

# Full Terms and Conditions

## STRUCTURE OF THE AGREEMENT

The sections of the Agreement that will apply to the Customer will depend on what the Customer has ordered from Company as follows:

- the Commercial Schedule (provided separately) will always apply;
- 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;

## 1. DEFINITIONS AND INTERPRETATION

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

<b>TERM/EXPRESSION</b>	<b>MEANING</b>
<b>Affiliate</b>	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);
<b>Agreement</b>	means the agreement between the Customer and Company as detailed in clause 29 of these Full Terms and Conditions;
<b>Broadband Services</b>	means those broadband services more specifically set out in the Broadband Terms;
<b>Charges</b>	means the monies payable by the Customer to Company under the Agreement;
<b>Commencement Date</b>	means the date of the Agreement unless otherwise specified in the Commercial Schedule;
<b>Commercial Schedule</b>	means the commercial schedule document being part of the Agreement;
<b>Company</b>	means Direct Market Services Ltd;
<b>Company Employee</b>	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;
<b>Company Price List</b>	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;
<b>Company Web Site</b>	means the Company web site at <a href="http://www.dmsluk.co.uk">www.dmsluk.co.uk</a> ;
<b>Confidential Information</b>	means proprietary information and/or any information obtained from the other in connection with the Agreement (including for the avoidance of doubt details of the Customer's employees) which is; (i) reasonably identified by either party as commercially sensitive or confidential; (ii) obviously confidential in nature; or (iii) given in circumstances giving rise to an obligation of confidence;
<b>Customer</b>	as detailed in the Contract Commercial Schedule;
<b>Customer Service Charter</b>	means Company's standard customer service charter as amended by Company from time to time and which is non-binding;
<b>Discount</b>	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;
<b>Discount Services</b>	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;
<b>Employee Liability Information</b>	shall have the meaning ascribed to it in the TUPE Regulations, as amended from time to time;

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<b>End User Licensed Software</b>	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;
<b>Hardware</b>	means the equipment described in the Commercial Schedule;
<b>Internet</b>	means the global data network comprising interconnected networks using the TCP/IP protocol suite;
<b>Line Rental Charge</b>	means the monthly non-usage dependent part of the Charges for the Services, as specified in the Commercial Schedule;
<b>Minimum Holding</b>	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 (if any);
<b>Minimum Holding Period</b>	means the number of months from the date a particular Service is first provided to the Customer within which the Customer is required to connect the Minimum Holding(s), as specified in the Commercial Schedule (if any);
<b>Minimum Revenue Commitment</b>	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;
<b>Minimum Term</b>	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 either (a) 24 months from the Service Commencement Date or (b) 24 months from the date of this Agreement (where the Service is terminated prior to the Service Commencement Date, during which, if the Service is terminated in either (a) or (b) then Termination Fees may be payable;
<b>Network</b>	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;
<b>O2</b>	means Telefonica O2 UK Limited (registered number 1743099) whose registered office is at 260 Bath Road, Slough, Berkshire SL1 4DX;
<b>Replacement Services</b>	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;
<b>RPI Change</b>	means an increase or a decrease as described in clause 4.7;
<b>RPI Rate</b>	means the "RPI Percentage change over 12 months: monthly rate" announced by the Office for National Statistics;
<b>Service Transfer</b>	means the provision of a Service (or any part of a Service) pursuant to the Agreement;
<b>Service Commencement Date</b>	in respect of each Service means the date the Customer first starts to receive the relevant Services or (at the election of the Company) the date upon which the Company notifies the Customer that the Services are available to the Customer;
<b>Service(s)</b>	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;
<b>Services Provider</b>	means Company or a Company Affiliate or any direct or indirect supplier of Company or a Company Affiliate;
<b>Service Schedule</b>	means the document entitled "Service Schedule" containing additional terms relating to a particular Service which schedule shall form part of the Agreement;
<b>Software</b>	means any software, excluding End User Licensed Software, supplied to the Customer by Company under the Agreement;
<b>Successor Supplier</b>	means any entity (including the Customer where relevant) which provides the Replacement Services;
<b>Target Delivery Date</b>	in respect of a Service means the date for the commencement of the provision of the relevant Service as specified by Company;
<b>Termination Fee</b>	shall have the meaning set out in clause 14.14;
<b>Terms</b>	means a document entitled "Terms" containing additional terms relating to particular Services or equipment which shall form part of the Agreement;
<b>Third Party</b>	means a person other than Company or the Customer;

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<b>TUPE Regulations</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006, (as amended, re-enacted or extended from time to time);
<b>User</b>	means anyone who is permitted by the Customer to use the Service;
<b>Virus</b>	means any code which is designed to disrupt, disable, harm or otherwise impede in any manner the operation of the Network;
<b>Working Day</b>	means Monday to Friday (excluding UK bank and public holidays). From 9.00am to 5.00pm.

- 1.2 The headings in the Agreement are for ease of reference only and shall not affect its construction.
- 1.3 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.
- 1.4 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.
- 1.5 Unless the context otherwise requires, the singular shall include the plural and vice versa.
- 1.6 Any obligation (including an obligation to "procure" or "ensure") assumed by an obligor under the Agreement takes effect as a primary obligation.
- 1.7 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 this commencement date shall be deemed the start of the agreement for purposes of contract renewal and the calculation of any early termination charges:
- 2.2. if the Customer is a consumer or employs less than 10 employees (a "Specified Customer") and the Services to be provided by Company are (i) fixed line telephone service and/or (ii) fixed broadband services (each a "Fixed Service") then the Agreement in relation to such Fixed Service only shall continue until terminated in accordance with the Agreement; or
- 2.3. if the Customer is not a Specified Customer or the Service to be provided by Company under the Agreement 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.

### 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 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:

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- (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, Specified Customers) the Company will increase the Charges for Service(s) each year, 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.
- (c) A £20 (+VAT) late payment administration fee will apply for each occurrence.

#### 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

#### 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 a new contract and have its own commencement date and minimum term; 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:

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- (a) additional instances of a Service (e.g. additional land-lines);
- (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:
- 8.3. 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:
  - (a) any Customer dependencies relating to the change; and
  - (b) 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.
- 8.4. 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 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 re-sell 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.

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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:
- (a) 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
  - (b) 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 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:
- (a) 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 [www.dmsluk.co.uk](http://www.dmsluk.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 regu-

latory body, as much notice as is reasonably practicable; and

- (b) 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:
- (a) during any technical failure, modification or maintenance of the telecommunications systems by which the Services are provided; or
  - (b) 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:
- (a) all Charges levied in accordance with the Agreement during any period of suspension; and
  - (b) 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 Condi-

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### 14. TERMINATION

#### Termination for convenience

- 14.1. The Customer may terminate the Agreement (in whole or in relation to a particular Service only) by providing to the Company not less than 30 days' notice in writing that the Agreement, or a particular Service only, will terminate save that such notice shall expire no earlier than the expiration of the relevant Minimum Term or Renewal Period (where relevant).
- 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 clause 14.4 of these General Conditions, the Customer shall be entitled to terminate a Service by providing 30 days' notice in writing if:
- (a) Company increases the prices and/or tariffs set out in the Company Price List and/or the Commercial Schedule in respect of that Service pursuant to clause 12 of these General Conditions and that increase is to the material disadvantage of the Customer (for the avoidance of doubt an increase in prices and/or tariffs of 10% or less in any 12 month period shall not constitute a material disadvantage of the Customer); or
  - (b) Company substantially varies the terms of the Agreement that relate to that 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 Company within 30 days of the date that the change comes into effect.
- 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 arises 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:
- (a) has committed a material breach of the Agreement that is incapable of remedy; or
  - (b) 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:

