

84 Uxbridge Road  
Suite B second Floor  
W13 8RA  
Ealing

The Customer's attention is particularly drawn to the provisions of clauses 4.6, 5.3 and 6.3 (Contract Extended Term), and clause 11. (Limitation on Your Company Mobiles Ltd' Liability)

#### 1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

**Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**Carrier:** the relevant third party telecommunications operator or network service provider.

**Charges:** the applicable charges payable by the Customer for the supply of any Services and/or Equipment in accordance with clause 8.

**Commencement Date:** means the date on which Your Company Mobiles Ltd shall start to provide the Service which shall mean in the case of:

(a) Maintenance Services the Installation Date or where Your Company Mobiles Ltd has not contracted with the client to install Equipment in connection with the Maintenance Services the date specified as the Commencement Date for the Maintenance Services;

(b) Fixed Network Services the Handover Date in respect of those Fixed Network Services; and

(c) Data Services the relevant Handover Date in respect of those Data Services.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 15.7.

**Connection Date:** means in the case of the provision of Data Services the date when the Carrier commences the provisioning of Data Services to the Customer on behalf of Your Company Mobiles Ltd.

**Contract:** the contract between Your Company Mobiles Ltd and the Customer for the supply of any Services and/or goods (including where appropriate Equipment) in accordance with these Conditions, the Order and any Service Specific Conditions.

**Contract Date:** the date on which a Contract between the Customer and Your Company Mobiles Ltd is formed and comes into existence as determined pursuant to the provisions of clause 2.2

**Customer:** the person or firm specified as such in the Order Form who contracts to purchase Services from Your Company Mobiles Ltd.

**Customer Default:** has the meaning given to it in clause 7.3.

**Data Services:** the data services to be provided by Your Company Mobiles Ltd to the Customer as described in the Order, together with such other data services that Your Company Mobiles Ltd agrees to supply to the Customer from time to time.

**Data Services Contract:** where applicable, the Contract for the supply of Data Services.

**Delivery:** has the meaning given to in clause 4.2.

**Equipment:** the equipment as set out in the Order Form.

**Estimated Installation Date:** the date on which Your Company Mobiles Ltd estimates that the Equipment will be installed, as advised by Your Company Mobiles Ltd to the Customer.

**Extended Term:** in relation to:

(a) a Contract for the supply of Fixed Network Services has the meaning given to it in clause 5.3 or if applicable, clause 5.4; and

(b) a Contract for the supply of Data Services has the meaning given to it in clause 6.3 or if applicable, clause 6.4; and

(c) a Contract for the supply of Maintenance Services has the meaning given to it in clause 4.6 or if applicable, clause 4.7.

**Fixed Network Services:** the voice services to be provided by Your Company Mobiles Ltd to the Customer as specified in the Order Form.

**Fixed Network Services Contract:** where applicable, the Contract for the supply of Fixed Network Services.

**Your Company Mobiles Ltd:** Your Company Mobiles Ltd registered in England and Wales with company number 04771242 of Europa House Southwick Square Southwick Brighton BN42 4FJ.

**Your Company Mobiles Ltd Customer Transfer Preference Policy:** the policy as set out at <http://www.Your Company Mobiles Ltd -grp.co.uk/information/terms-and-conditions/> as varied from time to time.

**Handover Date:** means

a) in the case of the provision of Fixed Network Services the date when the Fixed Network Services are available for use by the Customer with Your Company Mobiles Ltd as the supplier of the Fixed Network Services.

b) in the case of Data Services the date when the Data Services are available for use by the Customer with Your Company Mobiles Ltd as the supplier of the Data Services.

**Horizon Sub Licence:** a sub licence granted by Your Company Mobiles Ltd to the Customer for a hosted product known as "Horizon" for use in connection with Fixed Network Services.

**Installation Date:** the date on which the Equipment is installed.

**Installation Services:** the services relating to the installation by Your Company Mobiles Ltd (or its duly authorised agents) of the Equipment (where applicable).

**Maintenance Services:** the maintenance services to be provided by Your Company Mobiles Ltd to the Customer as described in the Order, together with such other maintenance services that Your Company Mobiles Ltd agrees to supply to the Customer from time to time.

**Maintenance Services Contract:** where applicable, the Contract for the supply of Maintenance Services.

**Minimum Term:** the minimum contract term that applies to the Maintenance Services, the Fixed Network Services and/or the Data Services as the case may be shall unless a different minimum term is specified for any such Service in the Service Specific Conditions section of the Order Form be the period of three years commencing on the Commencement Date.

**Notes Section:** the section of the order form marked "Notes Section".

**OFCOM:** the Office of Communications or any equivalent successor body.

**Order:** the Customer's order for Services as set out in the Order Form; such Order being subject to these Conditions.

**Order Form:** the document which sets out amongst other things the Services which the Customer would like Your Company Mobiles Ltd to provide to it and certain details in respect thereof including when read in conjunction with these Conditions the basis on which the charges for providing the Services will be calculated. The Order Form shall be prepared by Your Company Mobiles Ltd and sent to the Customer for signature by or on behalf of the Customer and returned to Your Company Mobiles Ltd. The Order Form may be prepared, sent, signed or returned either electronically or physically.

**Personal Data:** has the meaning given to it in the Data Protection Act 1998.

**Services:** the services to be supplied by Your Company Mobiles Ltd to the Customer being any or all of the Installation Services, Maintenance Services, Fixed Network Services and/or Data Services, as the case may be, and Service shall be construed accordingly but shall exclude the provision of DNS servers and mail servers

**Service Specific Conditions:** any policies, terms or procedures that apply to and shall be incorporated into the Contract, as specified in the notes section of the Order Form.

**Site:** the Customer's place of business as specified in the Order Form where any Services are to be provided or carried out and/or (where applicable) Equipment is to be delivered and any Installation is to take place, as specified in the Order Form.

**Small Business Customer:** a Customer identified on the Order Form as not being a communications provider and who has 10 or fewer individuals working for that Customer (whether as employees, volunteers or otherwise).

**Specification:** the description or specification of the relevant Services and/or Equipment provided in writing by Your Company Mobiles Ltd to the Customer as set out in the Order Form.

**Tariff:** the standard tariff as set out at <http://www.Your Company Mobiles Ltd -grp.co.uk/information/terms-and-conditions/> and as varied in the Notes Section of the Order Form for Fixed Network Services and the Data Services as attached to the Order Form and as amended or notified to the Customer from time to time.

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**VOIP:** Voice Over Internet Protocol being the use of the internet as the transmission medium for telephone calls by digital means (rather than the traditional telephone system based on copper wires carrying analogue data).

1.2 Construction. In these Conditions, the following rules apply:

- (a) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its personal representatives, successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms including, include, in particular or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to writing or written includes e-mails but excludes faxes.

### **2. BASIS OF CONTRACT**

2.1 The sending of the Order Form by Your Company Mobiles Ltd to the customer constitutes an offer by Your Company Mobiles Ltd to the Customer to provide services and/or Equipment in accordance with these conditions, the Order and any service specific conditions ("the Offer"). The Offer may be withdrawn at any point by Your Company Mobiles Ltd prior to it being accepted by the Customer.

