

STRUCTURE OF THE AGREEMENT

- the General Conditions for Customers will always apply.
- the Mobile Equipment Terms will apply if the Customer has ordered Mobile Equipment directly from Company (and not through one of Company's dealers). If the Customer has ordered mobile equipment through one of Company's dealers the Mobile Equipment Terms will not apply, but the Company dealers may have supplied the Customer with their own terms applying to the mobile equipment the Customer has purchased;
- the Mobile Terms will apply if the Customer has ordered any of the Mobile Services, together with such Service Schedules relating to the particular Mobile Service(s) the Customer has ordered.
- the VOIP Terms will apply if the Customer has ordered any of the VOIP Services.
- the Broadband Terms will apply if the Customer has ordered any of the Broadband Services.
- the Boostbox Terms will apply if the Customer has ordered any of the Boostbox Service.
- the Rental Leasing Terms will apply if the Customer has ordered any of the Rental Leasing Services.

GENERAL CONDITIONS FOR BUSINESS CUSTOMERS

1. DEFINITIONS AND INTERPRETATION

- 1.0. In these General Conditions, the following terms and expressions shall have the following meanings unless the context otherwise requires:

TERM/EXPRESSION	MEANING
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Affiliate	means, in relation to either party, any company which is a subsidiary or holding company (including the ultimate holding company) of that party and any company which is a subsidiary of such holding company (the terms subsidiary and holding company having the meanings set out in Section 1159 of the Companies Act 2006);
Agreement	means the agreement between the Customer and Company as detailed in clause 28 of these General Conditions;
Broadband Services	means those broadband services more specifically set out in the Broadband Terms;
Charges	means the monies payable by the Customer to Company under the Agreement;
Commencement Date	means the date of the Agreement unless otherwise specified in the Commercial Schedule;
Commercial Schedule	means the commercial schedule document being part of the Agreement;
Company	means ETS Networks Ltd.;
Company Employee	means any employee or other staff of Company or an Company Affiliate or any direct or indirect sub-contractor of Company or an Company Affiliate who provides the Services on behalf of Company;
Company Price List	means the notes, descriptions and definitions of, criteria for use of, and the list of prices and tariffs which are charged to customers for Services which may be amended by Company from time to time. The Company Price List is available at the Company Web Site.
Company Web Site	Means the Company web site at http://www.ETS.co .
Customer Service Charter	means Company's standard customer service charter as amended by Company from time to time and which is non-binding;
Discount	means the amount at which any of the Services are provided by Company to the Customer at less than the full rate. The amount of such discount having been supplied in writing to the Customer and/or inserted on the Commercial Schedule prior to any of the Services commencing as Discount Services;
Discount Services	means any Services provided by Company to the Customer from time to time and not charged for by Company from time to time or charged at a discount;
Employee Liability Information	shall have the meaning ascribed to it in the TUPE Regulations, as amended from time to time;
End User Licensed Software	means any software, the licence terms of which are governed by a separate agreement with the licensor of such software, typically by means of a click wrap or shrink wrap licence agreement;
General Conditions	means this document entitled General Conditions for Business Customers;
Hardware	means the equipment described in the Commercial Schedule;
Internet	means the global data network comprising interconnected networks using the TCP/IP protocol suite;
Line Rental Charge	means the monthly non-usage dependent part of the Charges for the Services, as specified in the Commercial Schedule;
Minimum Holding	means the minimum number of instances of a Service (e.g. SIM cards, or landlines) which must remain connected to a particular Service as specified in the Commercial Schedule

Minimum Notice Period means 90 days' notice in writing

Minimum Revenue Commitment means a commitment to spend the amount set out in the Commercial Schedule, or otherwise notified in writing by Company to the Customer, on call charges and/or monthly subscription charges on each voice connection per month for the Minimum Term or Renewal Period (as applicable) for the relevant Service;

Minimum Term means the period of the Agreement as specified in the Commercial Schedule and/or the minimum number of months a particular Service must be in operation for (as set out in the relevant Commercial Schedule) and if not specified in the Commercial Schedule the Minimum Term shall be 24 months from the Service Commencement Date, during which, if the Service is terminated then Termination Fees may be payable;

Network means the Company and/or O2 network or the network of any other Third Party used by Company or O2 to supply the Services, from time to time;

O2 means Telefonica O2 UK Limited (registered number 1743099) whose registered office is at 260 Bath Road, Slough, Berkshire SL1 4DX;

Replacement Services means all or part of the Services or services substantially similar to all or part of the Services which are provided by an entity other than a Services Provider following the termination of the Agreement (or the relevant part of the Agreement) or the termination of any or all of the Services;

Service Transfer means the provision of a Service (or any part of a Service) pursuant to the Agreement;

Service Commencement Date in respect of each Service means the date the Customer first starts to receive the relevant Services;

Service(s) means the service(s) identified in the Commercial Schedule as such service(s) are described in the Terms and/or Service Schedules as applicable and any other services agreed by the parties from time to time including without limitation any individual connections or any products ordered from time to time;

Services Provider means Company or a Company Affiliate or any direct or indirect supplier of Company or a Company Affiliate;

Service Schedule means the document entitled "Service Schedule" containing additional terms relating to a particular Service which schedule shall form part of the Agreement;

Software means any software, excluding End User Licensed Software, supplied to the Customer by Company under the Agreement;

Successor Supplier means any entity (including the Customer where relevant) which provides the Replacement Services;

Target Delivery Date in respect of a Service means the date for the commencement of the provision of the relevant Service as specified by Company;

Termination Fee shall have the meaning set out in clause 14.14;

Terms means a document entitled "Terms" containing additional terms relating to particular Services or equipment which

shall form part of the Agreement;

Third Party means a person other than Company or the Customer;

TUPE Regulations means the Transfer of Undertakings (Protection of

Employment) Regulations 2006, (as amended, re-enacted or extended from time to time);

User means anyone who is permitted by the Customer to use the Service;

Virus means any code which is designed to disrupt, disable, harm or otherwise impede in any manner the operation of the Network;

Working Day means Monday to Friday (excluding UK bank and public

holidays).