- (a) in the event that the Customer has committed a material breach of the Agreement that is incapable of remedy;
  - (b) 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
  - (c) if any of the events described in clause 13.4 of these General Conditions occurs.
- 14.8. 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

- 14.9. 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

- 14.10. 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.
- 14.11. Termination or expiry of the Agreement for whatever reason shall not affect:
- (a) the rights and obligations of the parties which have accrued prior to such termination or expiry; or
  - (b) any provisions of the Agreement which are of a continuing nature and any other provisions of the Agreement necessary for their interpretation or enforcement.
- 14.12. On the effective termination date or expiry date of the Agreement:
- (a) any sums properly due from one party to the other will, subject to clause 14.12 (e), become payable within 30 days of such termination date (including Termination Fees) or expiration date;
  - (b) the Customer shall cease using the Services and return all equipment;
  - (c) an admin charge of £25 per each line or connection will be payable by the Customer;
  - (d) 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; and
  - (e) the Company shall raise an invoice to the Customer in relation to all sums due from 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.
- 14.13. In the event of the Customer wishing to terminate any of the

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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 14.9 the Customer shall pay in full 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.

14.14. In the event of the Customer:

- (a) terminating any of the Services; or
- (b) attempting to terminate any of the Services; or
- (c) receiving notice from Company terminating any of the Services pursuant to any of clause 14.7 or 14.9,

during the Minimum Term or the Renewal Period, then the Customer accepts that Company shall be entitled to invoice the Customer a cancellation charge which is equal to:

- (i) 100% of the total Charges which are fixed charges (i.e. Line Rental Charges); together with an amount equal to
- (ii) 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 (i) and (ii) above together being the "Termination Fee").

14.15. For the purposes of part (ii) 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).

14.16. The amount payable pursuant to clause 14.14 is without prejudice to the amounts detailed in clause 14.12 which are payable in addition.

### 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 Company

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:

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



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- (b) register or attempt to register as a trade mark anything referred to in clause 15.6(a) of these General Conditions; and/or
- (c) authorise any Third Party to do anything referred to in clause 15.6(a) of these General Conditions.
- (d) 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.
- 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:
- (a) 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
  - (b) 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:
- (a) death or personal injury resulting from its negligence;
  - (b) 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
  - (c) 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

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. This includes phones supplied for use with VOIP services, unless purchased outright by the customer, which must be returned to the company upon cessation of the VOIP service

### 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

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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 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**

- 24.1. 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 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.

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### 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

28.1. 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:

- (a) the Commercial Schedule;
- (b) these General Conditions;
- (c) the applicable Terms;
- (d) the applicable Service Schedule(s);
- (e) the Company Price List; and
- (f) 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:

- (a) Company's own records;
- (b) 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;
- (c) records held by fraud prevention agencies ("FPAs"); and
- (d) 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.

### MOBILE EQUIPMENT TERMS

The following additional terms and conditions apply to the provision by Company of Mobile Equipment.

#### 1. DEFINITIONS

In these Mobile Equipment Terms, in addition to those terms set out in the General Conditions, the following terms and expressions apply:

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TERM/EXPRESSION	MEANING
<b>Mobile Equipment</b>	means any wireless devices, handsets and related items (including, but not limited to BlackBerry devices, iPhones, and USB modems) or other equipment provided by Company to the Customer under the Agreement for use in connection with the Mobile Services;
<b>Mobile Equipment Account</b>	means a notional account set up by Company to accrue credits owing to the Customer from which Mobile Equipment can be purchased from Company by the Customer; and
<b>Mobile Equipment Terms</b>	means this document entitled "Mobile Equipment Terms".
<b>2. SALE AND PURCHASE OF MOBILE EQUIPMENT</b>	
	The following additional terms and conditions shall apply to either the sale by Company and purchase by the Customer of Mobile Equipment specified in the Commercial Schedule as well as any Mobile Equipment ordered pursuant to an order placed pursuant to the Agreement or otherwise in the provision of Mobile Equipment from time to time by Company to the Customer.
<b>3. ORDERS</b>	
3.1	The Customer shall be entitled to place with Company an order for any Mobile Equipment identified by Company from time to time.
3.2	Company's acceptance of an order is subject to availability and Company may reject any order without any liability to the Customer. In the event that Company accepts an order, that order will be processed accordingly. Any order, once accepted by Company, may not be revoked by the Customer.
3.3	Company reserves the right to add to, substitute, or to discontinue any item of Mobile Equipment at any time. Company does not guarantee the continuing availability of any particular item of Mobile Equipment.
<b>4. DELIVERY, ACCEPTANCE AND RISK</b>	
4.1	Company will deliver the Mobile Equipment to the address specified on the completed order provided that address is within the United Kingdom.
4.2	The Customer shall be deemed to have accepted an item of Mobile Equipment: <ul style="list-style-type: none"> <li>(a) when that item of Mobile Equipment has been delivered, if Company is to deliver the item of Mobile Equipment; or</li> <li>(b) if the item of Mobile Equipment is to be collected by the Customer, when the Customer takes possession of that item of Mobile Equipment.</li> </ul>
4.3	Risk in an item of Mobile Equipment will pass to the Customer when the item of Mobile Equipment is accepted by the Customer. The Customer shall not be liable for any loss or damage to the item of Mobile Equipment to the extent that such loss or damage is caused by the negligence of Company or its suppliers.
<b>5. TITLE IN THE MOBILE EQUIPMENT</b>	
5.1	Title to an item of Mobile Equipment shall not pass to the Customer, except that title to accessory items shall pass to the Customer upon payment in full for such accessory items. Where Company is providing any Mobile Equipment without charge to a Customer as part of the Mobile Services then title in all such Mobile Equipment shall not at any time pass to the Customer and shall remain with Company.
5.2	The Customer undertakes in respect of Mobile Equipment in which Company retains title pursuant to clause 5.1 of these Mobile Equipment Terms not to sell, transfer, lease, charge, assign by way of security or otherwise deal in or encumber the same in any way and that it shall keep such Mobile Equipment in good working order allowing for fair wear and tear during the period of use by the Customer.
5.3	Following any: <ul style="list-style-type: none"> <li>5.3.1 upgrade or replacement of Mobile Equipment or</li> <li>5.3.2 disconnection of Mobile Equipment from the Mobile Services; or</li> <li>5.3.3 the termination of the Mobile Services for any reason whatsoever prior to the expiration of the Minimum Term or Renewal Period relevant for the Mobile Services (where the Mobile Equipment is being provided to the Customer without charge by Company as part of the agreed Mobile Services)</li> </ul>
5.3.4	then Company reserves the right to either charge the Customer for any such Mobile Equipment in which Company retains title pursuant to clause 5.1 or request the safe return of any such Mobile Equipment in which Company retains title pursuant to clause 5.1 of these Mobile Equipment Terms from the Customer at the Customer's expense.
5.4	Company reserves the right to charge the Customer for any Mobile Equipment that is not returned to Company in accordance with the provisions of clause 5.3 of these Mobile Equipment Terms or where the Customer fails to fulfil its obligations under clause 5.2 of these Mobile Equipment Terms.
5.5	Without prejudice to the remainder of clause 5 of these Mobile Equipment Terms, in the event that the Customer sells any Mobile Equipment in breach of clause 5.2 of these Mobile Equipment Terms, the Customer agrees that liquidated damages equal to the price set out by Company for such Mobile Equipment on the date on which Company invokes its right to recover liquidated damages, shall immediately be due and payable from the Customer to Company.
<b>6. OBLIGATIONS OF THE CUSTOMER</b>	
6.1	The Customer will, and shall take all reasonable steps to ensure that its employees will: <ul style="list-style-type: none"> <li>(a) pay the standard charges levied by Company from time to time applicable to repair work on Mobile Equipment which is outside (in scope or time) the warranty provided under the Agreement; and</li> <li>(b) use the Mobile Equipment and any End-User Licensed Software in accordance with any user guide or other reasonable instruction of any manufacturer or supplier of the same or reasonable instruction of Company and not copy, reverse engineer or modify any Software or End-User Licensed Software in any way save as permitted by</li> </ul>