2.2 The offer shall be accepted and the Contract shall be formed and come into existence at the point when Your Company Mobiles Ltd receives the Order Form, either electronically or physically, duly signed (either electronically or physically) by or on behalf of the Customer at which point and on which date the Contract shall come into existence (subject where applicable to clauses 4.1, 5.6 and 6.6). If Your Company Mobiles Ltd has not received the Order Form duly signed for or on behalf of the Customer within 12 months from the date on which it is sent to by Your Company Mobiles Ltd to the Customer the offer to contract with the Customer shall be deemed to have been withdrawn unless otherwise agreed between Your Company Mobiles Ltd and the Customer.

2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Your Company Mobiles Ltd which is not set out in the Order Form, the Service Specific Conditions or the terms (or incorporated by reference in any of them).

2.4 Any samples, drawings, descriptive matter or advertising issued by Your Company Mobiles Ltd, and any descriptions or illustrations contained in Your Company Mobiles Ltd ' catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the services described in them. They shall not form part of the Contract nor have any contractual force.

2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. In the event of any conflict between these Conditions and any Service Specific Conditions, the Service Specific Conditions shall prevail. In the event of any conflict between these Conditions, any Service Specific Conditions and the Order Form, the Order Form will prevail in relation to that Service.

2.6 Any quotation given by Your Company Mobiles Ltd shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

2.7 The Customer warrants to Your Company Mobiles Ltd that it is entering into the Contract for the purpose of its business, trade or profession and not as a consumer.

2.8 Except for Installation Services that shall form part of a Contract for the supply of Equipment, each order for Maintenance Services, Data Services or Fixed Network Services shall be deemed to be a separate Contract (irrespective of whether more than one or all of them are included on the same Order Form).

2.9 To the extent that there is any failure or delay by Your Company Mobiles Ltd to supply one of the Services, that shall not entitle the Customer to terminate the Contract for the supply of any other Service or Services as the case may be (if any).

### **3. SUPPLY OF SERVICES**

3.1 Your Company Mobiles Ltd shall supply the Services to the Customer in accordance with the Contract in all material respects. In the event that the Order Form specifies:

- (a) the supply by Your Company Mobiles Ltd to the Customer of Equipment and Installation Services and/or Maintenance Services, clause 4 of these Conditions shall also apply to the Contract;
- (b) the supply by Your Company Mobiles Ltd to the Customer of Fixed Network Services, clause 5 of these Conditions shall also apply to the Contract; and
- (c) the supply by Your Company Mobiles Ltd to the Customer of Data Services, clause 6 of these Conditions shall also apply to the Contract.

3.2 Your Company Mobiles Ltd shall use all reasonable endeavours to deliver any Services on or by any date or dates specified in the Order Form, but any such dates shall be estimates or for guidance only and time shall not be of the essence for the performance of the Services.

3.3 Your Company Mobiles Ltd shall have the right to make any changes to any Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the relevant Services. Your Company Mobiles Ltd shall notify the Customer of any such change.

3.4 Your Company Mobiles Ltd warrants to the Customer that the relevant Services will be provided using reasonable care and skill, subject to clauses 4, 5 and 6 of these Conditions.

### **4. TERMS APPLICABLE TO EQUIPMENT, INSTALLATION SERVICES AND MAINTENANCE SERVICES**

4.1 Any Order for Equipment is conditional on the availability of such Equipment prior to the Estimated Installation Date. Your Company Mobiles Ltd shall use reasonable endeavours to deliver the Equipment and supply the Installation Services with reasonable care and skill in accordance with the estimated period for delivery and installation. Installation within such period is not guaranteed and time shall not be of the essence.

4.2 Delivery of Equipment shall be deemed to take place when the relevant Equipment arrives at the Customer's Site (prior to unloading or unpacking) as specified in the Order (Delivery) (and Delivered shall be construed accordingly). In relation to Delivery of any Equipment:

- (a) the Customer shall be responsible for checking that all details specified in the Order are correct;
- (b) if the Customer fails to take Delivery of any Equipment within 10 Business Days of Your Company Mobiles Ltd notifying the Customer that the Equipment is capable of being delivered, the Equipment shall be deemed to have been Delivered in accordance with the Contract and the Equipment shall be at the risk of the Customer and thereafter clause 4.3 shall apply to the Equipment;
- (c) if any Equipment is to be Delivered in instalments, any delay in the Delivery of one instalment shall not entitle the Customer to reject the other instalments or to terminate the Contract; and
- (d) the risk in any Equipment shall pass to the Customer on Delivery (or deemed Delivery in accordance with clause 4.2(b)) and the Customer shall be responsible for insuring the Equipment from that time.

4.3 Notwithstanding clause 4.2(d), ownership of any Equipment contracted to be purchased by the Customer shall not pass to the Customer until such time as the Customer has paid to Your Company Mobiles Ltd all sums due for the Equipment and the Installation Services. Unless and until ownership of the Equipment passes to the Customer (if at all), the Customer shall:

- (a) not remove, deface or obscure any identifying mark on or relating to the Equipment;
- (b) maintain (except where Your Company Mobiles Ltd is also at the time supplying Maintenance Services) the Equipment in satisfactory condition and insured it against all risks for its full price from the date of Delivery or deemed Delivery;
- (c) not lease, charge or otherwise encumber the Equipment;
- (d) not remove the Equipment from the Site without Your Company Mobiles Ltd ' prior written consent;

4.4 If the Equipment is leased to the Customer the Customer shall:-

- (a) return the Equipment at the Customer's cost to Your Company Mobiles Ltd immediately on request at the end of the lease; and
- (b) permit Your Company Mobiles Ltd or its agents to enter any premises of the Customer or of any third party where the Equipment is located in order to recover it.

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4.5 If the Customer is in breach of the Contract the Customer shall return the Equipment at the Customer's cost to Your Company Mobiles Ltd immediately on request and permit Your Company Mobiles Ltd or its agents to enter any premises of the Customer or of any third party where the Equipment is located in order to recover it.

4.6 Subject to clause 2.2, supply of the Maintenance Services shall commence on the Commencement Date and shall continue for the Minimum Term and thereafter the Maintenance Services Contract shall automatically extend for three years (Extended Term) at the end of the Minimum Term and at the end of each Extended Term. A party may give notice in writing to the other party no later than 90 days before the end of the Minimum Term or the relevant Extended Term, to terminate the Maintenance Services Contract at the end of the Minimum Term or the relevant Extended Term, as the case may be.

4.7 If for any reason clause 4.6 is deemed to be unreasonable and unenforceable by way of a final court judgment then this clause 4.7 shall apply. Subject to clause 2.2, supply of the Maintenance Services shall commence on the Commencement Date and shall continue for the Minimum Term and thereafter the Maintenance Services Contract shall automatically extend for 12 calendar months (Extended Term) at the end of the Minimum Term and at the end of each Extended Term. A party may give notice in writing to the other party by no later than 90 days before the end of the Minimum Term or the relevant Extended Term, to terminate the Maintenance Services Contract at the end of the Minimum Term or the relevant Extended Term, as the case may be.