1.1. The headings in the Agreement are for ease of reference only and shall not affect its construction.

1.2. References in the Agreement to any statute or statutory instrument shall include any re-enactment, modifications or amendments thereto for the time being in force.

(if any);

- 1.3. References to clauses, sub-clauses, paragraphs, Terms and Service Schedules refer, unless otherwise stated, to clauses and sub-clauses of, and schedules to, the Agreement, and paragraphs to the Service Schedules.
- 1.4. Unless the context otherwise requires, the singular shall include the plural and vice versa.
- 1.5. Any obligation (including an obligation to "procure" or "ensure") assumed by

- an obligor under the Agreement takes effect as a primary obligation.
- 1.6. References in the Agreement to a Service shall include any instance of such Service as applicable (for example, reference to a mobile Service shall include both all mobile Services provided to the Customer and/or each individual mobile, as the context requires).

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1.5 Any obligation (including an obligation to "procure" or "ensure") assumed by an obligor under the Agreement takes effect as a primary obligation.

1.6 References in the Agreement to a Service shall include any instance of such Service as applicable (for example, reference to a mobile Service shall include both all mobile Services provided to the Customer and/or each individual mobile, as the context requires).

2. COMMENCEMENT AND TERM

2.1 The Agreement shall commence on the Commencement Date and shall continue for the Minimum Term and thereafter:

(a) if the Customer is a consumer or employs less than 10 employees (a "Specified Customer") and the Services to be provided by Company:

(i) are fixed line telephone service and/or fixed broadband services (each a "Fixed Service") then the Agreement in relation to such Fixed Service only shall continue after the end of the Minimum Term until the Customer gives the Company 90 days' written notice to terminate or the Agreement is otherwise terminated by either party in accordance with the terms of this Agreement; or

(ii) is not a Fixed Service then the Agreement in relation to such Services (other than Fixed Services) shall subject to clause 14.1 automatically renew for consecutive 12 month periods (each a ("Renewal Period") until terminated by either party in accordance with the terms of this Agreement; or

(b) if the Customer is not a Specified Customer then the Agreement in relation to such Services shall, subject to clause 14.1, automatically renew for consecutive 12 month periods (each a ("Renewal Period") until terminated by either party in accordance with the terms of this Agreement.

3. SUPPLY OF SERVICES

3.1 In consideration of the Customer paying the Charges and fulfilling all of its commitments as set out in the Agreement, Company shall supply the Services in accordance with the terms of the Agreement.

3.2 Company shall commence supplying a Service on the relevant Service Commencement Date and shall supply those Services for the Minimum Term and thereafter until terminated by either party in accordance with the provisions of the Agreement.

4. SERVICE STANDARDS

4.1 Company will supply the Services with the reasonable skill and care of a competent telecommunications service provider.

4.2 Company does not guarantee that the Services will be continuously available and/or fault-free. The Customer acknowledges that faults may occur from time to time.

4.3 Company will endeavour to provide the Services subject to technical and commercial feasibility.

4.4 Company shall be entitled to change the way it provides a Service, provided that any change to the way it provides such Service does not have a materially detrimental effect on the Customer.

4.5 Company shall use reasonable endeavours to provide the Services within any time periods and/or by any date indicated to the Customer, but all time periods and dates (including the Target Delivery Date) are estimates and Company shall have no liability for any failure to meet any date or perform any of its obligations within the time period indicated.

5. THE CHARGES

5.1 The Customer shall pay the Charges by Direct Debit for:

(a) each Service (whether or not the Service is used by the Customer);

(b) where applicable, the Mobile Equipment and/or Hardware; and

(c) any other products or services agreed between the parties from time to time,

in accordance with this clause 5. Where the Customer does not pay the Charges by Direct Debit then Company may add a surcharge for any payment by Credit Card.

5.2 The Customer acknowledges that the Charges have been agreed on the basis that they will be paid by Direct Debit. Where the Customer fails to set up any such Direct Debit then Company may add to its Charges a monthly amount for its administration expenses.

5.3 The Charges are as set out in the Commercial Schedule, or:

(a) as detailed in the Company Price List at the time the Mobile Equipment, Hardware, Service or

Contract other agreed product or service was supplied; or

(b) as notified to the Customer by Company in writing.

5.4 Where relevant Charges shall be based upon call and billing data recorded by or on behalf of Company.

5.5 The Charges are exclusive of value added tax which will be charged at the prevailing rate.

5.6 Unless otherwise stated in the Commercial Schedule or the Company Price List:

(a) call prices are quoted by the minute;

(b) the duration of each call shall be measured in whole seconds, any part thereof will be rounded up to the next whole second;

(c) each call shall be charged excluding VAT, based on the duration, the ex VAT cost of each call is then calculated and the result rounded up to the nearest penny. VAT is then added where applicable to the total of all charges on the Customer's invoice;

(d) peak rate call Charges apply from 07:00 to 19:00, Monday to Friday;

(e) weekend rate call Charges apply from midnight on Friday to midnight on Sunday;

(f) off peak rate call Charges apply at all times when peak rate or weekend rate call Charges do not apply; and

(g) all calls are subject to a minimum Charge.

5.7 The Customer will be liable for any Charges incurred as a result of unauthorised use of the Services whatsoever and howsoever and whether fraudulently, through misuse or otherwise.

5.8 The Customer may be liable for a Termination Fee.

5.9 If applicable, where the Customer fails to meet the Minimum Revenue Commitment, Company will apply a charge equal to the difference between the actual spend by the Customer and the Minimum Revenue Commitment on a monthly basis in arrears.