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- law.
- 6.2 Company reserves the right to bar service to any Mobile Equipment supplied under the Agreement to which Company retains title pursuant to clause 5.1 of these Mobile Equipment Terms where in Company's reasonable opinion that Mobile Equipment is not being used in a manner which Company would expect including but not limited to where the Mobile Equipment is:
- used in conjunction with a SIM Card connected to a tariff other than one which the Customer has ordered under the Agreement;
  - used in conjunction with a SIM Card allocated to any other Company customer's account; used solely or predominantly on a roaming basis; or
  - (or the SIM Card supplied in conjunction with such Mobile Equipment is) not used on the Network within 45 days from the date of despatch by Company, or during any other period of 30 consecutive days;

unless Company and the Customer have agreed otherwise.

- 6.3 The Customer, at the Customer's expense, shall return to Company any Mobile Equipment supplied by Company to which Company retains title pursuant to clause 5.1 of these Mobile Equipment Terms, which Mobile Equipment has been barred pursuant to clause 6.2 of these Mobile Equipment Terms and in the event that the Customer fails to return any such Mobile Equipment within two (2) weeks of written notice from Company to do so, then the Customer agrees to pay Company the price set out by Company from time to time for such Mobile Equipment.

### 7. WARRANTIES

- 7.1 Company warrants that each item of Mobile Equipment will conform in all material respects to the manufacturer's specification for a period of 12 months from the date on which each item of Mobile Equipment is despatched to the Customer by Company (a "Warranty Period") unless special conditions associated with certain Mobile Equipment apply.
- 7.2 Company warrants that any Software will conform in all material respects to the manufacturer's specification for a period of three months from the date on such Software is despatched to the Customer by Company (a "Warranty Period") unless special conditions associated with certain Software apply.
- 7.3 Upon request the Company shall provide the Customer with an option to take out insurance (at such cost as will be advised by the Company) extending the Warranty Period in respect of such Mobile Equipment.
- 7.4 If, within the relevant Warranty Period the Customer notifies Company of any defect or fault in the Mobile Equipment or Software arising under normal use in consequence of which it fails to conform in any material respect with the manufacturer's specification Company shall, at Company's option either: repair the faulty Mobile Equipment or Software; or, replace the faulty Mobile Equipment or Software with the same or an equivalent item of Mobile Equipment or Software which may be a new or refurbished item. In the event that Mobile Equipment or Software is provided to replace Mobile Equipment or Software which has failed during its Warranty Period, the replacement

Mobile Equipment or Software will be provided with its own Warranty Period which shall last for the greater of: (a) three months from the date on which the replacement Mobile Equipment or Software is despatched to the Customer; or (b) the outstanding period of the original Warranty Period.

- 7.5 The warranty obligations set out in clause 7.4 of these Mobile Equipment Terms shall not apply in the event that a person has amended or damaged the Mobile Equipment or Software, or used it for a purpose or in a context, other than in accordance with Company's or Third Party or the manufacturer's instructions and advice.

### 8. CREDITS

- 8.1 Where applicable any credits accrued in the Mobile Equipment Account may be used solely for the purposes of offsetting Charges for Mobile Equipment. Credits do not have any monetary value and the Customer is not entitled to:
- use any credits accrued in the Mobile Equipment Account to offset Charges for Mobile Services or vice versa;
  - offset any credits accrued in the Mobile Equipment Account against any outstanding debt;
  - any payments from any credits accrued in the Mobile Equipment Account; or
  - any future use of credits accrued in the Mobile Equipment Account upon termination of the Agreement.

### MOBILE TERMS

#### (including terms for the Voice Services and/or Data Services)

The following additional terms and conditions apply to the provision of the Mobile Services.

### 1. DEFINITIONS

In these Mobile Terms, in addition to those terms set out in the General Conditions, the following terms and expressions apply:

TERM/EXPRESSION	MEANING
<b>Airtime</b>	means mobile airtime and Network capacity;
<b>Airtime Account</b>	means a notional account set up by Company to accrue credits owing to the Customer from which Airtime can be purchased from Company by the Customer;
<b>AIT</b>	means artificially inflated traffic which occurs when the flow of calls to any particular revenue share service is, as a result of any activity on or behalf of the entity operating that revenue share service, disproportionate to the flow of calls which would be expected from good faith usage of the Network;
<b>Minimum Spend</b>	means the monthly minimum expenditure per SIM Card for the Voice Services (and for the avoidance of doubt excluding any expenditure relating to Mobile

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	Equipment Charges and BlackBerry and data charges) which must be incurred by the Customer during the Minimum Term or Renewal Period (as applicable), as set out in the Commercial Schedule;		
<b>Data Services</b>	means the Mobile Services under which Company supplies the Customer with Airtime enabling the Customer to transfer data on the Network;	<b>Re-Sign SIM Only Connection</b>	Equipment;  means the transfer of a SIM Card which was, immediately prior to the Agreement, connected under an agreement between Company and/or 02 (directly, and not via a third party) and the Customer, and in conjunction with which Company and/or 02 is not providing a Device at the New Connection rate for Mobile Equipment specified in the Company Price List;
<b>Device</b>	means a mobile device or other Mobile Equipment incorporating a SIM Card;	<b>RPI Change</b>	means an increase or a decrease as described in clause 4.7;
<b>Gateway</b>	means any equipment containing a SIM Card which enables the routing of calls from fixed apparatus to mobile equipment by establishing a mobile to mobile call or data connection;	<b>RPI Rate</b>	means the "RPI Percentage change over 12 months: monthly rate" announced by the Office for National Statistics in January 2014 or thereafter announced in the February preceding an RPI Change;
<b>Mobile Equipment</b>	has the meaning set out in the Mobile Equipment Terms;	<b>SIM Card</b>	means a subscriber identity module supplied to the Customer by Company;
<b>Mobile Services</b>	means those Services identified as a "Mobile Service" in the Services Schedules;	<b>SMS and/or MMS</b>	means the short message service and multimedia message service which allows text messages and/or pictures to be sent and received from Mobile Equipment;
<b>Mobile Terms</b>	means this document entitled "Mobile Terms";	<b>Value Added Mobile Services</b>	means the value added services in relation to Mobile Services such as, installation, insurance, repair etc. as may be made generally available from time to time by Company to business customers, the details of which appear on the Company Price List; and
<b>New Connector</b>	(including New SIM-Only Connections and new Non SIM-Only Connections) means a new SIM Card which connects to the Network under the Agreement which was not immediately prior to the Agreement connected to the Network except where the SIM Cards were formerly provided to the Customer by means of a Reseller;	<b>Voice Services</b>	means the Mobile Services under which Company supplies the Customer with Airtime enabling the Customer to make and receive mobile voice calls and SMS texts on the Network.
<b>New Non SIM-Only Connection</b>	means a New Connection in conjunction with which Company is providing a Device at the New Connection rate for Mobile Equipment specified in the Company Price List;		
<b>New SIM Only Connection</b>	means a New Connection in conjunction with which Company is not providing a Device at the New Connection rate for Mobile Equipment specified in the Company Price List;		
<b>Reseller</b>	means any third party acting as an agent or distributor on behalf of Company;		
<b>Re-Sign Non SIM Only</b>	means the transfer of a SIM Card which was, immediately prior to the Agreement, connected under an agreement between Company and/or 02 (directly, and not via a third party) and the Customer and in conjunction with which Company and/or 02 is providing Mobile		
		<b>2. MOBILE SERVICE STANDARDS</b>	
		The Customer acknowledges that provision of the Mobile Services is subject to the geographic extent of airtime coverage and local geography, topography and/or atmospheric conditions and/or other physical or electromagnetic interference and/or the number of users trying to access the Mobile Services in any particular location that may from time to time adversely affect the provision of the Mobile Services in terms of availability, line clarity and call interference.	