4.8 The Maintenance Services shall only be supplied by Your Company Mobiles Ltd in relation to the Equipment and to any other equipment agreed by Your Company Mobiles Ltd in writing from time to time. Unless agreed otherwise in writing by Your Company Mobiles Ltd, Your Company Mobiles Ltd shall supply the Maintenance Services in accordance with the Maintenance Service Levels (a copy of which is available at <http://www.Your Company Mobiles Ltd -grp.co.uk/information/terms-and-conditions/>) as amended from time to time.

4.9 The Maintenance Services shall not include or be deemed to include repair or maintenance to:

(a) equipment that is faulty or has failed due (in whole or in part) to or caused by:

(i) fair wear and tear;

(ii) the Customer's (including its agents or workers) acts, operating errors, omissions or default;

(iii) failure in air-conditioning or fluctuations in electrical power;

(iv) any failure of equipment or software attached to or integrated to the Equipment where such equipment or software was not supplied by Your Company Mobiles Ltd;

(v) vandalism, fire, theft, water or lightning;

(vi) any defect or error in software loaded on to the Equipment;

(vii) any defect or fault in connection with services supplied to Your Company Mobiles Ltd by any Carrier;

(viii) failure by the Customer (including its agents or workers) to adequately maintain any Equipment or operate it in accordance with the manufacturer's specifications, guidelines or recommendations; or

(ix) any attempt by the Customer or any third party other than Your Company Mobiles Ltd or its duly authorised agents to repair, reconfigure, re-program or otherwise alter the Equipment or any equipment or cabling attached to it.

(b) ancillary items, including but not limited to, answer-phones, analogue and digital phones or devices, call loggers, payphones, computers, servers, uninterruptible power supplies, batteries, fax machines, public address systems, printers, cabinets, external music on hold sources, any cabling and/or consumables unless otherwise agreed in writing;

(c) the maintenance or repair of any extension wiring, any Equipment not at the Site, or of anything other than the Equipment; or

(d) the reprogramming of the Equipment to provide improved or modified services or facilities.

4.10 In the event that Your Company Mobiles Ltd carries out Maintenance Services to any Equipment which has, in its reasonable opinion failed or become faulty due (wholly or partially) to any of the circumstances described in clause 4.9, Your Company Mobiles Ltd shall be entitled to charge additional fees for such services calculated in accordance with clause 8.5.

4.11 In carrying out the Maintenance Services Your Company Mobiles Ltd shall not (subject to clause 11) be liable for the loss of any data or information stored on the Equipment or any other equipment that may be affected by the carrying out of the Maintenance Services and the Customer shall ensure that appropriate backups of all data and information are maintained.

4.12 In rectifying any fault to Equipment it may be necessary for Your Company Mobiles Ltd to reset the Equipment's software. In such cases, Your Company Mobiles Ltd shall not be responsible for resetting or reloading equipment programming and user profiles.

4.13 The Maintenance Services are limited to the provision and repair of the Equipment by Your Company Mobiles Ltd on a like for like basis, which may include Your Company Mobiles Ltd supplying reconditioned parts for Equipment and reconditioned Equipment. Any Equipment that is removed or replaced and any parts that are removed or installed in Equipment in the carrying out of the Maintenance Services shall become or shall remain (as the case may be) the property of Your Company Mobiles Ltd.

4.14 Subject to clause 11, Your Company Mobiles Ltd shall not be liable for any delay in the performance of the Maintenance Services where such delay is attributable to no or poor or delayed availability of spare parts for any item of Equipment.

4.15 If the Customer terminates a Contract (in whole or in part) for Maintenance Services before the end of any applicable Minimum Term or Extended Term, the Customer shall pay to Your Company Mobiles Ltd all charges that would have accrued during the period from the expiry of the Customer's notice to terminate (or where no notice is given the date of indication by the Customer of an intention to no longer be bound by the Contract (in whole or in part)) to the end of the Minimum Term or Extended Term (as the case may be).

### **5. TERMS APPLICABLE TO FIXED NETWORK SERVICES**

5.1 Subject to clause 2.2 and clause 5.5, the supply of the Fixed Network Services shall commence on the Commencement Date and shall continue for the Minimum Term.

5.2 If the Commencement Date for the provision of Fixed Network Services has not occurred prior to the first anniversary of the Contract Date for the Fixed Network Services then the Contract in respect thereof shall be deemed to have terminated unless otherwise agreed between Your Company Mobiles Ltd and the Customer. The rights of the parties that have accrued prior to such termination shall not be affected by such termination.

5.3 Subject to clause 5.5, the Fixed Network Services Contract shall automatically extend for three years (Extended Term) at the end of the Minimum Term and at the end of each Extended Term. A party may give notice in writing to the other party no later than 90 days before the end of the Minimum Term or the relevant Extended Term to terminate the Fixed Network Services Contract at the end of the Minimum Term or the relevant Extended Term, as the case may be.

5.4 In the event that clause 5.3 is deemed to be unreasonable and unenforceable by way of a final court judgment then this clause 5.4 shall apply. Subject to clause 5.5, the Fixed Network Services Contract shall automatically extend for 12 calendar months (Extended Term) at the end of the Minimum Term and at the end of each Extended Term. A party may give notice in writing to the other party no later than 90 days before the end of the Minimum Term or the relevant Extended Term to terminate the Fixed Network Services Contract at the end of the Minimum Term or the relevant Extended Term, as the case may be.

5.5 Where the Customer is a Small Business Customer, the Customer may terminate the Fixed Network Services Contract by giving not less than 90 days' notice in writing to Your Company Mobiles Ltd, such notice to expire no earlier than the end of the Minimum Term.

5.6 The provision of any Fixed Network Services by Your Company Mobiles Ltd under a Fixed Network Services Contract is conditional on:

(a) Your Company Mobiles Ltd carrying out such surveys as it deems necessary to satisfy itself that it is possible for it to supply the Fixed Network Services;

(b) the installation of the lines over which the Fixed Network Services are to be provided and such lines being fully operational; and

(c) the Customer providing to Your Company Mobiles Ltd to its satisfaction accurate information and data to enable Your Company Mobiles Ltd to calculate the Charges and to carry out a site survey.

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5.7 Your Company Mobiles Ltd warrants to the Customer that Fixed Network Services will be provided using reasonable care and skill. The Customer agrees that Your Company Mobiles Ltd cannot guarantee that the Fixed Network Services will work without interruption and will be fault or error free. Any interruption, fault or error with the Fixed Network Services must be notified to Your Company Mobiles Ltd in accordance with clause 5.8.

5.8 The Customer shall notify Your Company Mobiles Ltd of any interruption, fault or error with the Fixed Network Services in accordance with Your Company Mobiles Ltd ' Fault Handling Policy (available at <http://www.Your-Company-Mobiles-Ltd-grp.co.uk/information/terms-and-conditions/>) as amended from time to time. Your Company Mobiles Ltd shall use reasonable endeavours to correct or cure any interruption, fault or error with the Fixed Network Services in accordance with Your Company Mobiles Ltd ' Fault Handling Policy, save that time shall not be of the essence.

5.9 Notwithstanding any other provision of these Conditions, Your Company Mobiles Ltd shall not be liable to the Customer in contract, tort (including negligence) or otherwise for any acts or omissions of Carriers that may (wholly or partially) cause, impact or result in any interruption, fault error with or withdrawal of (temporarily or permanently) the Fixed Network Services.