5.10 In relation to all Customers (including, for the avoidance of doubt Customers with 10 or fewer employees) the Company will increase the Charges for Service(s) during March 2014 and from 2015, and each year thereafter, during April, by the RPI Rate (an "RPI Change") or otherwise to reflect change in prices, tariffs, terms or otherwise made or imposed by any third party supplier of Company or a regulatory body.

6. INVOICING AND PAYMENT

6.1 Unless otherwise agreed with the Customer, Company may issue to the Customer on a monthly basis one or more invoice(s) which shall set out the Charges due in accordance with the Agreement.

6.2 Unless otherwise stated in the Commercial Schedule, the Customer shall pay:

(a) in advance for subscription, rental and other recurring Charges (including inclusive usage Charges); and

(b) in arrears for usage (excluding inclusive usage Charges), connection and other non-recurring Charges.

6.3 If the parties agree that payments of the Charges to Company are to be made by credit card and if payments of such Charges are not made on the due date, Company is authorised to debit the Customer's nominated credit card company with all Charges due and payable to Company.

6.4 The Customer shall pay each invoice issued by Company under the Agreement (including any invoice relating to Termination Fees) within 14 days of the date of invoice.

6.5 The Customer shall pay the Charges (including any Termination Fees) in full without any deduction or set off.

Late payment

6.6 Without prejudice to any other rights of Company, in the event of the Customer failing to pay any sums due to Company on time or at all, notwithstanding notification by Company of the overdue debt to the Customer, Company shall be entitled to:

(a) charge interest (both before and after any judgment) on amounts overdue from the Customer under the Agreement from the due date until the payment is actually made at the rate of 4% per annum over the base rate of Barclays Bank plc for the time being during the relevant period; and

(b) suspend the provision of the relevant Service(s) until such time as all payments due including all interest accrued has been paid and satisfied in full.

Credit security

6.7 Company reserves the right to set a credit limit on the Charges that can be accrued under the Agreement and Company can review any such credit limit at any time.

6.8 Company may require from the Customer a deposit as security for payment of Charges. The Customer may request the return of any deposit paid at the expiry of each 12 month period after the deposit was taken but the decision to return any deposit prior to termination of the Agreement will be at the discretion of Company. Company reserves the right to set off any deposit against the Charges.

7. NEW SERVICES

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New services on the terms of the Company Price List

7.1 The Customer may request new services on the terms set out in the Company Price List by placing a new service order under the Agreement. Company shall be entitled to accept or reject a new service order. Once a new service order is accepted by Company:

- (a) the new Service shall be deemed added to the Agreement (including for the avoidance of doubt, the terms of the Company Price List applicable to the Service as well the applicable Service Schedules where applicable); and
- (b) Company shall supply to the Customer the Services requested in that new service order on the terms and conditions of the Agreement and any alternative terms appearing on or referred to in any other communication, (whether oral, in writing or by electronic means) by the Customer for the purpose of placing orders shall be ineffective.

New services on bespoke terms

7.2 The Customer may request a new service at any time on terms other than those set out on the Company Price List. In the event that Company and the Customer agree the terms that would apply to such new services, those terms will be added to the Agreement by execution of a formal variation in writing to the Agreement.

8. MOVES, ADDS AND CHANGES

8.1 Subject to any specific procedures otherwise set out in the Agreement, the Customer may request a change to the Services by submitting a request in writing, including, but not limited to the following types of changes:

- (a) additional instances of a Service (e.g. additional landlines);
- (b) the termination of certain instances of a Service (e.g. disconnection of a mobile);
- (c) a change from one Service specification to another Service specification; or
- (d) a change to the location or site where a Service is supplied.

The change request shall contain sufficient information to enable Company to submit a response.

8.2 Company shall supply to the Customer a written response confirming whether or not Company would be prepared to accept the changes and may specify in such notice:

- (a) any additional Charges that would result from the change (e.g. Termination Fees in the case of termination of an instance of a

Service) and/or any changes to existing Charges;

- (b) any Customer dependencies relating to the change; and
- (c) the timescales for the delivery of the change which shall, unless otherwise stated in Company's written response run from the date on which the Customer notifies Company that it wishes to proceed with the change.

8.3 The Customer shall notify Company in writing within 14 days of the date that it receives Company's response whether or not it would like to proceed with the change.

9. OTHER CUSTOMER OBLIGATIONS

9.1 The Customer shall and shall procure that Users (or anyone having access to the Services), shall:

- (a) comply with any instructions from Company relating to the use of the Services;
- (b) not use the Services in a manner which is inconsistent with a reasonable customer's good faith use of the Services or the Network;
- (c) not use the Services in a manner which, in Company's opinion, will (or is likely to) adversely affect the provision of the Services to the Customer, Company's or O2's other customers or users of the Network;
- (d) not use the Services fraudulently or in connection with a criminal offence;
- (e) not make nuisance calls;
- (f) not use the Services to send, knowingly receive, store or communicate any material which is unlawful, offensive, abusive, indecent, defamatory, obscene or menacing, a nuisance or a hoax;
- (g) not use the Services in a way that contravenes any licence, code of practice, instructions or guidelines by a relevant regulatory authority;
- (h) not use the Services in a way that is in contravention of a Third Party's rights (including but not limited to intellectual property rights);
- (i) not use the Services to spam or to send unsolicited advertising or promotional material;
- (j) not use the Services in any way which causes annoyance, inconvenience or needless anxiety as set out in the Communications Act 2003;
- (k) not use the Services in a manner which may damage the reputation of Company and/or O2, the reputation of the Services or