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### 3. SIMS CARDS AND NUMBERS

3.1 Where the Customer is not already a Company customer, Company will supply to the Customer such number of SIM Cards as is necessary for the Customer to receive the Mobile Services to be provided under the relevant order. Title to the SIM Cards shall remain with Company.

3.2 Company shall:

- (a) provide to the Customer such mobile numbers as are necessary for the Customer to receive the Mobile Services; or
- (b) endeavour to port mobile numbers from another mobile network in accordance with standard porting procedures between mobile networks in the United Kingdom.

Nothing in the Agreement shall be construed as to grant the Customer any right in relation to the mobile numbers other than to receive the Mobile Services as described in the Agreement.

### 4. CHARGES

4.1 The Charges for Mobile Services detailed in the Commercial Schedule are available, subject to the Customer fulfilling all of its commitments as set out in the Agreement (for example, the Minimum Spend and Minimum Term as applicable).

4.2 The Customer acknowledges that roaming calls may take longer to be billed than other types of calls.

4.3 Company may monitor the Customer's usage of the Mobile Services for the purpose of controlling Company's credit risk and the Customer's exposure to fraudulent usage.

4.4 The Customer will be liable for any Charges incurred as a result of unauthorised use of the Mobile Services.

4.5 Any credits accrued in the Airtime Account may be used solely for the purposes of offsetting Charges for Airtime, do not have any monetary value, and the Customer is not entitled to:

- (a) use any credits accrued in the Airtime Account to offset Charges for Services other than Airtime or vice versa;
- (b) offset any credits accrued in the Airtime Account against any outstanding debt; any payments from any credits accrued in the Airtime Account; or
- (c) any future use of credits accrued in the Airtime Account upon termination of the Agreement.

4.6 Where the Customer requests that a Successor Supplier provide Replacement Services upon the termination of the Mobile Services Company shall be entitled to charge the Customer in relation to the transfer arrangements a reasonable fee including without limitation the right to charge a reasonable fee for the provision of a porting authorisation code (PAC or MAC codes).

4.7 In relation to all Customers (including, for the avoidance of doubt Customers with 10 or fewer employees) the Company will increase the Charges for Mobile Services during March 2014 and from 2015, and each year thereafter, during April, by the RPI Rate (an "RPI Change") or otherwise to reflect increases in the cost of providing the Mobile Services imposed by O2 and/or a supplier of Company.

### 5. DISCONNECTION OF SIM CARDS

5.1 The Customer may serve on Company a disconnection notice in respect of a SIM Card at any time.

5.2 Company will, within 30 days from receipt of a disconnection notice, disconnect the relevant SIM Card or SIM Cards from the Mobile Services.

5.3 In the event that the Customer gives a disconnection notice resulting in disconnection of a SIM Card prior to the expiry of its Minimum Term (as set out in the Commercial Schedule) or any Renewal Period, the Customer will pay to Company any applicable Termination Fee.

### 6. OBLIGATIONS OF THE CUSTOMER

6.1 The Customer shall notify Company immediately (and confirm in writing) on becoming aware that any SIM Card has been lost or stolen or that any person is making improper or illegal use of a SIM Card.

6.2 The Customer will be responsible for any Charges incurred as a result of unauthorised use of any SIM Card, or the information contained within a SIM Card, until Company has received a request from the Customer to suspend the provision of Mobile Services to that SIM Card.

6.3 The Customer shall, and shall take all reasonable steps to ensure that its employees will:

- (a) not use the Mobile Services in any way to generate AIT; and
- (b) not, without the prior written consent of Company which may be withheld at Company's absolute discretion, establish, install or use a Gateway so that telecommunication services are provided via the Gateway.

6.4 The Customer agrees not to use SMS or MMS for the purpose of marketing or advertising anything to users of Mobile Services without the consent of those users.

6.5 The Customer agrees that in respect of SMS and MMS, Company is procuring access to a network operator and as such has no knowledge of, involvement with, or liability for the specific content of any text messages sent to the Customer's SIM Cards, which do not originate from Company.

6.6 The Customer shall not be permitted to transfer a SIM Card from the tariff which that SIM Card was originally connected to under the Agreement to another tariff except where Company at Company's absolute discretion agrees to do so and confirms such a change in writing to the Customer.

6.7 Company can at its discretion suspend any SIM Card from making calls (other than to emergency services) and disconnect any SIM Card from the Mobile Services if Company has reasonable cause to suspect fraudulent use of the SIM Card or relevant Mobile Equipment, or either are identified as being stolen. The Customer shall remain liable for all Charges levied in accordance with the Agreement during any period of suspension.

### 7. VALUE ADDED SERVICES

7.1 The Customer may order Value Added Mobile Services and Company may accept or decline such orders.

7.2 Company reserves the right to add to, substitute, or to discontinue any Value Added Mobile Service at any time. Company does not guarantee the continuing availability of any particular

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Value Added Mobile Service.

## 8. CUSTOMER EQUIPMENT

8.1 Certain elements of the Mobile Services are dependent on the Customer having suitable customer equipment available and in the event that the Customer is unable to provide such customer equipment, then:

- (a) some of the Mobile Services may not function correctly (the "Affected Services");
- (b) Company may choose not to provide the Customer with the Affected Services; and
- (c) Company shall have no liability for the Customer's inability to receive those Affected Services.

8.2 Any customer equipment must be:

- (a) technically compatible with the Network and the relevant Mobile Service and shall not harm the Network or equipment belonging to another customer;
- (b) connected to the Network strictly in accordance with the instructions of Company; and
- (c) used by the Customer in compliance with any relevant instructions, standards and laws.

## 9. INSURANCE

Please contact Direct Market Services Ltd for more details of the mobile insurance terms, such terms shall be incorporated by reference herein.

## MOBILE SERVICE SCHEDULE

### GOOD SERVICE

The following additional terms and conditions apply to the provision of the Good Service.