5.10 All and any telephone numbers allocated to the Customer in connection with the Fixed Network Services may be withdrawn by OFCOM and accordingly Your Company Mobiles Ltd does not warrant or represent that such telephone numbers can be provided to the Customer. The Customer acknowledges and agrees that any telephone numbers allocated to it are allocated on the basis of a licence and the Customer agrees not to sell or transfer any telephone number provided to it (except where the Customer has a right to port that telephone number).

5.11 In relation to the use of the Fixed Network Services the Customer agrees:

- (a) to ensure that the Fixed Network Services are not used to make offensive, indecent, menacing, nuisance or hoax calls;
- (b) not to use the Fixed Network Services in any way that may, in Your Company Mobiles Ltd ' reasonable opinion, damage its reputation;
- (c) not to contravene any laws, regulations or codes of conduct that may, from time to time, be applicable to the use or supply of the Fixed Network Services;
- (d) to implement and maintain appropriate security and control over its networks, equipment and business to prevent fraud and to prevent calls being generated by third parties;
- (e) to maintain adequately all equipment utilised in connection with the Fixed Network Services and ensure its compatibility in terms of technical specification;
- (f) not to use nor permit the Fixed Network Services to be used in any way that would constitute or contribute to the commission of any crime, tort, fraud or other unlawful activity;
- (g) not to allow any unauthorised use of the Fixed Network Services and to take all reasonable security measures to prevent such use;
- (h) not to sell or resell the Fixed Network Services in whole or in part;
- (i) not to misuse the Fixed Network Services in any way, including without limitation causing the volume of calls made to the telephone numbers allocated to the Customer to significantly exceed that which can be answered by the Customer where this would cause congestion to a network;
- (j) that Your Company Mobiles Ltd may publish details of the Customer's name, address and telephone number(s) in the Directory Enquiries Service, unless the Customer expressly confirms to Your Company Mobiles Ltd in writing that it would like a special entry to be made, for which Your Company Mobiles Ltd may make an additional charge;
- (k) that to the extent the Fixed Network Services contain VOIP services, clause 6.12 shall also apply save that references in that clause to Data Services shall be deemed to be references to Fixed Network Services; and
- (l) in order to protect the Customer against unauthorised transfer of Fixed Network Services, in the event that the Customer fails to contact Your Company Mobiles Ltd not less than 48 hours prior to any transfer date in accordance with Your Company Mobiles Ltd ' Customer Transfer Preference Policy, Your Company Mobiles Ltd may cancel any order made with a third party supplier.

5.12 Any equipment installed or supplied by Your Company Mobiles Ltd to the Customer in connection with the Fixed Network Services shall, except for equipment purchased by the Customer under clause 4, at all times remain the property of Your Company Mobiles Ltd. Clause 4.3 shall apply to such equipment as if it were deemed to be Equipment. The Customer shall return such equipment to Your Company Mobiles Ltd immediately on request and shall be liable for costs, losses, damages and expenses incurred by Your Company Mobiles Ltd for the repair, recovery and replacement of such equipment.

5.13 Your Company Mobiles Ltd shall be entitled to make additional charges in the event that the Customer supplies inaccurate or misleading information to Your Company Mobiles Ltd or if the results of any survey reveal additional construction work is required in order for Your Company Mobiles Ltd to supply the relevant Fixed Network Services.

5.14 Where the transfer of lines and services of another supplier occurs, then the provision of any and all relevant existing services supplied to the Customer by such supplier will automatically transfer to Your Company Mobiles Ltd and will be charged for by Your Company Mobiles Ltd in accordance with the Tariff.

5.15 The Customer acknowledges and accepts that it is liable for any charges (including without limitation any early termination charges) made by third party suppliers for any transfer of lines and services or otherwise, unless it is clearly stated on the Order Form that Your Company Mobiles Ltd will pay for such charges in which case Your Company Mobiles Ltd will pay for such charges but limited to those specifically as set out on the Order Form.

5.16 The Customer accepts and acknowledges that Your Company Mobiles Ltd will prior to the Handover Date have spent a significant amount of time and incurred expense in preparation for the provision of the Fixed Network Services to the Customer. In the event that the Customer terminates the Contract for Fixed Network Services prior to the Handover Date it shall pay to Your Company Mobiles Ltd , £500 plus vat. This clause 5.16 shall not apply where the Customer is a Small Business Customer. Where the Customer is a Small Business Customer, the Customer may terminate a Contract for Fixed Network Services at any time prior to commencement of the supply of such Services.

5.17 The following provisions of this clause 5.17 shall apply in the event that after the Handover Date the Customer terminates the Contract for Fixed Network Services in breach of contract prior to the expiry of the Minimum Term or the Extended Terms as the case may be

- (a) In this clause 5.17 Remainder of the Term means (where the Customer terminates or is deemed to have terminated the Contract in breach of contract) the period that the Contract would have had left to run if the Customer had instead terminated it at the earliest following opportunity without being in breach of contract.
- (b) Save where the Customer has contracted for the supply of line rental only, a Customer agrees that it shall not on lines contracted to be billed by Your Company Mobiles Ltd use those lines for calls charged for by another supplier. If in breach of this clause the Customer does use lines supplied by Your Company Mobiles Ltd for the carriage of calls charged for by another supplier the Customer shall be deemed to be in breach of the Contract for the supply of Fixed Network Services and at Your Company Mobiles Ltd ' option the Customer shall be deemed to have terminated the Contract for Fixed Network Services in breach of contract and the provisions of this clause 5.17 shall apply.
- (c) If in breach of contract the Customer terminates a Contract for Fixed Network Services before the end of the Minimum Term or where applicable the end of an Extended Term (as the case may be), the Customer shall be liable to pay to Your Company Mobiles Ltd an amount calculated in the following manner:-
  - (i) (by reference to line rental) the sum that it would have paid to Your Company Mobiles Ltd of the rental of the lines for the Remainder of the Term calculated at the rate then applying at the time of termination; plus
  - (ii) (by reference to call charges) either the sum of £500 or if greater the average of the monthly charges for calls incurred by the Customer for the three whole months prior to the termination of the Contract multiplied by the period of the Remainder of the Term (expressed in months)

5.18 The Customer agrees not to use in connection with the Fixed Network Service provided by Your Company Mobiles Ltd any telephone number that the Customer does not have the legitimate right to use. In this regard the Customer shall not "present over" any telephone number that it does not have the right to use; such as a telephone number of a competitor.

5.19 Where Your Company Mobiles Ltd grants to the Customer a Horizon Sub Licence it shall terminate at the point when Your Company Mobiles Ltd ceases to provide to the Customer the Fixed Network Services in respect of which the Horizon Sub Licence was granted and the Horizon Sub Licence and all rights in the Horizon Sub Licence shall revert to and be owned in their entirety by Your Company Mobiles Ltd .

