/or Product Support package requested by the Customer will be subject to the payment of additional charges as identified in the Price Guide.
- 9.3** For the purpose of calculating the charges, the Company shall round up the time spent on each call to the nearest minute.
- 9.4** The Customer acknowledges and agrees to the provision of invoices electronically by the Company in respect of the Services. The provision of paper invoices will be subject to an additional charge per number or Seat as applicable per invoice period (as identified in the Price Guide), and the Customer shall be liable to pay a separate or further charge in respect of any copy invoice it requests (in either electronic or paper format).
- 9.5** All charges are exclusive of any applicable VAT.
- 9.6** 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 Agreement pursuant to clause 20.
- 9.7** Without prejudice to clause 9.6 the Company may increase or implement new charges by giving the Customer 14 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 of implementation of new charges 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. In addition, the Company may increase the charges in accordance with any corresponding increase in the charges payable by the Company to Service Providers, on written notice to the Customer.
- 9.8** 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 Agreement remains in force.
- 9.10** The Company may at any time request a further deposit or director guarantee from the Customer as security for payment for the Services by the Customer and may suspend or terminate the Agreement without liability if the Customer fails to provide such deposit or director guarantee on request.
- 10. PAYMENT OF THE CHARGES**
- 10.1** Upon signature of the Agreement by the Customer, the Customer shall pay a non-refundable deposit to the Company equivalent to the charges payable by the Customer for the provision of Services by the Company for a period of three months (Deposit).
- 10.2** Where the Company (at the request of the Customer), undertakes installation of the Equipment and commences the provision of Services prior to finalisation of any leasing arrangements with the Leasing Company (or the Company as applicable), the Customer agrees to make payment for Services to the Company as identified in the Agreement (or the Price Guide as applicable), and acknowledges that the Service Commencement Date (for the purposes of calculation of the Minimum Period), will be deferred until such leasing arrangements have been completed.
- 10.3** Provided always that this Agreement is not terminated by the Customer prior to the end of the Minimum Period (and no other charges remain outstanding), the Company shall apply the Deposit received from the Customer against the charges payable by the Customer in the final three months of the Minimum Period where leasing arrangements have been put in place with the Company.
- 10.4** Payment of the charges for the Equipment (unless otherwise stated in the Agreement 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 periodic payment agreed by the Customer with the Leasing Company or the Company as applicable) and payment of the charges for Services (unless otherwise stated in the Agreement 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 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 in accordance with clause 9.4 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 per invoice as identified in the Price Guide. 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.
- 10.5** 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 Agreement (and following payment of all sums outstanding to the Company), 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 Agreement 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 Agreement without notice.
- 10.6** Payment by the Customer or on its behalf shall be made without any deduction or set off.
- 10.7** 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.
- 10.8** In addition to the Company's rights in clause 10.7, any default in payment will be subject to a late penalty fee per invoice (as detailed in the Price Guide), which will be included with the Customer's next invoice for charges.
- 10.9** Despite any provision allowing credit, payment of all charges payable under the Agreement (including all accrued charges and cancellation payments), is due and payable to the Company immediately upon cancellation or termination of the Agreement.
- 10.10** 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:-
- 10.10.1** suspend performance of the Services to the Customer in accordance with clause 11, or cancel the Agreement in accordance with clause 20.2.2; and/or
- 10.10.2** appropriate any payment made by the Customer to such of the Equipment or Services (or the goods or services supplied under any other agreement between the Customer and the Company) as the Company thinks fit.
- 10.11** The Company is entitled to set off sums owed by the Company to the Customer against sums owed by the Customer to the Company.
- 10.12** 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 suppliers and (where relevant) the Service Providers in relation to the quality of Services, including, line clarity and call interference, availability of the Network or other networks 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 and/or electromagnetic interference that may from time to time adversely affect the provision of Services. The Company shall not be liable to the Customer or any third party in the event of a failure of the Services arising from a failure of any network or connection infrastructure (including Customer Equipment).