Contract

- otherwise bring Company and/or O2 into disrepute;
- (l) not use the Services for the processing of automated personal data as defined in the Data Protection Act 1998;
- (m) hold and will continue to hold any licences, consents and/or notifications required under any applicable legislation, regulation and/or administrative order to receive and use the Services and/or to connect to the Network;
- (n) notify Company of any methods of doing business which may affect the Customer's use of the Services or the Customer's ability to comply with the terms of the Agreement;
- (o) comply with Company's reasonable instructions relating to health, safety, security and use of the Network;
- (p) comply with all applicable laws and regulatory provisions;
- (q) comply with any applicable fair use policy that Company may issue from time to time; and
- (r) not damage Company or O2's systems or the Network through the introduction of any Virus.
- 9.2 Subject to clause 11 of these General Conditions, the Customer agrees that it is procuring the Services solely for its own use and that it will not resell or otherwise act as any form of distributor in respect of the Services.
- 9.3 The Customer shall provide Company with any and all information and/or assistance that Company may require in order to perform the Services. The Customer shall ensure the information is complete and accurate. Company shall not be responsible for any failure and/or delay to provide the Services if such failure and/or delay is a result of the Customer's failure to provide Company with the required information and/or assistance. The Customer shall reimburse Company for any administrative charges that it incurs as a result of information that it receives in accordance with this clause 9.3 that is incomplete or inaccurate.
- 9.4 The Customer shall notify Company immediately (and confirm in writing) on becoming aware that any person is making improper or illegal use of the Services. The Customer shall indemnify Company fully against all losses, liabilities, costs (including without limitation legal costs) and expenses which Company may suffer or incur as a result of any fraud, illegal or improper use (with or without Customer's authorisation) of the Services.
- 9.5 The Customer agrees and acknowledges that Company, O2 and/or a supplier of Company or O2 may monitor and record:
- (a) calls to 999 and 112 services; and

(b) calls or other communications relating to Company's customer services and telemarketing.

- 9.6 The Customer acknowledges that some of the Services enable access to the Internet and that use of the Internet is solely at the Customer's risk and subject to all applicable laws. Company has no responsibility for any information, software, services, goods or other materials obtained by the Customer using the Internet.
- 9.7 The Customer warrants to Company that it will take all reasonable steps (including testing with the latest commercially available virus detection software) to ensure that any software used with or in connection with the Services that is not provided by Company under the Agreement is not infected by viruses and/or logic bombs, worms, trojan horses and any other types of disruptive, destructive or nuisance programs.

10. NUMBERS AND CODES

- 10.1 Company may allocate the Customer numbers, IP addresses and other codes in accordance with the Terms and Service Schedules.
- 10.2 Nothing in the Agreement shall be construed as to transfer from Company to the Customer ownership of any numbers, IP addresses or other codes or to grant the Customer the right to sell or dispose of a number, IP address or other code. All the Customer's rights to use such IP addresses or other codes will cease upon termination of the Agreement or the relevant Service.
- 10.3 The Customer acknowledges that Company may change the numbers, IP addresses or other codes it has allocated to the Customer. Company shall (where reasonably practicable) provide the Customer with reasonable notice of such a change.
- 10.4 The Customer will comply with any and all instructions for use of any number, IP address or other code issued by the Third Party provider of that number, IP address or other code. Company shall (where reasonably practicable) provide the Customer with reasonable notice of such instructions.

11. CUSTOMER AFFILIATES

- 11.1 Company acknowledges that the Customer may permit a Customer Affiliate to use the Services supplied by Company to the Customer under the Agreement. The Customer will procure that its Affiliates are aware of and comply with the terms of the Agreement. The Customer shall be liable to Company for any and all:
- 11.1.1 claims, losses and expenses suffered or incurred by Company as a result of a breach of a term of the Agreement resulting from a Customer Affiliate's use of the Services; and
- 11.1.2 losses, costs and expenses resulting from any claims against Company made by any of the Customer's Affiliates (or any other Third Party whom the Customer has permitted to use a Service or related equipment) to the extent that

Contract such claims exceed the financial caps and other limitations on liability as set out in the Agreement.

The foregoing liabilities shall remain in full force and effect notwithstanding any termination of the Agreement.

12. VARIATIONS TO THE AGREEMENT

12.1 Company reserves the right from time to time to vary the Agreement as follows:

12.1.1 Company shall be entitled to vary the Customer Service Charter and/or the Company Price List (including the prices and tariffs set out in the Company Price List). Such variations shall be published at <http://www.Company-group.co.uk> at least 28 days before such changes come into effect or, where the variation arises due to changes imposed by Third Party manufacturers, Third Party suppliers or a regulatory body, as much notice as is reasonably practicable; and

12.1.2 Company shall be entitled to vary the provisions of the Agreement (including for the avoidance of doubt, the Commercial Schedule). Company will provide to the Customer 28 days notice in writing of any such variation or, where the variation arises due to changes imposed by Third Party manufacturers, Third Party suppliers or a regulatory body, as much notice as is reasonably practicable.

13. SUSPENSION

Maintenance and emergencies

13.1 Company may, from time to time and without notice, suspend the Services in any of the following circumstances:

13.1.1 during any technical failure, modification or maintenance of the telecommunications systems by which the Services are provided; or

13.1.2 because of an emergency or upon instruction by emergency services or any government or appropriate authority or for the Customer's or Users' own security.

13.2 Company shall endeavour to restore the Services suspended in accordance with clause 13.1 of these General Conditions as soon as reasonably practicable.

13.3 The Customer shall remain liable for all Charges levied in accordance with the Agreement during any period of suspension arising from the circumstances described in clause 13.1 of these General Conditions.

Actions of the Customer and/or fraud

13.4 Company may, without prejudice to its other rights hereunder, suspend or disconnect the Services without notice in any of the following circumstances:

(a) if the Customer fails to comply with the terms of the Agreement after being given written notice of its failure (including but not limited to failure to pay any Charges due hereunder); or

(b) if the Customer allows anything to be done which in Company's reasonable opinion may have the effect of jeopardising the operation of the Network or the Services, or if the Services are being used in a manner prejudicial to the interests of Company, O2 and/or a supplier of Company and/or O2; or

(c) if Company has reasonable cause to suspect fraudulent use of the Services (whether by the Customer or any third party).