## 6. TERMS APPLICABLE TO DATA SERVICES

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- 6.1 Subject to clause 6.6, the supply of the Data Services shall commence on the Commencement Date and shall continue for the Minimum Term.
- 6.2 Subject to the remaining provisions of this clause if the Commencement Date for the provision of Data Services has not occurred prior to the first anniversary of the Contract Date for the Data Services then the Contract in respect thereof shall be deemed to have terminated. Your Company Mobiles Ltd may by giving written notice to the Customer extend the period referred to in this clause by six months if the reason why the Commencement Date has not occurred is outside of the control of Your Company Mobiles Ltd. Further, the period may be extended in by such period as Your Company Mobiles Ltd and the Customer agree. The rights of the parties that have accrued prior to such termination shall not be affected by such termination.
- 6.3 Subject to clause 6.5 the Data Services Contract shall automatically extend for three years (Extended Term) at the end of the Minimum Term and at the end of each Extended Term. Either party may give notice in writing to the other party no later than 90 days before the end of the Minimum Term or of the end of the relevant Extended Term, to terminate the Data Services Contract at the end of the Minimum Term or the relevant Extended Term, as the case may be.
- 6.4 If for any reason clause 6.3 is deemed to be unreasonable and unenforceable by way of final court judgment then this clause 6.4 shall apply. Subject to clause 6.5 the Data Services Contract shall automatically extend for 12 calendar months (Extended Term) at the end of the Minimum Term and at the end of each Extended Term. Either party may give notice in writing to the other party no later than 90 days before the end of the Minimum Term or of the end of the relevant Extended Term, to terminate the Data Services Contract at the end of the Minimum Term or the relevant Extended Term, as the case may be.
- 6.5 Where the Customer is a Small Business Customer, the Customer may terminate the Data Services Contract by giving not less than 90 days' notice in writing to Your Company Mobiles Ltd, such notice to expire no earlier than the end of the Minimum Term.
- 6.6 The provision of any Data Services by Your Company Mobiles Ltd under a Data Services Contract is conditional on:
- (a) Your Company Mobiles Ltd carrying out such surveys as it considers necessary to satisfy itself that that it is feasible for it to supply the Data Services and Your Company Mobiles Ltd being satisfied with the results of such surveys;
  - (b) Your Company Mobiles Ltd not being prevented by circumstances and factors outside of its control from being able to supply the Data Services. Examples of such circumstance and factors include (without limit) the infrastructure not being able to support the Data Services, the Customer not obtaining the necessary permission from third parties such as a landlord to install the necessary infrastructure, or a public body such as a local authority or highways authority withholding consent to the installation of the infrastructure where such consent is required;
  - (c) the installation of the lines over which the Data Services are to be provided and such lines being fully operational;
  - (d) the Customer providing to Your Company Mobiles Ltd to its satisfaction accurate information and data to enable Your Company Mobiles Ltd to calculate the Charges and to carry out a site survey; and
  - (e) the Customer providing to the satisfaction of Your Company Mobiles Ltd accurate information to enable Your Company Mobiles Ltd to commission a site survey.
- 6.7 Your Company Mobiles Ltd warrants to the Customer that Data Services will be provided using reasonable care and skill. The Customer agrees that Your Company Mobiles Ltd cannot guarantee that the Data Services will work without interruption and will be fault or error free. Any interruption, fault or error with the Data Services must be notified to Your Company Mobiles Ltd in accordance with clause 6.8.
- 6.8 The Customer shall notify Your Company Mobiles Ltd of any interruption, fault or error with the Data Services in accordance with Your Company Mobiles Ltd ' Fault Handling Policy (available at <http://www.Your Company Mobiles Ltd -grp.co.uk/information/terms-and-conditions/>) as amended from time to time. Your Company Mobiles Ltd shall use reasonable endeavours to correct or cure any interruption, fault or error with the Data Services in accordance with Your Company Mobiles Ltd ' Fault Handling Policy, save that time shall not be of the essence.
- 6.9 Notwithstanding any other provision of these Conditions, Your Company Mobiles Ltd shall not be liable to the Customer in contract, tort (including negligence) or otherwise for any acts or omissions of suppliers that may (wholly or partially) cause, impact or result in any interruption, fault or error with, or withdrawal of (temporarily or permanently), the Data Services.
- 6.10 In relation to the use of the Data Services the Customer agrees and where appropriate accepts:
- (a) to comply with the obligations in clauses 5.11(a) to 5.11(i) (inclusive) as if references in those clause to Fixed Network Services were references to Data Services;
  - (b) not to misuse the Data Services in any way, including sending or receiving data in such a manner or volume so as to exceed agreed usage limits or so as to adversely affect the network, Your Company Mobiles Ltd or its other customers;
  - (c) that the speed of any Data Services or connection depends on a number of factors beyond Your Company Mobiles Ltd ' control (including external factors and physical factors) (such as local availability, the distance from the exchange and peak traffic volume) and that Your Company Mobiles Ltd does not warrant or represent that the Customer's connection(s) will produce the maximum advertised speed;
  - (d) that except where stated otherwise in the Order Form, the Data Services do not include the supply by Your Company Mobiles Ltd of lines, modems and other equipment that might be required by the Customer to utilise the Services nor advice on these unless Your Company Mobiles Ltd is specifically engaged to do so under a separate contract which shall be in addition to the provision of Data Services under the Data Services Contract;
  - (e) to comply with Your Company Mobiles Ltd ' Fair Use Policy (available at <http://www.Your Company Mobiles Ltd -grp.co.uk/information/terms-and-conditions/>) as amended from time to time;
  - (f) provide suitable space and environment at the Site for the equipment used in the provision of the Data Services (such as sufficient cooled space on a rack) and to do so in a timely manner. Compliance by the Customer with this clause shall be entirely at the Customer's cost.
  - (g) in respect of any router supplied by or on behalf of Your Company Mobiles Ltd for a managed internet Ethernet circuit unless otherwise specifically agreed with Your Company Mobiles Ltd :-
  - (i) the router will be provided in a routed IP configuration and its sole purpose is to create an interface for the Customer to plug equipment into and it is not to be used for any other purpose;
  - (ii) the router is the demarcation point at which the responsibility for the provision of Data Services by Your Company Mobiles Ltd ends;
  - (iii) access to the command interface of the router (which would be required to configure the router) will not be provided to the Customer, nor will other functions that the router may be capable be enabled such as wireless connectivity and firewall functionality;
  - (iv) Your Company Mobiles Ltd is not responsible for configuration of the router other than to an IP configuration; and
  - (v) Your Company Mobiles Ltd shall not be responsible for installing firewalls or plugging in the router and if the Customer requires firewalls the Customer shall be responsible for processing their installation.
  - (h) In respect of a router supplied by or on behalf of Your Company Mobiles Ltd for an internet broadband service it will be provided in a NAT (Network Address Translation) configuration with DHCP Scope enabled unless otherwise agreed.
- 6.11 Your Company Mobiles Ltd is under a duty to all of its customers to preserve network integrity and capacity and avoid degradation. The Customer agrees that:
- (a) if in Your Company Mobiles Ltd ' reasonable opinion the Customer's use of Data Services is adversely affecting, or may adversely affect, integrity and capacity of networks, Your Company Mobiles Ltd may take such steps as it deems appropriate to manage the Customer's Data Services;
  - (b) Your Company Mobiles Ltd and/or the Carrier may take such steps as it deems necessary to stop emails that appear to be bulk emails or which appear to be of an unsolicited nature from entering networks and this may include blocking access to or delivery of any such emails; and
  - (c) Your Company Mobiles Ltd and/or the Carrier may operate virus screen technology which may result in the deletion or alteration of emails or their attachments.
- 6.12 Where the Data Services involve the supply of VOIP services, then it is agreed that the following shall apply and the Customer accepts that:
- (a) the Customer's ability to make emergency calls and their priority treatment cannot be guaranteed and that any suspension or interruption of the VOIP service may result in the Customer being unable to make emergency calls;
  - (b) the VOIP services are generally not considered to be as reliable as calls made over conventional telephone lines and Customers are advised to maintain the ability to make telephone calls other than as through a VOIP system, such as by maintaining a conventional telephone line;