- 11.2** Where a Customer requests additional Services, these will be subject to the payment of additional charges to the Company at the prices (and subject to any applicable additional contract terms), identified in the Price Guide or subsequent order.
- 11.3** The Company may, where reasonable from time to time and without notice suspend the Services and the provision of customer services in order to maintain the Network and seek to ensure the ongoing availability of the Services, or otherwise arising from a failure by the Customer to comply with the Acceptable Use Policy or this Agreement.
- 11.4** 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 Agreement.
- 11.5** Where, in accordance with the Agreement the Company suspends performance of or access to the Services pending compliance by the Customer with the Agreement, such suspension may result in one or more of the following actions:-
- 11.5.1** call-barring may be implemented, restricting calls to and/or from the Customer's system;
- 11.5.2** lines, Equipment and Services may be designated "temporarily out of service"; and
- 11.5.3** disconnection of the Services and the Customer's ability to access the Network.
- 11.6** The Customer acknowledges that following a suspension of Services resulting in disconnection under clause 11.5, 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. CALL PACKAGES**
- 12.1** The call package bundle set out in the Agreement comprises part of the Services. As part of the call package chosen, the Customer will receive the call package minutes set out in the Agreement.
- 12.2** The level of call package minutes comprised in the Customer's call package shall be applied in each month against the duration of all relevant calls made across the Network by (or on behalf of), the Customer. Any call time exceeding the call package minutes or arising from Services outside the call package, will be charged at the BT Standard Rate, or such other rate identified in the Agreement.
- 12.3** Call package minutes can be utilised by the Customer against calls to UK local geographic, UK national geographic and (where included as part of the Customer's call package), selected UK mobile destinations and selected international destinations. The Customer must comply with the Acceptable Use Policy when using the call package minutes.
- 13. LOYALTY POINTS SCHEME**
- 13.1** The Company operates the Loyalty Points Scheme for the benefit of Customers, subject to the Customer being registered on specific Service tariffs made available by the Company.
- 13.2** The Customer acknowledges that the operation of the Loyalty Points Scheme is subject to additional terms and conditions, and made available by the Company prior to registration and on the Website.
- 13.3** The Customer further acknowledges that where goods or vouchers are made available to Customer employees, as the employer, the reporting and payment of income tax, National Insurance Contributions or other similar payments arising as a result of the provision of such goods and vouchers will remain at all times the responsibility of 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 or provision of Services by the requested service date or otherwise.
- 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 installation of Services of cabling and/or wiring already installed at the Customer's 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 legislative and regulatory standards and specifications and such other standards and specifications as may be 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. 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 and availability of the Services shall be deemed to have occurred.
- 14.4** Where the Company agrees to implement the immediate transfer to the Company of responsibility for existing connectivity, the Customer agrees to indemnify the Company against all costs incurred by (or on behalf of) the Company in relation to such transfer, pending provision of the Services, and subject always to clause 14.1.
- 15. SERVICE CARE AND PRODUCT SUPPORT**
- 15.1** The Company shall provide the level of Service Care and/or Product Support set out in the Agreement throughout the Minimum Period for the charges set out in the Agreement.
- 15.2** The Company shall supply the Service Care and/or Product Support to the Customer subject to these Conditions. The Customer acknowledges that the charges in respect of Service Care and Product Support do not include work necessary to repair or reinstate the Equipment where loss or damage to the Equipment is caused by:-
- 15.1.1** the negligence, misuse, attempted or actual repair, unauthorised adjustment of or tampering with the Equipment by the Customer or any third party;
- 15.2.1** any event or circumstance beyond the Company's reasonable control;

- 15.2.2** accidental or wilful disconnection of the Equipment;
- 15.2.3** faults of a minor or intermittent nature which do not significantly affect the operation of the Equipment;
- 15.2.4** fault in, or other problem associated with, any telecommunications equipment not forming part of the Equipment; and
- 15.2.5** the Customer's failure to comply with any provisions of these Conditions.
- 15.3** 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.