### 1. DEFINITIONS

In this Service Schedule, in addition to those terms defined in the General Conditions, the Mobile Terms and the Mobile Equipment Terms the following terms and expressions apply:

TERM/EXPRESSION	MEANING
<b>Electronic Stock Distribution</b>	means provision of Good Software by electronic download means as opposed to on physical medium such as a disk;
<b>Evaluation Agreement</b>	means a limited period evaluation or trial agreement under which the Customer has the opportunity to trial the Good Service;
<b>First Line Support</b>	means the Customer's IT helpdesk which shall be the Customer's employees first point of contact in the event that they have a query or problem with a Good Accredited Device or the Good Service;
<b>Good Accredited Device</b>	means a specific Device accredited by Company for use with the Good Service;
<b>Good Client Software</b>	means the Good handheld software

application, which is installed onto the Good Accredited Device by the Customer, enabling connectivity to the Good Service;

### Good Customer Service Charter

means the service plan for Good Service as determined by Company, which can be provided to the Customer by Company on request and as updated from time to time;

### Good Mobile Messaging Server Software

means the software known as the Good mobile messaging server software for either Microsoft Exchange or Lotus Domino and which, when installed on the Customer's Server of the required Server Specification, forms part of the End-User Licensed Software for the purposes of using the Good mobile messaging functionality;

### Good Mobile Intranet Server Software

means the software known as the Good mobile intranet server software for Microsoft Exchange and which, when installed on the Customer's Server of the required Server Specification, forms part of the End-User Licensed Software for the purposes of using the Good mobile intranet functionality;

### Good Service

means the Mobile Service which enables the Customer to send and receive e-mails wirelessly using a Good Accredited Device;

### Good Software

means the Good Mobile Messaging Server Software and the Good Mobile Intranet Server Software;

### Mobile Terms

means the Terms applicable to Mobile Services which form part of the Agreement;

### Server

means the computer server provided by the Customer on which the Good Software will be installed and operate; and

### Server Specification

means the minimum specification of the Server which shall be available from Company upon request.

## 2. MOBILE SERVICE

The Good Service is a "Mobile Service" and the Mobile Terms will apply to this Service.

## 3. SERVICE STANDARDS

3.1 The Customer will procure the Good Service in conjunction with a Company data tariff. Without a Company data tariff, the



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- Good Service will not be able to operate.
- 3.2 Company reserves the right to terminate access to the Good Service for SIM Cards connected to the Good Service for which:
- (a) the Charges associated with the Good Service are not being paid;
  - (b) or an appropriate end-user licence has not been procured.
- 3.3 The Customer expressly acknowledges the following additional obligations in respect of the provision of the Good Service. The Customer shall be responsible for:
- (a) procuring and commissioning the Server in accordance with the Server Specifications and licensing requirements;
  - (b) installing the Good Software components;
  - (c) provision of suitably qualified IT personnel who have a full working knowledge of the Customer's corporate e-mail system and firewalls;
  - (d) configuration of the Good Software and configuration of the Good Client Software for each Good Accredited Device;
  - (e) provision of First Line Support for Good Accredited Device users; and
  - (f) provision of any necessary training for Good Accredited Device users.
- 3.4 In the event the Customer uses software packages or applications other than those approved by Company for use with a Good Accredited Device or the Good Software, Company shall have no liability whatsoever for any failure of the Good Service resulting from the use of such software packages or applications by the Customer.
- 3.5 The Customer agrees that it will deactivate any lost, stolen or replaced Good Accredited Devices from the Server.
- 3.6 The Customer shall use the returns process as detailed by Company to the Customer from time to time for returns of all damaged/faulty Good Accredited Devices and/or other Equipment.
- 3.7 The Customer will take all reasonable steps to ensure that all its Good Accredited Device users connected to the Good Service invoke password protection on their Good Accredited Devices. Company shall not be liable for any losses whatsoever or howsoever occurring as a result of a Good Accredited Device user failing to invoke adequate password protection. The Customer should note, and inform its users, that text messages as well as e-mails may be retained on a Good Accredited Device even when it is turned off or the SIM Card is removed from it.
- 3.8 The Customer shall be responsible, as licensee of the End-User Licensed Software for any encryption of information between the Customer's Good Software and the Good Accredited Devices. The Customer shall accept responsibility for the provision, when properly required, of unencrypted information to the relevant authorities in accordance with European regulations and United Kingdom legislation. In the event that changes in legislation impose a requirement on Company or its Third Party supplier to provide such unencrypted information, the Customer shall provide Company or its Third Party supplier, promptly or in accordance with any statutory time-

scales, with the unencrypted information in order for Company or its Third Party supplier to forward it to the relevant authority.

### MOBILE SERVICE SCHEDULE

#### MOBILE BROADBAND

The following additional terms and conditions apply to the provision of Mobile Broadband.

#### 1. DEFINITIONS

In this Service Schedule, in addition to those terms defined in the General Conditions, the Mobile Terms and the Mobile Equipment Terms, the following terms and expressions apply:

TERM/EXPRESSION	MEANING
<b>Mobile Broadband</b>	means the Mobile Service under which Company enables the Customer to use the internet to send and receive data over the Network using approved Mobile Equipment containing a Company SIM Card; and
<b>Mobile Term</b>	means the Terms applicable to Mobile Services which form part of the Agreement.

#### 2. MOBILE SERVICE

Mobile Broadband is a "Mobile Service" and the Mobile Terms will apply to this Service.

#### 3. SERVICE STANDARDS

- 3.1 Connection speeds are subject to various factors including network coverage and signal strength and therefore Company can not guarantee that the Customer's connection will reach any specific speeds.
- 3.2 Use of Mobile Broadband is subject to the Customer using a compatible laptop or mobile handheld device. The Customer is responsible for ensuring they meet minimum system requirements, as specified by Company, in order to use the service.
- 3.3 Data usage can be monitored through the "Connection Manager" software. Data usage is displayed by calendar month and may not match the Customer's billing period so must be used as guidance only.

#### 4. CUSTOMER OBLIGATIONS

- 4.1 The Customer must tell Company immediately upon becoming aware of any improper disclosure of security information or unauthorised use of Mobile Broadband through the Customer's account.
- 4.2 An excessive usage policy operates and the Customer shall ensure the Mobile Broadband is not used:
- (a) in, or connected to, any other device excluding a USB modem or data card; or
  - (b) to allow the continuous streaming of any audio/video content, to enable Voice over Internet Protocol (VoIP), to use Peer to Peer (P2P) software or for file sharing.

If Company reasonably suspects the Customer is not acting in accordance with this policy Company shall contact the Customer with its concerns and reserves the right to impose

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further Charges and/or impose network protection controls which may reduce the Customer's speed of transmission.

### VOIP Terms

The following additional terms and conditions apply to the provision of VOIP Services

#### 1. DEFINITIONS

- 1.1 In the VOIP Terms, in addition to those terms and conditions defined in the General Conditions, the Mobile Terms, the Mobile Equipment Terms and the Broadband Terms the following terms and expression apply:
- 1.1.1 "Broadband" means an asymmetric or symmetric digital subscriber line (ADSL or SDSL);
- 1.1.2 "Customer Equipment" means any telecommunications apparatus or system owned, controlled or housed by the Customer, excluding Service Equipment;
- 1.1.3 "Customer's Premises" means the Customer's premises the address of which is set out in the Commercial Schedule;
- 1.1.4 "IP Centrex Service" means a centrally hosted service for the provision of voice communications over IP networks;
- 1.1.5 "Service Equipment" means equipment (including but not limited to any data collection and call routing devices, routers, switches, handsets and other telecommunications equipment) which Company (or a third party on Company's behalf) may from time to time deliver to and / or install at the Customer's Premises for the purposes of providing the VOIP Service, as specified in the Commercial Schedule, remains the property of the Company at all times;
- 1.1.6 "Software" means the VoIP application software used by Company (or a third party on Company's behalf) to provide the IP Centrex Service; and
- 1.1.7 "VOIP Service" means the IP Centrex Service, an internet portal account through which the VOIP Service can be controlled online, and any other services which the Customer requested from Company as specified in the Commercial Schedule (including supply, delivery and installation of Service Equipment, training and Broadband connectivity).