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(c) the Customer acknowledges that the VOIP service may sometimes be limited, unavailable or interrupted due to events beyond Your Company Mobiles Ltd ' control, such as those specified in clause 14.1 (force majeure); and

(d) the VOIP services may not offer all of the features or resilience that the Customer may expect from a conventional telephone line.

6.13 Other than Equipment purchased by the Customer, any equipment installed or supplied by Your Company Mobiles Ltd to the Customer in connection with the Data Services shall at all times remain the property of Your Company Mobiles Ltd . The provisions of clauses 4.3 (a) to (d) shall apply to all such equipment. The Customer shall return such equipment to Your Company Mobiles Ltd immediately on request or cessation of the provision of Data Services and the Customer shall be liable for all costs, losses, damages and expenses incurred by Your Company Mobiles Ltd for the repair, recovery and replacement of such equipment.

6.14 Where the Customer wishes to transfer the provision of any lines or services from another supplier to Your Company Mobiles Ltd , the Customer shall:

(a) provide to Your Company Mobiles Ltd such accurate information as is required by Your Company Mobiles Ltd to enable the migration from the current supplier; and

(b) be responsible for all costs, charges and penalties that may arise as a result of or in connection with such transfer.

6.15 The Customer acknowledges and accepts that it is liable for all cancellation or termination payments and charges (including without limitation any early termination charges) levied by a previous supplier for the transfer of the provision of services and lines to Your Company Mobiles Ltd unless it is stated on the Order Form that Your Company Mobiles Ltd will be responsible for the payment of such Charges.

6.16 The Customer accepts and acknowledges that Your Company Mobiles Ltd will prior to the Connection Date have spent a significant amount of time and incurred expense in preparation for the provision of the Data Services to the Customer. In the event that the Customer terminates the Contract prior to the Connection Date it shall pay to Your Company Mobiles Ltd (a) £500 plus vat in respect of the time spent by Your Company Mobiles Ltd in preparation for the provision of the Data Services to the Customer; and (b) an amount equal to the direct expenses (plus vat) incurred by Your Company Mobiles Ltd to its supplier(s) in the preparation of Data Services to the Customer limited to £2,000. This clause 6.16 shall not apply where the Customer is a Small Business Customer.

6.17 Where the Customer is a Small Business Customer, the Customer may terminate a Contract for Data Services at any time prior to commencement of the supply of such Data Services.

6.18 The following provisions of this clause 6.18 shall apply in the event that after the Connection Date the Customer terminates the Contract for Data Services in breach of contract prior to the expiry of the Minimum Term or the Extended Terms as the case may be

(a) In this clause 6.18 Remainder of the Term means (where the Customer terminates or is deemed to have terminated the Contract in breach of contract) the period that the Contract would have had left to run if the Customer had instead terminated it at the earliest following opportunity without being in breach of contract. Where the Customer terminates the Contract for Data Services in breach of contract after the Connection Date but before the Handover Date then the Remainder of the Term shall be deemed to have commenced on the Connection Date.

(b) The Customer acknowledges and accepts that to enable Your Company Mobiles Ltd to provide the Data Services to the Customer, Your Company Mobiles Ltd will enter into a contract for a fixed term with its supplier at the Connection Date. As is common with such contracts Your Company Mobiles Ltd may remain liable to its supplier whether or not the Contract for Data Services with the Customer terminates prior to the end of the Minimum Term or the Extended Term as the case may be.

(c) In the event that the Customer is in breach of contract by terminating the Contract for Data Services otherwise than in accordance with clause 6.3 or 6.4 if applicable (and/or 6.5 where the Customer is a Small Business Customer) before the end of the Minimum Term or where applicable the end of an Extended Term (as the case may be) the Customer shall pay to Your Company Mobiles Ltd (subject to the provisions of clause (d)) as liquidated damages an amount equal to the sum that the Customer would have been liable to pay to Your Company Mobiles Ltd for the Remainder of the Term for the Data Services (calculated at the rate which applied at the time of termination) less any reduction that may apply pursuant to the provisions of clause 6.18(d) below. Where such termination occurs after the Connection Date but before the Commencement Date then the rate shall be the rate that would have been applied at the Commencement Date had the Contract not been terminated.

(d) If the provisions of clause 6.18(c) apply and in the event that a supplier used by Your Company Mobiles Ltd to provide the Data Services to the Customer reduces the amount that it charges to Your Company Mobiles Ltd from that which it is contractually entitled to charge in respect of the Remainder of the Term Your Company Mobiles Ltd shall advise the Customer of the amount of the reduction and that reduction shall be deducted from the amount payable under clause 6.18(c).

#### **7. CUSTOMER'S GENERAL OBLIGATIONS AND TERMS APPLICABLE TO ALL SERVICES**

7.1 In relation to the Services, the Customer:

(a) shall ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;

(b) shall co-operate with Your Company Mobiles Ltd in all matters relating to the relevant Services;

(c) shall provide Your Company Mobiles Ltd , its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Your Company Mobiles Ltd ;

(d) shall provide Your Company Mobiles Ltd with such information and materials as Your Company Mobiles Ltd may reasonably require in order to supply the relevant Services and/or Equipment, and ensure that such information is accurate in all material respects;

(e) shall prepare its premises for the supply of the relevant Services (where applicable);

(f) shall obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start (where applicable);

(g) agrees that Your Company Mobiles Ltd may from time to time monitor or record calls made to Your Company Mobiles Ltd or by Your Company Mobiles Ltd to improve customer service, for training or for marketing purposes;

(h) agrees that Your Company Mobiles Ltd shall not be liable or responsible for any failure or delay in the Services due to or in connection with any third party infrastructure applicable to the supply of any Services;

(i) agrees to co-operate with any criminal investigations or any investigation of any regulatory body that is applicable to the supply of any of the Services;

(j) be responsible for ensuring the accuracy of all specifications, drawings, sketches, plans, descriptions and instructions provided to Your Company Mobiles Ltd in connection with the supply of any Services and/or Equipment; and

(k) shall comply with all Service Specific Conditions.

7.2 The Customer is responsible and shall be liable to Your Company Mobiles Ltd for the use of the Services (including for any Charges incurred) by the actions of any of its employees and any other person who has been given access to use the Services by the Customer and any person who gains access to use the Services for fraudulent purposes including in each case where such use was not authorised by the Customer. The Customer is strongly advised to install robust and effective security provisions to prevent unauthorised and/or fraudulent use.