- 15.4** The Customer shall promptly notify the Company's customer service centre by telephone or e-mail of any failure of or fault in the Equipment.
- 15.5** If a fault in the Services is reported by the Customer, in accordance with the applicable Service Care or Product Support plan, and:-
- 15.5.1** the Company make arrangements to visit the Customer's site and are unable to obtain the necessary access to the site; or
- 15.5.2** 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
- 15.5.3** the Company agrees to attend a site outside the normal working hours appropriate to the applicable Service Care or Product Support 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 for the lines or Seats 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 Agreement 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. RISK AND PROPERTY**
- 17.1** The Company may refer the Customer, where appropriate, to the Leasing Company to arrange a leasing agreement for 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.
- 17.2** In the event that the Leasing Company is unable to offer a lease arrangement to the Customer, then the Company may at its discretion choose to lease the Equipment to the Customer in exchange for an additional fee as agreed in writing with the Customer. If the Company, acting reasonably, refuses to do so, then (subject to the Customer implementing alternative funding arrangements acceptable to the Company), the Agreement shall be deemed to be cancelled and clause 8 shall apply.
- 17.3** The Equipment remains the property of the Company or the Leasing Company (as applicable) unless otherwise agreed in writing by the Company or the Leasing Company (as applicable).
- 17.4** The Equipment is at the risk of the Customer from the time of delivery.
- 17.5** Throughout the term of the Agreement (and subject to any additional requirements under the lease arrangement, the Customer must:-
- 17.5.1** store the Equipment at its own cost at its site (or otherwise under its control), in a manner which makes it readily identifiable as the equipment of the Company (or the Leasing Company);
- 17.5.2** not destroy, deface or obscure any identifying mark or packaging of the Equipment;
- 17.5.3** maintain the Equipment in a satisfactory condition insured for their full price against all risks; and
- 17.5.4** hold the proceeds of insurance referred to in clause 17.5.3 on trust for the Company (or Leasing Company as applicable) and not mix them with any other money, nor pay the proceeds into an overdrawn account.
- 17.6** The Company may (subject to the lease arrangement), so as to discharge any overdue payment from the Customer recover or resell the Equipment.
- 17.7** In order to verify the Customer's compliance with its obligations under clause 17.5 and to exercise its rights under clause 17.6, 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.
- 17.8** 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 20 occur.
- 18. LIMITATION OF LIABILITY**
- THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION**
- 18.1** 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 this Agreement, any representation, statement or act or omission (including negligence) arising under or in connection with the Agreement and in respect of any contemplated performance or lack of performance.
- 18.2** 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:-
- 18.2.1** any implied condition that the Company has or will have the right to provide the Equipment when property is to pass;
- 18.2.2** 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.
- 18.3** 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.
- 18.4** Nothing in this Agreement excludes or limits the Company's liability for death or personal injury caused by the Company's negligence or for fraudulent misrepresentation.
- 18.5** Subject to clauses 18.2 to 18.4;
- 18.5.1** 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 provision of Services, the Agreement, its contemplated performance or lack of performance or any suspension of Services in accordance with clause 11; and
- 18.5.2** subject to clause 18.5.1, 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 Agreement shall be limited to the charges incurred by the Customer in the immediately preceding 12 month period.
- 18.6** 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 Equipment and therefore, save as provided in clause 18.4, all warranties, conditions or other terms implied by statute, common law, trade usage or otherwise are excluded to the fullest extent permitted by law.
- 19. INDEMNITY**
- 19.1** 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.

20. TERMINATION

- 20.1** This Agreement shall continue in force for the Minimum Period and shall be automatically renewed on expiry of the Minimum Period for a further period or periods of 12 (twelve) months unless either party gives written notice to the other party at least 120 days prior to the expiry of the Minimum Period or subsequent extension, as the case may be.