13.5 If Company has suspended the Services in accordance with clause 13.4 of these General Conditions, Company shall restore the Services when the circumstance described in clause 13.4 of these General Conditions is remedied.

13.6 The Customer shall remain liable for:

13.6.1 all Charges levied in accordance with the Agreement during any period of suspension; and

13.6.2 all reasonable costs and expenses incurred by Company in the implementation of such suspension or disconnection,

where such suspension or disconnection arises from the circumstances described in clause 13.4 of these General Conditions.

14. TERMINATION

Termination for convenience

14.1 The Customer may terminate the Agreement (in whole or in relation to a particular Service) by providing to Company 90 days' notice in writing providing such notice does not expire prior to the expiration of the Minimum Term or Renewal Period relevant to those Services being terminated.

14.2 Company may terminate the Agreement (in whole or in relation to a particular Service) by providing to the Customer 30 days' notice and, in this event, the Customer shall not be liable for any Termination Fees.

Termination resulting from changes to the Agreement

14.3 Subject to 14.4 of these General Conditions, the Customer shall be entitled to terminate a Service by providing 30 days' notice in writing if:

14.3.1 the Company increases the prices and/or tariffs set out in the Company Price List and/or the Commercial Schedule in respect of that specific Service pursuant to clause 12 of these General Conditions and that increase is to the material disadvantage of the Customer; or

14.3.2 the Company substantially varies the terms of the Agreement that relate to that specific Service pursuant to clause 12 of these General Conditions (including the Commercial Schedule) and that variation is to the Customer's material disadvantage, provided that such notice is provided to the Company within 30 days of the date that the change is notified to the Customer.

For the avoidance of doubt, any price or Charges **Contract** increases that would not have increased the Customer's immediately previous monthly total bill for that specific Service (if the increase(s) had applied for the whole of that month) by more than the greater of: (i) the Retail Price Index (RPI); or (ii) the Consumer Price Index (CPI) annual inflation rate at the date the Company notifies the Customer of the applicable price increase; or (iii) 10%, shall not constitute a material disadvantage to the Customer under this clause 14.3.

- 14.4 The right to terminate a Service in clause 14.3 above shall not apply where the increases in prices or tariffs or the variation of the terms of the Agreement have been agreed by the Customer (including an RPI Change) and/or arise as a consequence of a change in prices, tariffs, terms or otherwise made by Third Party manufacturers, Third Party suppliers or a regulatory body.
- 14.5 Termination of a Service in accordance with clause 14.3 of these General Conditions will not affect the Customer's requirement to pay the Charges relating to that Service incurred prior to the date of termination, but, in this event, the Customer shall not be liable for any Termination Fees.

Termination for cause

- 14.6 The Customer may terminate the Agreement by providing to Company 30 days' notice in writing in the event that Company:
- 14.6.1 has committed a material breach of the Agreement that is incapable of remedy; or
- 14.6.2 has committed a material breach of the Agreement that is capable of remedy and Company has failed to remedy that breach within 30 days of the Customer supplying written notice specifying the breach and requiring its remedy.
- 14.7 Company may terminate the Agreement (in whole or in relation to a particular Service) by providing 30 days' notice in writing:
- 14.7.1 in the event that the Customer has committed a material breach of the Agreement that is incapable of remedy;
- 14.7.2 in the event that the Customer has committed a material breach of the Agreement that is capable of remedy and the Customer has failed to remedy that breach within 30 days of Company supplying written notice specifying the breach and requiring its remedy; or
- 14.7.3 if any of the events described in clause 13.4 of these General Conditions occurs.

and in the event of clause 14.7 applying, the Customer shall without limitation to any other remedies available to Company be liable for the Termination Fees (if any).

Insolvency

- 14.8 A party to the Agreement may terminate the Agreement by providing 30 days' notice in writing in the event that bankruptcy or insolvency

proceedings are brought against the other party, or if an arrangement with creditors is made, or a receiver or administrator is appointed over any of the other party's assets, or the other party goes into liquidation.

Consequences of termination

- 14.9 If the Agreement is terminated and the Customer wishes to transfer to another service provider, Company will provide reasonable assistance to the Customer in respect of the transfer of the Customer's service in accordance with standard telecommunications industry practice.
- 14.10 Termination or expiry of the Agreement for whatever reason shall not affect:
- 14.10.1 the rights and obligations of the parties which have accrued prior to such termination or expiry; or
- 14.10.2 any provisions of the Agreement which are of a continuing nature and any other provisions of the Agreement necessary for their interpretation or enforcement.
- 14.11 On termination or expiry of the Agreement:
- 14.11.1 any sums properly due from one party to the other will become payable within 30 days of termination (including Termination Fees). The Company shall raise an invoice immediately upon notice of termination or expiry of the Agreement to the Customer and the Customer shall pay such invoice within 7 days of such invoice date or prior to any transfer of services, whichever is earlier;
- 14.11.2 the Customer shall cease using the Services and, within 14 days of termination or expiry, return all Hardware. The Company shall be entitled to charge the Customer an amount not less than the minimum fee specified in the Retail Price List from time to time in respect of each piece of Hardware that is not returned to the Company within 14 days of termination or expiry; and
- 14.11.3 each party will, on request, promptly return to the other all Confidential Information and other property belonging to the other which is in its custody or control or will destroy such Confidential Information and certify such destruction to the other party.
- 14.12 In the event of the Customer wishing to terminate any of the Services at any time prior to the expiration of the Minimum Term or Renewal Period relevant to such Service and Company (in its sole discretion) electing to accept such notice or Company terminating Services during the Minimum Term or Renewal Period pursuant to any of clauses 14.7 or 14.8 the Customer shall pay in full (i) an amount equal to the Discount for the period any of the Services have been supplied as Discount Services during the Minimum Term or Renewal Period and (ii) an admin charge of £25 per each Service and per each line or connection.
- 14.13 In the event of the Customer:
- 14.13.1 terminating any of the Services; or
- 14.13.2 attempting to terminate any of the Services; or