7.3 If Your Company Mobiles Ltd ' performance of any of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or failure by the Customer to perform any relevant obligation or comply with any obligation or policy under the Conditions (Customer Default):

(a) Your Company Mobiles Ltd shall without limiting its other rights or remedies have the right to suspend performance of any Service until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent that the Customer Default prevents or delays Your Company Mobiles Ltd ' performance of any of its obligations;

(b) Your Company Mobiles Ltd shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Your Company Mobiles Ltd ' failure or delay to perform any of its obligations as set out in this clause 7.3; and

(c) the Customer shall reimburse Your Company Mobiles Ltd on written demand for any costs or losses sustained or incurred by Your Company Mobiles Ltd arising directly or indirectly from the Customer Default.

7.4 Without prejudice to clause 7.3 or any other remedy available to Your Company Mobiles Ltd , Your Company Mobiles Ltd shall be entitled to suspend the performance of any Service or terminate the Contract relating to the relevant Service without further liability to the Customer in the event that Your Company Mobiles Ltd :

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- (a) is obliged to comply with any order, instruction or request of any competent governmental body;
- (b) terminates the provision of telecommunications services;
- (c) in its reasonable opinion, Your Company Mobiles Ltd or the Carrier believes the Service are being used fraudulently or unlawfully; or
- (d) in its reasonable opinion Your Company Mobiles Ltd or the Carrier needs to carry out improvements or repairs to any networks or equipment relating to the applicable Services.

7.5 Your Company Mobiles Ltd shall not be liable for any charges resulting from or in connection with fraudulent or unauthorised use of a Service and/or Equipment and the Customer shall be responsible for and pay all charges, costs, fees and expenses resulting from or in connection with any fraudulent or unauthorised use of any Service and/or Equipment.

### **8. CHARGES AND PAYMENT FOR SERVICES**

8.1 The Charges for the Services and/or the Equipment shall be charged to and payable by the Customer in accordance with this clause 8 and in the case of Data Services and Fixed Network Services in accordance with this clause 8 and clause 9.

8.2 The Charges for the Equipment and Installation Services shall be as specified in the Order Form and calculated in accordance with these Conditions. Except as otherwise specified in the Order Form, Charges for Equipment and Installation Services shall be payable on Delivery.

8.3 The Customer shall pay any deposit specified in the Order Form within seven days of submitting the Order Form to Your Company Mobiles Ltd.

8.4 The Charges for the Maintenance Services shall be as specified in the Order Form and calculated in accordance with these Conditions. Except as otherwise specified in the Order Form, Charges for Maintenance Services shall be payable annually in advance with the first payment due on the Commencement Date, and continuing to be payable thereafter on each anniversary of the Commencement Date.

8.5 Where clause 4.10 applies in relation to Maintenance Services, Your Company Mobiles Ltd shall be entitled to make such additional charges as are calculated in accordance with the Tariff.

8.6 Your Company Mobiles Ltd may charge the Customer a call out fee where such a call out occurs based on incorrect information being provided to Your Company Mobiles Ltd or where a call out occurs but the operative is unable to gain access to the premises within the times notified to the Customer for the call out.

8.7 The Charges for the Maintenance Services shall increase on each anniversary of the Commencement Date by 8%.

8.8 The provisions of this clause apply to any proposed increase in the Charges other than those referred to in clause 8.10 below (which reflect an increase caused by regulatory changes in respect of which the provisions of clause 8.10 apply). Your Company Mobiles Ltd reserves the right to increase its Charges for any Service (including without limitation by revising any Tariff). Your Company Mobiles Ltd will give the Customer written notice of any such increase not less than 30 days before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify Your Company Mobiles Ltd in writing within 14 days of the date of Your Company Mobiles Ltd's notice that the Customer wishes to terminate the Contract, failing which the Customer shall be deemed to have accepted the changes.

8.9 Subject to applicable regulations, Your Company Mobiles Ltd reserves the right to increase its Charges for any Service (including without limitation by revising any Tariff) as a result of any increase in charges made to Your Company Mobiles Ltd by third party providers to it by a sum equal to any such increase. In such circumstances the Customer shall not have the right to cancel the Contract.

8.10 Where Your Company Mobiles Ltd proposes to increase its Charges for any Service (including by revising without limitation any Tariff) as a consequence of a regulatory change and that the increase is no greater than the additional cost to Your Company Mobiles Ltd caused by the regulatory change, it will give the Customer written notice of any such increase not less than 30 days before the proposed date of the increase. In such circumstances the Customer shall not have the right to cancel the Contract.

8.11 Except where otherwise specified in these Conditions or the relevant Order for any Service, the Customer shall pay each invoice submitted by Your Company Mobiles Ltd:

- (a) within 14 days of the date of the invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by Your Company Mobiles Ltd.

8.12 Time for payment of all Charges shall be of the essence of the Contract.

8.13 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). The Customer shall pay to Your Company Mobiles Ltd such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

8.14 Invoices shall be deemed to have been accepted if the Customer does not present a written objection, identifying clearly the disputed invoice and the reasons why it is challenged, to Your Company Mobiles Ltd within 30 days of the date of the invoice.

8.15 If the Customer fails to make any payment due to Your Company Mobiles Ltd under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per cent per annum above HSBC Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

8.16 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Your Company Mobiles Ltd may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Your Company Mobiles Ltd to the Customer.

8.17 Your Company Mobiles Ltd may exercise a lien over any equipment or goods in Your Company Mobiles Ltd's possession belonging to the Customer, for all monies payable by the Customer to Your Company Mobiles Ltd.

8.18 Any delay in Your Company Mobiles Ltd raising an invoice for any Charges shall not prohibit Your Company Mobiles Ltd from raising an invoice for the applicable Charges at a later date and the Customer shall pay such Charges.

8.19 Your Company Mobiles Ltd reserves the right to make additional charges for paper billing, late payment, reconnection, non-direct debit payment methods and incorrect fault reporting by the Customer. Such charges are as published by Your Company Mobiles Ltd from time to time and are published at <http://www.YourCompanyMobilesLtd-grp.co.uk/information/terms-and-conditions/>.

### **9. ADDITIONAL TERMS RELATING TO CHARGES FOR DATA SERVICES AND FIXED NETWORK SERVICES**

9.1 The Charges for the Fixed Network Services and the Data Services shall be as detailed in the Order Form (subject always to clause 8.7) and as otherwise determined in accordance with the Contract.

9.2 Charges for line rental are payable from the Handover Date monthly in advance by direct debit, or such other method as is specified in the Order.

9.3 The Customer shall pay for all Charges for calls whether made by the Customer or any third party. Subject to clause 9.4, Your Company Mobiles Ltd shall invoice the Customer monthly in arrears for all call Charges and the Customer shall pay such invoice within 14 days of the date of the relevant invoice by direct debit.

9.4 Notwithstanding clause 9.2 and clause 9.3, Your Company Mobiles Ltd reserves the right to invoice the customer for Charges at any time.

9.5 If Your Company Mobiles Ltd supplies the Customer with any temporary Data Services and/or Fixed Network Services, it may charge the Customer in advance for the whole period during which the temporary services are to be provided.