- 20.2** Notwithstanding clause 20.1 the Company may terminate this Agreement immediately on written notice if:-
- 20.2.1** 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 20.2.1 the Customer shall include the Customer's direct and/or indirect parent company and "Customer" shall be interpreted accordingly;
- 20.2.2** the Customer materially breaches (including without limitation failure to pay any charges promptly) the Agreement or any other agreement the Customer may have with the Company or a member of the Company's group;
- 20.2.3** the Company suspects on reasonable grounds that the Customer may have committed or may be committing:-
- 20.2.3.1** a breach of law; and/or
- 20.2.3.2** any fraud against the Company or any third party.
- 20.2.4** the Customer fails to meet a reasonable standard of creditworthiness; or
- 20.2.5** any contract between the Company and a third party provider of telecommunications services is terminated where such termination affects the provision of the Services.
- 20.3** 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 Agreement 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 Agreement or, without prejudice to its right so to terminate, to downgrade or suspend the Services as it thinks fit.
- 21. CONSEQUENCES OF TERMINATION**
- THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION**
- 21.1** On termination of the Agreement by reason of the Customer's breach of the Agreement 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:
- 21.1.1** all arrears of charges and interest outstanding at the date of termination;
- 21.1.2** where applicable, 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;
- 21.1.3** where the Company has taken possession of the Equipment, all costs incurred by the Company in relation to the repossession of the Equipment;
- 21.1.4** all charges which would have been payable to the Company under the Agreement 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;
- 21.1.5** all other sums due from the Customer to the Company under this Agreement, including without prejudice to this Agreement (which shall continue in full force and effect) all claims and liabilities then outstanding or thereafter arising;
- 21.7** 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.
- 21.8** On termination or expiry of this Agreement 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.
- 21.9** The right to terminate this Agreement shall not prejudice any other right or remedy of the Parties in respect of any rights, obligations or liabilities accrued prior to termination.
- 21.10** 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 the Company for all claims, losses and expenses arising out of breach of the terms of this Agreement by any subsidiary or group companies.
- 21.11** Upon the termination of this Agreement or disconnection of a relevant line or item of Equipment in respect of any Service:
- 21.11.1** 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 11.6 in respect of each connection and the Agreement shall be deemed to continue; and
- 21.11.2** the Company 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.
- 21.12** Termination or cancellation of any Service by either party in accordance with this Agreement shall not affect the provision of any other Services which are the subject of this Agreement, and this Agreement shall remain in full force and effect in respect of any Services which are not terminated or cancelled.
- 22. GENERAL**
- 22.1** If any provision of this Agreement (including without limitation any provision of clause 18) is found by any competent authority to be invalid, unenforceable or unreasonable, it shall be severed from the remainder of the Agreement which shall (subject to termination at the discretion of the Company), continue in full force and effect.
- 22.2** Failure or delay by the Company in enforcing or partially enforcing any provision of this Agreement is not a waiver of any of its rights under this Agreement.
- 22.3** Any waiver by the Company of any breach by the Customer is not a waiver of any subsequent breach.
- 22.4** Any disputes between the parties arising out of or in connection with the Agreement shall in the first instance be considered by representatives of the Company and the Customer having authority to resolve such dispute, and failing a resolution of such dispute the Company and the Customer shall seek to resolve such dispute by reference to an agreed mediation procedure, provided always that in the event of a failure to agree the terms of mediation, either party shall have the right to refer such dispute to the ordinary court process.
- 22.5** Any notice to be given by either party to the other under this Agreement 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.
- 22.6** The Company reserves the right to record calls for training purposes and/or for testing and diagnostic purposes in order for the Company to resolve any faults identified by the Customer and/or the Company.
- 23. ASSIGNMENT**
- 23.1** The Company may assign, subcontract or otherwise transfer this Agreement or any part of it and may dispose of or deal in any manner with any of its rights or beneficial interests under it.
- 23.2** The Customer may not assign this Agreement or dispose of or deal in any manner with any of its rights or beneficial interests under it.
- 24. ENGLISH LAW**
- 24.1** This Agreement shall be governed by English law, and subject to clause 22.4 the parties submit to the exclusive jurisdiction of the English courts.
- 24.2** Clause 24.1 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.