14.13.3 receiving notice from Company terminating any of the Services pursuant to any of clause 14.7 or 14.8 during the Minimum Term or the Renewal Period,

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then the Customer accepts that Company shall be entitled to invoice the Customer a cancellation charge which is equal to:

- (a) 100% of the total Charges which are fixed charges (i.e. Line Rental Charges); together with an amount equal to
- (b) 30% of the aggregate anticipated call charges and other non -fixed charges

in each case which would have been payable in respect of the relevant Services being terminated or attempted to be terminated during each month outstanding during the remainder of the relevant Minimum Term or Renewal Period (as applicable) (each of (a) and (b) above together being the "Termination Fee");

For the purposes of part (b) above the Termination Fee shall be calculated for the call charges and other non -fixed charges using:

- (a) the average of the last three monthly amounts invoiced by Company to the Customer prior to the Termination Fee becoming payable; or
- (b) the actual amount payable by the Customer for the Services being terminated during the last full calendar month immediately prior to the said breach (whichever is the higher); or
- (c) where no invoice has been submitted to the Customer prior to the Termination Fee becoming payable the amount of the estimated spend (divided by 12 where such estimated spend is based upon a year rather than a month).

14.14 The amount payable pursuant to clause 14.13.3 is without prejudice to the amounts detailed in clause 14.11 which are payable in addition.

14.15 Where the Company is providing any Services on a bespoke rates package and the Customer terminates any such Service for any reason whatsoever or howsoever the Customer agrees that the Company shall be entitled to invoice the Customer a cancellation fee of £10 per each line that is ceased as a result of such termination.

15. INTELLECTUAL PROPERTY

15.1 Title to, and all intellectual property rights in the Software, associated documents and all parts thereof will be and remain vested in and be the absolute property of the owner of the copyright in the Software or associated documents as appropriate, which owner shall be entitled to enforce any of the terms of the Agreement relating to the Customer's use of that Software, associated documents and all parts thereof, directly against the Customer.

15.2 All information or materials exchanged between Companies and the Customer in connection with the

Agreement, together with the copyright therein, will remain the property of Company, Company's suppliers or the Customer as applicable and will be returned to the owning party on termination of the Agreement, if requested by such party.

15.3 Company grants to the Customer a non-exclusive, non-transferable licence to use, in object code form, any Software provided by Company or its suppliers solely in the United Kingdom in connection with the proper use of the Services. The Customer undertakes not to copy, alter, adapt, translate, software develop, decompile, license, sub-license, reverse engineer or resell any Software (or any part of the Software), unless expressly permitted to do so by Company or by relevant law. This licence will terminate on the termination of the Agreement (or any relevant part of the Agreement).

15.4 Company grants to the Customer a non-exclusive, non-transferable royalty free licence for the term of the Agreement to use copy and reproduce any information or materials provided by Company to the Customer under the Agreement to the extent necessary for the Customer to receive the benefit of the Services. The Customer must not alter, adapt, translate, develop, decompile, license, sub- license, reverse engineer or resell any such information or materials (or any part thereof), unless expressly permitted to do so by Company or relevant law.

15.5 In the event that the Customer is subject to a claim by a Third Party in respect of any alleged infringement of any trademark, patent, registered design or copyright arising from its normal use or possession of the Mobile Equipment, Hardware, Software, information or materials provided by Company then Company will indemnify the Customer in relation to such claim provided that the Customer promptly notifies Company of such claim, makes no admission in respect of such claim, the Customer seeks to mitigate the loss where it can do so without unreasonable inconvenience or cost, allows Company or its licensor or supplier to conduct all negotiations and proceedings (providing Company or its licensor or supplier with all reasonable assistance) and allows Company at Company's own discretion and expense to modify or replace the Mobile Equipment, Hardware, Software, information or materials so as to avoid any continuing infringement. This indemnity does not apply to any such infringements caused by the Customer's own breach of the terms of the Agreement or the operation or use of the Mobile Equipment, Hardware, Software, information or materials in conjunction with other equipment and software or Services not supplied by Company pursuant to the Agreement in which event the Customer shall indemnify Company in respect of any claims, proceedings and expenses arising from any such infringement by the Customer.

15.6 The Customer will not be entitled to and agrees not to:

15.6.1 use in the course of trade or otherwise in relation to any goods or services of the Customer any registered or unregistered trademark, logotype or abbreviation of the name of Company (or any of its suppliers including without limitation 02) or any part thereof so that any person might reasonably

Contract import a connection between those goods or services and Company (or any of its suppliers) or any part thereof;

15.6.2 register or attempt to register as a trade mark anything referred to in clause 15.6 of these General Conditions; and/or

15.6.3 authorise any Third Party to do anything referred to in clause 15.6.1 of these General Conditions.

The Customer further agrees not to infringe any copyright, or registered or unregistered trademark rights belonging to any Third Party in respect of any Hardware or Mobile Equipment.

End User Licensed Software

15.7 The Customer recognises that the Services may be dependent upon End-User Licensed Software and if the Customer does not accept the licence terms relating to any End-User Licensed Software, Company shall have no liability whatsoever for any failure to provide the Services to the Customer where the Services depend on the use of End- User Licensed Software.

15.8 Where the Customer accepts the terms of a licence in respect of any End-User Licensed Software, then those licence terms shall take precedence over any terms within the Agreement relating to End-User Licensed Software and shall exclusively comprise the Customer's sole rights and remedies in respect of such End-User Licensed Software.

15.9 The Customer shall accept and comply with all licence terms required from time to time by any Third Party provider of any Software or materials as agreed between the relevant Third Party and 02.