9.6 Your Company Mobiles Ltd shall have the right to charge a minimum fee for calls of not less than £4.50 per month in the event that the Customer's call charges do not exceed this sum in any month.

### **10. CONFIDENTIALITY AND DATA PROTECTION**

10.1 A party (receiving party) shall keep in strict confidence all technical or commercial know-how, specifications, or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (disclosing party), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party may disclose such of the disclosing

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party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 10 shall survive termination of the Contract.

10.2 The Customer agrees that Your Company Mobiles Ltd may use the Personal Data provided to Your Company Mobiles Ltd to:

- (a) provide any Services;
- (b) process payment for such Services; and
- (c) inform the Customer about similar products or services that Your Company Mobiles Ltd or other members of its group provide.

10.3 The Customer agrees that Your Company Mobiles Ltd may pass its Personal Data and other information about the Customer to credit reference agencies and that Your Company Mobiles Ltd may keep a record of any search obtained in respect of a Customer from a credit reference agency.

#### **11. LIMITATION OF LIABILITY**

11.1 Nothing in the Contract shall limit or exclude Your Company Mobiles Ltd ' liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation by Your Company Mobiles Ltd ; or
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

11.2 Subject to clause 11.1, Your Company Mobiles Ltd shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of or damage to goodwill;
- (f) loss of use or corruption of software, data or information;
- (g) any indirect or consequential loss.

11.3 Subject to clause 11.1 and clause 11.2, Your Company Mobiles Ltd ' total liability to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement shall, in respect of all claims (connected or unconnected) in any consecutive 12 (twelve) month period, be limited to the equivalent of the total Charges paid by the Customer in that period for the Equipment and/or the relevant Service in respect of which the claim arose.

11.4 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.

11.5 If the Customer is a consumer, nothing in these Conditions shall prejudice its statutory rights.

11.6 This clause 11 shall survive termination of the Contract.

#### **12. TERMINATION**

12.1 Without limiting its other rights or remedies, Your Company Mobiles Ltd may terminate the Contract (in whole or in part) without further liability to the Customer by giving the Customer not less than 30 days written notice.

12.2 Without limiting its other rights or remedies, Your Company Mobiles Ltd may terminate the Contract (in whole or in part) with immediate effect by giving written notice to the Customer if:

- (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 10 Business Days of the Customer being notified in writing to do so;
- (b) the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- (e) the Customer (being an individual) is the subject of a bankruptcy petition or order;
- (f) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 10 Business Days;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer (being a company);
- (h) the holder of a qualifying floating charge over the assets of the Customer (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer;
- (j) any event occurs or a proceedings are taken with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.2(b) to clause 12.2(i) (inclusive);
- (k) the Customer suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- (l) the Customer's financial position deteriorates to such an extent that in Your Company Mobiles Ltd ' opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- (m) the Customer (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

12.3 Without limiting its other rights or remedies, Your Company Mobiles Ltd may terminate the Contract (in whole or in part) with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment and fails to pay all outstanding amounts within 30 Business Days after being notified in writing to do so.

12.4 Without limiting its other rights or remedies, Your Company Mobiles Ltd may suspend provision of the Services under the Contract or any other contract between the Customer and Your Company Mobiles Ltd if the Customer becomes subject to any of the events listed in clause 12.2(b) to clause 12.2(m), or Your Company Mobiles Ltd reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

#### **13. CONSEQUENCES OF TERMINATION**

13.1 On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to Your Company Mobiles Ltd all of Your Company Mobiles Ltd 's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Your Company Mobiles Ltd shall submit an invoice, which shall be payable by the Customer immediately on receipt;



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(b) the Customer shall return any Equipment which has not been fully paid for. If the Customer fails to do so, then Your Company Mobiles Ltd may enter the Customer's premises and take possession of the Equipment. Until it has been returned, the Customer shall be solely responsible for the safe keeping of such Equipment and will not use it for any purpose not connected with the Contract;

(c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination of the Contract shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and

(d) clauses which expressly or by implication survive termination shall continue in full force and effect.

13.2 Where the Customer is a Small Business Customer, the Customer may terminate a Contract for Fixed Network Services or Data Services at any time prior to commencement of the supply of such Services.

#### **14. FORCE MAJEURE**

14.1 For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of Your Company Mobiles Ltd including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of Your Company Mobiles Ltd or otherwise), failure of a utility service (including without limitation street cabling, network or infrastructure failure or fault), failure of a transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers, subcontractors or utility suppliers.

14.2 Your Company Mobiles Ltd shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

14.3 If the Force Majeure Event prevents Your Company Mobiles Ltd from providing any of the Services for more than 10 Business Days, Your Company Mobiles Ltd shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

#### **15. GENERAL**

15.1 Assignment and other dealings:

(a) Your Company Mobiles Ltd may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract (in whole or in part) and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

(b) The Customer shall not, without the prior written consent of Your Company Mobiles Ltd, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

15.2 Notices:

(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or e-mail. (Emails to Your Company Mobiles Ltd must be sent to sales@Your Company Mobiles Ltd -grp.co.uk).

(b) A notice or other communication shall be deemed to have been received:

(i) if delivered personally, when left at the address referred to in clause 15.2(a);

(ii) if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting;

(iii) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or

(iv) if sent by e-mail, one Business Day after transmission.

(c) A notice or other communication sent by email to Your Company Mobiles Ltd must be sent to sales@Your Company Mobiles Ltd -grp.co.uk and if sent to a different email address shall not be deemed to have been received.

(d) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

15.3 Severance:

(a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

(b) If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

15.4 Waiver: A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

15.5 No partnership or agency: Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

15.6 Third parties: A person who is not a party to the Contract shall not have any rights to enforce its terms.

15.7 Variation: Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by Your Company Mobiles Ltd. Your Company Mobiles Ltd reserves the right to make changes to these Conditions from time to time.

15.8 Information about Your Company Mobiles Ltd : Your Company Mobiles Ltd operates the website [www.Your Company Mobiles Ltd -grp.co.uk](http://www.Your Company Mobiles Ltd -grp.co.uk). Your Company Mobiles Ltd is Your Company Mobiles Ltd, a company registered in England and Wales under company number 04771242 with its registered office at Europa House Southwick Square Southwick Brighton BN42 4FJ. Your Company Mobiles Ltd ' VAT number is 837118622. Please refer to Your Company Mobiles Ltd ' website at [www.Your Company Mobiles Ltd -grp.co.uk](http://www.Your Company Mobiles Ltd -grp.co.uk) for information about how to contact us.

15.9 Dispute resolution: The Customer must notify any complaints or disputes to Your Company Mobiles Ltd in accordance with its Complaints and Dispute Resolution Procedure available at [www.Your Company Mobiles Ltd -grp.co.uk](http://www.Your Company Mobiles Ltd -grp.co.uk). Your Company Mobiles Ltd shall use reasonable endeavours to resolve any complaint or dispute. Further information concerning the Customer's rights in relation to any dispute or complaint are specified in the Complaints and Dispute Resolution Procedure.

15.10 Governing law: The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

15.11 Jurisdiction: Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).