#### 2. THE SERVICE

- 2.1 Company shall respond to any reported fault with the VOIP Service as soon as reasonably practicable during Company's normal working hours and will use all reasonable endeavours to correct any fault within Company's control.
- 2.2 Company will use all reasonable endeavours to ensure the security of the VOIP Service but the Customer should be aware that there is always a risk of security being breached for reasons beyond the control of Company, where for instance the VOIP Service is provided through a third party network.
- 2.3 The Company will use reasonable endeavours to maintain, but does not guarantee, constant access to the internet portal account and the Company shall not be liable for any losses caused by any restrictions in such access.

#### 3. SOFTWARE

- 3.1 Company grants the Customer a non-exclusive, non-transferable licence to use the Software for the term of the Agreement

solely in connection with the use of the VOIP Service. For the avoidance of doubt customers may not transfer VOIP licences to another reseller or provider and these licences remain the property of the Company at all times.

- 3.2 All intellectual property rights in the Software and the VOIP Service and any associated documentation made available to the Customer under the Agreement shall remain the property of Company or its licensors.

#### 4. BROADBAND

- 4.1 In order to use the VOIP Service, it is the Customer's responsibility to procure at its cost a Broadband connection, either through Company or through a supplier approved by Company.
- 4.2 Where Broadband is supplied by a third party, then Company does not assume any liability or responsibility for the third party Broadband service.
- 4.3 The Customer acknowledges that VOIP Service call quality depends on both the specification and availability of the Broadband service to which the Customer is connected and also on the IP or telecommunications network to which the person being called is connected.

#### 5. IMPLEMENTATION

- 5.1 Company or its appointed agent will deliver and install the Service Equipment at the Customer's Premises. Company will use all reasonable endeavours to deliver and install the Service Equipment by such date as it may have advised to the Customer. However, any delivery date given is an estimate only and Company accepts no liability for any delay in delivery however caused.
- 5.2 Risk in the Service Equipment shall pass to the Customer on delivery to the Customer's Premises. The Customer will be liable for any loss or damage to the Service Equipment except where caused by Company or anyone acting on Company's behalf.
- 5.3 Where the Customer is purchasing the Service Equipment from Company the Service Equipment will at all times remain the property of Company until such time as the Customer has paid Company for the Service Equipment in full.
- 5.4 Where the Service Equipment is supplied to the Customer by a third party on a hire or hire purchase basis, then the Customer shall enter into, and observe and comply with the terms of, a separate hire or hire purchase agreement with that third party.
- 5.5 Unless or until title to the Service Equipment passes to the Customer, the Customer shall not:
- 5.5.1 add to, modify or in any way interfere with the Service Equipment, nor allow anyone other than Company or someone authorised by Company to do so;
- 5.5.2 move the Service Equipment from the Customer's Premises without the prior written consent of Company.

#### 6. NUMBER PORTING

- 6.1 Where access to the VOIP Service is facilitated through BT number porting, the Customer authorises Company (or someone authorised by Company) to have the numbers from the BT lines listed in the Commercial Schedule (or as otherwise agreed between Company and the Customer) routed by

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Company (or someone authorised by Company) instead of BT and to forward appropriate details of the Customer's porting application for the VOIP Service to Company (or someone authorised by Company). The Customer will receive advance notification of the change of service from BT to Company (or someone authorised by Company). Company's (or someone authorised by Company) ability to provide the VOIP Service is subject to BT porting the numbers.

6.2 In the case of analogue lines being utilised for facsimile machines, the standard service is not compatible, and an alternative e-fax service will be offered for numbers that are required to be ported to Company. This may result in loss of service for a period of up to 15 days.

6.3 The Customer shall pay to Company an administration fee of £10 plus VAT per number ported.

### **7. USE OF THE SERVICE**

7.1 The Customer will ensure that the Customer Equipment is in proper working order and complies with all applicable standards and approvals for connection to the telecommunications network. The Customer will not do anything that may damage or affect the operation of the telecommunications network.

7.2 If the VOIP Service is to be used to carry alarm signals, then Company will not accept responsibility for lack of VOIP Service or failure to deliver an alarm signal due to a) the network going down; b) suspension of the Customer's account or c) reasons outside Company's reasonable control including but not limited to any technical failure of the network; because the network is being tested, modified or maintained or if access to the network is denied.

7.3 Company will have the right to recover all reasonable costs incurred in investigating or remedying any fault with the VOIP Service where it is caused by the Customer's negligence or default or by the Customer Equipment or where the fault does not lie with Company or any Service Equipment.

7.4 The Customer shall not sub-license, re-sell or offer in any manner, to a third party, the Service or use of or access to the VOIP Service, whether for commercial gain or otherwise.

7.5 Where a Customer terminating telephone number (an A number) is being presented:

7.5.1 The Customer shall ensure that such A Number is of a national significant format, is allocated to the Customer and that the Customer possesses all necessary permissions in respect of the lines in question or that the Customer has written consent from the allocated owner for its use as an A Number and that such consent has not been withdrawn;

7.5.2 The Customer shall ensure that at all relevant times such A Number is in use and shall notify the Company if at any time such A Number is not connected to a terminal or is not capable of receiving calls;

7.5.3 The Company has the right to suspend/withdraw use of the service if it is subsequently found that the Customer is in breach of this paragraph 7 and the Customer hereby indemnifies the Company against any and all losses or claims arising howsoever as a result of any such breach.

7.6 The Customer acknowledges that the VOIP Service supports 999/112 public emergency calls but that connections to

national emergency call handling agents may not be possible in the event of a service outage caused by loss of Customers' connectivity to the internet for whatever reason. In such circumstances Customers should use their PSTN line to make the emergency call. Furthermore, it may on occasions not be possible for emergency services personnel to identify the Customers' location and telephone number so this information should be stated promptly and clearly by the Customers when making such a call.

7.7 The Customer acknowledges that the VOIP Service constitutes a private service for use for certain previously identified specific applications which, as regards public emergency call services, confers only limited service at agreed defined locations. It is not a full public service.

### **8. CHARGES AND PAYMENT**

8.1 The Customer shall pay to Company the Charges in respect of the VOIP Service as specified in the Commercial Schedule. Unless otherwise stated in the Commercial Schedule all time based Charges in relation to the VOIP Service shall be deemed to commence one day after the despatch, by the Company or on the Company's behalf, of the Service Equipment to the Customer.

8.2 In addition, the Customer shall pay to Company all charges relating to calls made through the VOIP Service as are set out in Company's Price List as in force from time to time (a copy of which is available on request).

8.3 The Company may increase the charges in respect of the VOIP Service and/or the charges relating to calls made through the VOIP Service upon seven days' written notice to the Customer in the event that any change in applicable laws or regulations results in additional costs being incurred by the Company or incurred by any of the Company's suppliers and passed on to the Company.