16. CONFIDENTIALITY

16.1 Neither party will divulge Confidential Information to any Third Party except such of its employees, contractors, suppliers and agents as may need to know the same for the purposes of the implementation and/or performance of the Agreement and in each case who agree to be bound by the provisions of this clause 16.1.

16.2 The obligation of confidence set out in clause 16.1 of these General Conditions shall not apply to any material or information which is:

16.2.1 in the public domain (other than as a result of a breach of the Agreement); already known to the receiving party prior to the Commencement Date; lawfully received from a Third Party; or

16.2.2 required to be disclosed pursuant to the order of a court or other tribunal or regulatory authority of competent jurisdiction.

16.3 The obligation of confidence set out in this clause 16 shall apply in the period commencing on the Commencement Date and ending five years after the termination or expiry of the Agreement.

17. LIMITATION OF LIABILITY

17.1 Subject to clauses 17.3 and 17.4 of these General Conditions, Company shall not be liable to the Customer in respect of any matter arising out of or in connection with the Agreement in contract or tort (including negligence) or otherwise for any loss (whether direct or indirect) of profit, business, revenue, anticipated savings, goodwill, business interruption, from wasted expenditure or any loss or corruption of data, or for any indirect or consequential loss or damage whatsoever.

17.2 Subject to clauses 17.1, 17.3 and 17.4 of these General Conditions, Company's aggregate liability of any sort resulting from breach of contract or negligence, under any indemnity or otherwise arising in connection with the Agreement (whether to the Customer, any Customer Affiliate, Users or otherwise) shall be limited in respect of all claims arising in a Year to an amount equal to the Annual Agreement Value, where the "**Annual Agreement Value**" means the total Charges paid or payable by the Customer in the year prior to the year in which any claim arises (or where a claim arises during the first year of the Agreement, the Charges paid or payable up to the date on which the Customer's right to take action in respect of the claim arose); and "**Year**" means the first, and each subsequent, consecutive period of 12 months of the Agreement commencing on the Commencement Date.

17.3 Nothing in the Agreement shall exclude or restrict the liability of Company for:

17.3.1 death or personal injury resulting from its negligence;

17.3.2 for breach of any implied term as to title or quiet enjoyment arising out of section 12 of the Sale of Goods Act 1979; or

17.3.3 any fraud or fraudulent misrepresentation committed or made by it.

17.4 Nothing in the Agreement shall exclude or restrict the liability of either party in respect of any liability which cannot be excluded or restricted by law.

17.5 Nothing in this clause 17 shall apply to the payment of the Charges.

17.6 Subject to clauses 17.3 and 17.4 of these General Conditions, the express terms of the Agreement are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are hereby excluded to the fullest extent permitted by law.

Liability for Third Parties

17.7 Company shall not be liable for the acts or omissions of other providers of telecommunication services unless such other providers have been specifically engaged by Company as subcontractors or assignees in respect of the performance of Company's obligations under the Agreement.

18. TITLE

Contract Notwithstanding acceptance and the passage of risk, title to any item of equipment or hardware provided to the Customer by the Company shall not pass to the Customer unless otherwise agreed in writing by the Company.

19. ASSIGNMENT

- 19.1 The Customer shall not assign or transfer the Agreement to any third party without the prior written consent of Company, such consent not to be unreasonably withheld or delayed.
- 19.2 Company may assign or transfer the Agreement to any third party and may subcontract the performance of all or part of the same, provided that Company shall remain liable for the acts and omissions of its subcontractors.
- 19.3 Company may assign or transfer to any third party and/or more than one third party a particular Service (rather than the Agreement as a whole). Where Company assigns or transfers to any third party a particular Service only, such assignment or transfer shall be of such part of the Agreement as relates and/or is generally applicable to the relevant Service being transferred or assigned. The Agreement shall, following such assignment or transfer continue in accordance with its terms as relate to or are generally applicable to the remaining Services.

20. ENTIRE AGREEMENT

- 20.1 The Agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, representations, proposals, understandings and agreements whether written or oral relating to the subject matter of the Agreement.
- 20.2 Each of the parties acknowledges and agrees that in entering into the Agreement, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to the Agreement or not) other than as expressly set out in the Agreement. Nothing in this clause 20.1 shall, however, operate to limit or exclude any liability for fraudulent misrepresentation.

21. INVALIDITY

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

22. WAIVER

The failure or delay by either party to the Agreement to exercise or enforce any right, power or remedy under the Agreement shall not be deemed to operate as a waiver of any such right, power or remedy; nor shall any single or partial

exercise by any party operate so as to bar the exercise or enforcement thereof or of any right, power or remedy on any later occasion.

23. DATA PROTECTION

- 23.1 Company operates in accordance with the Data Protection Act 1998 as updated or amended from time to time. The Customer agrees that its details, or those of its Users may be used and disclosed to third parties by Company for the purposes of the Agreement, for the purposes of any assignments or transfers by Company pursuant to clauses 19.2 and/or 19.3 and for marketing purposes including informing the Customer and its Users from time to time about other Services or associated technologies. If the Customer or a User does not want its details, or, in the case of the Customer those details of its Users to be used for direct marketing purposes in this way then the Customer should contact Company.
- 23.2 The Customer will ensure that its Users have consented to the use of their details in accordance with clause 23.1 of these General Conditions.
- 23.3 Without prejudice to clause 23.1 of these General Conditions, in so far as Company processes any personal data on behalf of the Customer, Company shall not transfer personal data outside the European Economic Area without complying with the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any personal data that is transferred.

24. MATTERS BEYOND THE PARTIES' REASONABLE CONTROL

Neither party shall be deemed in default or liable to the other party for any matter whatsoever for any delays in performance or from failure to perform or comply with the terms of the Agreement due to any cause beyond that party's reasonable control including, without limitation, acts of God, acts of Government or other competent regulatory authority, telecommunications network operators, war or national emergency, riots, civil commotion, fire, explosion, flood, lightning, extremely severe weather, epidemic, lock-outs, strikes and other industrial disputes (in each case, whether or not relating to that party's workforce).