### **9. DISCLAIMERS**

9.1 Save for the warranties and conditions expressly set out in the Agreement, Company gives no warranty or condition regarding the VOIP Service and specifically Company:

9.1.1 expressly disclaims all conditions and warranties of any kind, whether express or implied, including but not limited to the implied conditions and warranties of satisfactory quality, fitness for a particular purpose, reasonable care and skill and non-infringement; and

9.1.2 gives no condition or warranty that the VOIP Service will meet the Customer's requirements, will be uninterrupted or timely, will be secure or error free or that defects in the VOIP Service will be corrected.

### **10. LIABILITY**

10.1 This clause sets out Company's total liability to the Customer if the VOIP Service is not available for a continuous period of 12 hours or more in any one day and that unavailability is attributable entirely due to the fault of Company. In such an event Company's total liability will be limited to the sum of 5% of the charges relating to VOIP Services incurred in the average month for the previous quarter. Such liability will be paid as a credit against the next invoice.

10.2 Company's aggregate liability to the Customer under or in

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connection with the Agreement (whether in contract, tort or otherwise including any liability in negligence) in respect of all causes of action arising in a calendar year will not exceed 60% of the total Charges paid or payable by the Customer for the VOIP Service in such calendar year.

- 10.3 Company's obligations and responsibilities under this VOIP Service Schedule are solely to the Customer and not to any third party and the Customer will keep harmless and will indemnify Company, its officers, employees and agents against any liabilities or costs arising from any and all claims by any third party in connection with the use of the VOIP Service or any defect in or failure of the VOIP Service.
- 10.4 In the event of any failure in the VOIP Service, Company will not be liable to the Customer for any charges incurred by the Customer should the Customer direct its traffic to another service provider.
- 10.5 The Company shall not be liable for any losses whatsoever, including unavailability of VOIP Services, arising from use of Customer Equipment or any equipment other than the Service Equipment.
- 10.6 The Company's liability for any malfunction of the Service Equipment which is in the Company's reasonable opinion attributable to a fault in the configuration work, shall be limited to the obligation to remedy the fault as soon as reasonably practicable.
- 10.7 The Company's liability for any malfunction of the VOIP Service which is in the Company's reasonable opinion attributable to the Service Equipment, shall be limited to the obligation to:
- 10.7.1 use reasonable endeavours to pass on the benefit of any manufacturer's warranty with respect to the Service Equipment;
- 10.7.2 use reasonable endeavours, if so requested, to obtain for the Customer replacement Service Equipment, provided that it will be entitled to recover from the Customer all costs it incurs in doing so, regardless as to the reason for the malfunction; and
- 10.7.3 if replacement equipment is purchased by the Customer, the Company shall procure that it is correctly configured without charge.

### 11. SUSPENSION OF VOIP SERVICE

- 11.1 Company may at its sole discretion suspend with immediate effect the provision of the VOIP Service until further notice without liability or compensation to the Customer on notifying the Customer either orally (confirming the same in writing) or in writing in the event that:
- 11.1.1 the Customer is in breach of any term of this VOIP Service Schedule;
- 11.1.2 the Customer prevents or delays any prearranged maintenance from being carried out;
- 11.1.3 the Customer is suspected, in Company's reasonable opinion, of involvement with fraud or attempted fraud in connection with the use of the VOIP Service;
- 11.1.4 Company is obliged to do so in order to comply with an order, instruction or request of any government, emergency service organisation or other competent authority.
- 11.1.5 If Company suspends the VOIP Service under this VOIP Service

Schedule then Customer will reimburse any costs and expenses reasonably incurred as a result of such suspension and/or the services being reinstated.

### 12. TERMINATION

- 12.1 On termination of the VOIP Service Schedule (however occurring):
- 12.1.1 the Licence granted under clause 3.1 will terminate with immediate effect;
- 12.1.2 the Customer will allow Company or any third party authorised by Company prompt access to the Customer's Premises to remove any Service Equipment; and or any handsets provided, unless purchased outright, provided as part of the VOIP service;
- 12.1.3 where this VOIP Service Schedule is terminated before the end of the Minimum Term or Renewal Period (as relevant) other than for breach by Company, the Customer will be responsible for the cost of de-installation and collection of the Service Equipment by Company and will pay Company £200 for the de-installation of each item forming part of the Service Equipment; and
- 12.1.4 any consequential reprogramming of the Customer Equipment will be the Customer's responsibility and at the Customer's cost.

### Broadband Terms

The following additional terms and conditions apply to the provision of Broadband Services

#### 1. Definitions

- 1.1 In the Broadband Terms, in addition to those terms and conditions defined in the General Conditions, the Mobile Terms, the VOIP Terms and the Mobile Equipment Terms, the following terms and expression apply:
- 1.1.1 "Acceptable Use Policy" means the policy setting out the acceptable use that the Customer can make of the Broadband Service which can be found at the Company Web Site or as otherwise notified by Company to the Customer;
- 1.1.2 "Broadband Charges" means the charges payable by the Customer in relation to the Broadband Services as set out in the Commercial Schedule, these Broadband Terms or as otherwise agreed between Company and the Customer;
- 1.1.3 "Broadband Equipment" means a modem, adaptor, cables and filter(s) and a CD and booklet;
- 1.1.4 "Broadband Service" means the Broadband service which the Customer requested from Company as specified in the Commercial Schedule; and
- 1.1.5 "MAC key" means a migration reference code.

#### 2. Receiving the Broadband Service

- 2.1 Company grants a limited, revocable, non-exclusive, non-transferable licence to use the Broadband Equipment for the term of the Agreement for the sole purpose of receiving the Broadband Service.
- 2.2 In the event that the Customer wishes to migrate to the Broadband Service from another provider that Customer shall request a MAC key from its current provider.
- 2.3 Company does not warrant that the migration to the Broad-

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band Service will be uninterrupted.

- 2.4 Customer agrees that Company or its appointed agent will immediately start work on the technical and operational elements required for provision of the Broadband Services upon the issue of order acceptance which may be prior to the end of any statutory cancellation period. Customer acknowledges and agrees that thereafter it shall not have the right to cancel any Broadband Services under the Consumer Protection (Distance Selling) Regulations 2000 or otherwise.

### 3. Broadband Equipment

- 3.1 Company or its appointed agent will deliver the Broadband Equipment to the address specified on the Commercial Schedule provided that address is within the United Kingdom.
- 3.2 The Customer shall be deemed to have accepted an item of Broadband Equipment:
- 3.2.1 when that item of Broadband Equipment has been delivered, if Company is to deliver the item of Broadband Equipment; or
- 3.2.2 if the item of Broadband Equipment is to be collected by the Customer, when the Customer takes possession of that item of Broadband Equipment.
- 3.3 Risk in an item of Broadband Equipment will pass to the Customer when the item of Broadband Equipment is accepted by the Customer. The Customer shall not be liable for any loss or damage to the item of Broadband Equipment to the extent that such loss or damage is caused by the negligence of Company or its suppliers.
- 3.4 Title to an item of Broadband Equipment shall not pass to the Customer, except that title to accessory items shall pass to the Customer upon payment in full for such accessory items.
- 3.5 The Customer undertakes in respect of Broadband Equipment in which Company retains title pursuant to clause 3.4 of these Broadband Terms not to sell, transfer, lease, charge, assign by way of security or otherwise deal in or encumber the same in any way and that it shall keep such Broadband Equipment in good working order allowing for fair wear and tear during the period of use by the Customer.
- 3.6 Following any upgrade or replacement of Broadband Equipment or disconnection of Broadband Equipment from the Broadband Services, Company reserves the right to request the safe return of any such Broadband Equipment in which Company retains title pursuant to clause 3.4 of these Broadband Terms from the Customer at the Customer's expense.
- 3.7 Company reserves the right to charge the Customer the price set out in the Replacement section of the Company Price List or £35 (whichever is the higher) from time to time for any Broadband Equipment that is not returned to Company in accordance with the provisions of clause 3.6 of these Broadband Terms or where the Customer fails to fulfil its obligations under clause 3.5 of these Broadband Terms.
- 3.8 In the event that the modem forming part of the Broadband Equipment is faulty, Company or its appointed agent will repair or replace the modem provided that the fault is not caused by any act or omission of the Customer. Replacement items of Broadband Equipment are available on payment of the applicable replacement items fee(s) detailed in the Company Price List or as otherwise notified to the Customer. The Customer

shall return any faulty or replaced items of Broadband Equipment to Company at its own cost.

### 4. Static IP Address

Customer will receive a dynamic IP address unless it is eligible and chooses to receive a static IP address. If the Customer is eligible and chooses a static IP address, the Customer acknowledges and accepts that the IP address will be re-assigned to Company or its appointed agent in the event that the Broadband Service is disconnected or terminated for any reason. Broadband Charges may apply for static IP addresses.

### 5. Broadband Service Connection

- 5.1 Provided that the Customer has a serviceable BT phone line, connection takes place in the BT exchange and there should be no reason for a Company or BT engineer to visit the Customer's home. In the event that a BT engineer does need to attend the Customer's home for any reason, either prior to connection or during the contract period, then BT's own charges may apply. Customer shall provide any reasonable cooperation and assistance that may be required to get complete connection to the Broadband Services and agrees to pay any connection fee.
- 5.2 The Customer acknowledges and accepts that when connecting the Customer's phone line to the Broadband Service, there may be a temporary loss of telephone services or other telecommunications services. Company or its appointed agent will use its reasonable endeavours to keep this disruption to a minimum but Company will not be responsible for any resulting damage, loss or costs caused, unless caused by Company's negligence.
- 5.3 Company does not warrant or guarantee the speed of the Broadband Services.
- 5.4 The Customer shall keep its current telephone line provider for the duration of the Minimum Term and any Renewal Period (as relevant). Customer acknowledges that it may not be able to continue receiving the Broadband Services in the event that the Customer changes its telephone line provider.
- 5.5 In the event that the Customer current phone line is disconnected for any reason, Company will charge the Customer a reconnection fee of £24 (as Company or its appointed agent will be required to pay a fee for reconnecting the Customer's phone line). If the Customer changes the details of the account for its nominated BT phone line and this leads to BT disconnecting the Customer's phone line then the Customer shall pay a reconnection charge to reactivate the Broadband Services. If the Broadband Service is suspended for failure to pay the Broadband Charges, Company shall charge the Customer a reactivation fee of £10.

### 6. Broadband Service Cancellation

- 6.1 Company shall be entitled to terminate the Broadband Service without liability before the Customer has been connected to the Broadband Service (i) if the Customer fails a credit check or pre-authorisation of payments due is not approved, (ii) if Company is not able to provide the Broadband Services to the Customer's premises by the expected connection date for any reason or (iii) if the Customer's premises is not in a geographical area covered by the Broadband Services.

## Full Terms and Conditions

- 6.2 In the event that Company the Broadband Service is not connected within one (1) month of the confirmed connection date notified by Company to the Customer (other than as a result of the Customer's act or omission), the Customer shall be entitled to cancel the Broadband Service by sending a cancellation notice in writing to Company.
- 7. Charges**
- 7.1 Company's charges in relation to the Broadband Services are set out in the Commercial Schedule and can include (without limitation):
- 7.1.1 a monthly subscription fee;
- 7.1.2 Broadband Service connection fee; and
- 7.1.3 charges in pursuant to clause 5 of these Broadband Terms;
- 7.2 All invoices will be issued and held on Company's or its appointed agent's website. The Customer will need its member ID and password in order to access the invoices. Company or its appointed agent will notify the Customer as and when a new invoice has been issued and the Customer shall be responsible for viewing and taking copies of such invoices.
- 7.3 Company shall be entitled to terminate the Broadband Services in the event that Company does not receive full payment from the Customer for the Broadband Services.
- 8. Broadband Service Interruptions**
- 8.1 Company shall not be held responsible for disruptions caused as a result of war, strikes, natural disasters or other 'acts of God' and shall not be liable for any delay or failure in the performance of its obligations to the extent that such delay or failure is attributable to matters beyond its reasonable control.
- 8.2 Company shall be entitled to make changes to its network or the technical specification of the Broadband Service or may need to suspend provision of the Broadband Services for operational or technical reasons. Company shall use all reasonable endeavours to notify Customer in advance of such changes or suspension if it materially affects the Broadband Services.
- 8.3 In the event that the Customer experiences a total loss of Broadband Services caused by Company for more than five (5) consecutive days, Company shall compensate the Customer for each day's disruption by a credit towards the Customer's monthly Broadband Charge equivalent to the amount Customer would have paid for the Broadband Service on those days. In order to receive this credit, Customer shall notify Company as soon as the Service failure occurs and request the appropriate credit by contacting Company when the Broadband Service is restored. The credit will be applied to the next monthly payment that Customer owes to Company.
- 8.4 In the event that Company reasonably believes that the Customer is using the Broadband Services in breach of its obligations including, without limitation, in breach of the Acceptable Use Policy, Company may without liability or further notice suspend the Broadband Services or in terminate the Broadband Services.
- 9. Moving Home**
- 9.1 If the Customer moves home and the Customer's new home is in an area that is covered by the Broadband Service, the Broadband Services will be moved to the Customer's new home.
- The Customer acknowledges and accepts that a connection fee may be payable.
- 9.2 Company will transfer the Broadband Services to another address free of charge once in any 12 month period since either the Customer's connection or the Customer's last move, whichever is more recent. Additional moves will incur a charge of £50 per move.
- 10. Customer Obligations**
- 10.1 The Customer agrees to comply fully with these Broadband Terms and at all times:
- 10.1.1 comply with the Acceptable Use Policy;
- 10.1.2 keep the Customer's security information including, without limitation, user name and password, safe and notify Company immediately if the Customer becomes aware of any improper disclosure of its security information or unauthorised use of the Broadband Services;
- 10.1.3 ensure that the Customer's equipment and software complies with all applicable laws and standards and that the Customer's equipment and software is compatible with the Broadband Equipment;
- 10.1.4 if the Customer opts to use Company's optional email and webhosting services, with the additional terms and conditions which apply in addition to these Broadband Terms. Use of Company's optional email and webhosting services means that the Customer shall be required to Company's our standard network settings (which includes a block on Port 25 while assigned to Company or its appointed agent's SMTP server);
- 10.1.5 indemnify Company against all losses, liabilities, costs (including legal costs) and expenses which Company may incur as a result of any third party claims against Company arising from, or in connection with the Customer's misuse of the Broadband Services or breach of these Broadband Terms; and
- 10.1.6 all amounts due to Company shall be paid in full (without deduction or withholding except as required by law) and Customer shall not be entitled to assert any credit, set-off or counterclaim against Company in order to justify withholding payment of any such amount in whole or in part.