25. EXPORT CONTROL

- 25.1 Delivery of the Mobile Equipment, Hardware and/or End-User Licensed Software (as applicable) to the Customer may be subject to export control law and regulations. Company does not represent that any necessary approvals and licences have been obtained or will be granted.
- 25.2 The Customer agrees to comply with any applicable export or re-export laws, regulations, prohibitions or embargoes of any country, including obtaining written authority from any relevant licensing authority where necessary.
- 25.3 In the event that the Customer procures Mobile Equipment, including xda devices or similar computer technology from Company, the Customer agrees that in entering into the Agreement the Customer accepts the terms of the

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following end-user undertaking: The Customer certifies that it or will be the end-user of the Mobile Equipment and further certifies that it shall use the Mobile Equipment only for the purposes of allowing its employees to send, receive, store and process data and voice Mobile Services in order to perform their every day contractual duties; that the Mobile Equipment will not be used for any purpose connected with chemical, biological or nuclear weapons, or missiles capable of delivering such weapons; that the Mobile Equipment will not be re-exported or otherwise re-sold or transferred if it is known or suspected that they are intended or likely to be used for such purposes; and that the Mobile Equipment, or any replica of them, will not be used in any nuclear explosive activity or un-safeguarded nuclear fuel cycle activity; and agrees to sign a formal "End-User Undertaking" in a format specified by the United Kingdom Department of Trade and Industry if requested to do so by Company.

26. RELATIONSHIP OF THE PARTIES

Nothing in the Agreement shall create, or be deemed to create, a partnership or joint venture between the parties and nothing in the Agreement shall be construed to appoint one party as the distributor, dealer or agent of the other.

27. NOTICES

Any notice or other communication required or permitted under the Agreement to be given in writing shall be given in writing to the address of the recipient stipulated herein or as notified from time to time and will be deemed to have been given or made: when delivered personally; or, if properly addressed and posted by first class mail in the United Kingdom within two Working Days of posting; or, if sent by facsimile upon being sent; or, if sent by e-mail or other electronic means upon such communication being acknowledged as having been received.

28. NO THIRD PARTY RIGHTS

Except as otherwise explicitly set out in the Agreement, a person who is not a party to the Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement. For the avoidance of doubt, Customer Affiliates shall have no rights to enforce any term of the Agreement.

29. PRIORITY OF DOCUMENTS FORMING THE AGREEMENT

29.1 The Agreement includes the following documents:

29.1.1 the Commercial Schedule;

29.1.2 these General Conditions;

29.1.3 the applicable Terms;

29.1.4 the applicable Service Schedule(s);

29.1.5 the Company Price List; and

29.1.6 any other documentation explicitly referred to in the Agreement.

29.2 In the event of any conflict between provisions of the documents making up the Agreement, the order of precedence shall be as set out in clause 29.1 of these General Conditions (in order of decreasing precedence) unless explicitly stated otherwise.

30. CREDIT CHECKS AND FRAUD PREVENTION

30.1 When the Customer applies for Services, Company may check the following records about the Customer and the Customer's business partners:

30.1.1 Company's own records;

30.1.2 business records at credit reference agencies ("CRAs") including both public (including the electoral register) and fraud prevention information. When CRAs receive a search from Company they will place a search footprint on the Customer's business credit file that may be seen by other lenders;

30.1.3 records held by fraud prevention agencies ("FPAs"); and

30.1.4 if the Customer contact is a director, Company may seek confirmation, from CRAs that the residential address that is provided is the same as that shown on the restricted register of directors' usual addresses at Companies House.

30.2 Company may also make checks such as assessing the Customer's application for Services and verifying identities to prevent and detect crime and money laundering. Company may also make periodic searches at CRAs and FPAs to manage the Customer's Company account.

30.3 Company will send information on the Customer's applications, Company account and how the Customer manages its account to CRAs which may record such information, including information on the Customer's business and its proprietors. The CRAs may create a record of the name and address of the Customer and its proprietors if there is not one already.

30.4 If the Customer does not pay the Charges when they become due and payable, CRAs will record the outstanding debt which shall remain on file for six years after they are closed (whether by settlement or default). Such records may be supplied to other organisations by CRAs and FPAs to perform similar checks and to trace the Customer's whereabouts and recover debts owed by the Customer.

30.5 If the Customer gives Company false or inaccurate information and Company suspect or identify fraud Company will record this and may also pass this information to FPAs and other organisations involved in crime and fraud prevention.

30.6 Company and other organisations may access and use from other countries the information recorded by fraud prevention agencies.

30.7 Customer data may also be used for other purposes for which the Customer or any User gives its specific permission or, in very limited circumstances, when required by law or where permitted under the terms of the Data Protection Act 1998. To read the full details of how data may be used please visit our Company Web Site.

30.8 The Customer can contact the CRAs currently operating in the UK, including CallCredit (Consumer Services Team, PO Box 491, Leeds, LS3 1WZ or call 0870 0601414); Equifax PLC, (Credit File Advice Centre, PO Box 3001, Bradford, BD1 5US; 0870 010 0583; www.myequifax.co.uk); and Experian (Consumer Help Service, PO Box 8000, Nottingham, NG80 7WF; 0844 4818000; www.experian.co.uk). The information they hold may not be the same. They will charge a small statutory fee for access to their Records. Details of the relevant fraud prevention agencies are available from 02 on request.

31. **GOVERNING LAW**

The Agreement, and any issues or disputes of whatever nature arising out of or in any way relating to it or its formation (whether such disputes are contractual or non-contractual in nature, such as claims in tort, for breach of statute or regulation, or otherwise) shall be governed by and construed in accordance with the laws of England and Wales. The Parties submit to the exclusive jurisdiction of the courts of England and Wales.