



## **JAGUAR TELECOM LTD – TERMS AND CONDITIONS**

### **1. DEFINITIONS**

1.1 In this Agreement the following expressions shall have the following meanings unless the context otherwise requires:

**“Access Services”** means the services supplied to the Customer to enable access to the Network

**“Act”** means the Communications Act 2003

**“Additional User”** means any party other than the Customer or User who makes use of a service or facility derived from the Services including any ultimate end user

**“Agreement”** means this agreement including any schedule hereto, as the same may be varied amended or extended from time to time in accordance with the terms of this Agreement

**“Annual Minimum Call Spend”** means the annual sum of money the Customer agrees with the Company will be the Customer’s minimum spend on Call Charges during each year beginning on the Switchover Date or Installation Date or any anniversary thereafter during the term of the Agreement

**“Artificially Inflated Traffic”** means the flow of calls and / or data to any particular revenue share service which is, as a result or consequence of any activity by or on behalf of Subscribers, disproportionate to the flow of calls and / or data which would be expected from good faith commercial practice and usage of the cellular electronic communications network

**“Authorisation”** means the authorisation granted pursuant to the Communications Act 2003 that authorises the Network Operator to run a public communications network

**“Average Call Spend”** means the average charge incurred by the Customer for Calls on a monthly, quarterly or annual basis

**“Broadband”** means a connection between an End User’s site and the underlying network, which carries data in both directions using a broadband protocol

**“Business Day”** means any day which is not a Saturday, Sunday or a bank or public holiday in England

**“Business Hours”** means the hours between 09.00 and 17.00 on a Business Day

**“Call”** means a signal, message or communication that is silent, spoken or visual

**“Call Charges”** means the sum of money (plus VAT) which is payable to the Company by the Customer per Call

**“Charges”** means all sums (plus VAT) payable by the Customer to the Company in respect of any and all Services provided by the Company, including but not limited to hardware, software, Line rental, Broadband rental, support, Call Charges and maintenance

**“Code”** means any Code of Practice relevant to the Services issued by Phonepay Plus or OFCOM as amended from time to time

**“Commencement Date”** means the date on which any Service is provided by the Company to the User

**“Company”** means Jaguar Telecom Limited, a company registered in England and Wales Registration No. 6290704 whose registered office is 4 Imperial Place, Maxwell Road, Borehamwood, WD6 1JN and the expression “Company” includes the Company’s permitted employees and agents

**“Confidential Information”** means all information which relates to the business, affairs, products, developments, trade secrets, know-how, personnel, customers and suppliers of each party (including, for the avoidance of doubt, any information in relation to the Jaguar Telecom services) and which may be reasonably regarded as the confidential information of the disclosing party

**“Customer”** means the person with whom the Company makes this Agreement. It includes a person who the Company reasonably believes is acting with the Customer’s authority or knowledge

**“Data Protection Legislation”** means the Data Protection Directive 94/46/EC as implemented in each member state, including the Data Protection Act 1998 and the Privacy and Electronic Communicative (EC Directive) Regulations 2003

**“Early Termination Charges”** means the charges (plus VAT) for early termination calculated pursuant to clause 14.5

**“Equipment”** means equipment that is not part of the Network and which the Customer uses or intends to use with the Service

**“Ethernet”** means a circuit as defined in Clause C1

**“Fault”** means the continuous or intermittent loss of the ability to use the related service for the purpose for which it was provided

**“Gateway”** means any equipment containing a SIM which enables the routing of calls or data from fixed apparatus to mobile equipment by establishing a mobile to mobile call or transmission.

**“Goods”** means the goods (including any instalment of the goods or any parts for them) which the Company supplies in accordance with these Conditions.

**“Indirect Access”** means a service which enables a User to choose to route certain outgoing calls via a choice of telecommunications networks by prefixing an access code to initiate them

**“Installation Date”** means the same as “Commencement Date”

**“Intellectual Property Rights”** means a) patents, designs, trademarks and trade names (whether registered or not), copyright and related rights, database rights, know-how and confidential information; b) all other intellectual property rights and similar or equivalent rights in the world which currently exist or are recognised in the future; and c) applications, extensions and renewals in relation to any such rights

**“Line”** means a physical connection to the Network

**“Minimum Term”** means the period of 12, 24, 36 or 60 months, as notified to the Customer by the Company and/or specified on the Order

**“Network”** means a) the fixed line telecommunications network operated by the Network Operator, and/or b) the system for the conveyance through the agency of electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy of (i) speech, music and other sounds, (ii) visual images signals serving for the impartation (whether as between persons and persons, things and things or persons and things) of any matter otherwise than in the form of sounds or visual images or (iii) signals serving for the actuation or control of machinery or apparatus

**“Network Operator”** means the network operator who operates a network to which the Line is connected in accordance with an agreement between the Network Operator and the Company

**“Normal Business Hours”** means the hours between 09.00 and 17.30 on Business Days

**“Notification”** means a notification provided by the Company to the Customer regarding the Customer’s transfer to the Company, such notification to include details of the Switchover Date, Installation Date, Commencement Date or any other date relevant to the services being provided by the Company. Such notification may take the form of a letter, electronic mail, SMS or other text service, or other form of communication

**“Number Translation Services”** means telephone numbers with the prefixes 0808, 0845, 0870, 0871 and other non-geographic numbers

**“Order”** means any request executed by both parties for the supply of Services, the term and charges for which, together with any additional terms and conditions, are set out in that order form

**“Parties”** means the Company and the Customer

**“Phone Box”** means any kiosk, booth, acoustic hood, shelter or similar structure in which a phone is installed for the provision of telephone services to the public

**“Post Pay Fraud”** means theft, fraud, deception, unauthorised or unlawful use in relation to the Systems, SIMs and / or Services in connection with mobile telecommunications

**“Premises”** means the place where the Service is or will be provided, usually the Customer’s place of business unless agreed otherwise

**“Price List”** means the price list as set out on the Website and/or available from the Company on request, as varied by the Company from time to time

**“Priority Level”** means a rating applied to a Fault to indicate the seriousness of the Fault and /or the estimated time in which it will be responded to and / or resolved.

**“Protected Circuit”** means an Ethernet circuit delivered over multiple lines so as to provide a resilient service

**“Relevant Standards”** means the standards designated under Section 22 of the Telecommunications Act 1984 as amended by the Communications Act 2003

**“Remote Support”** means the attendance to faults, problems or queries in connection with the Customers telecommunications services provided by the Company. This support will be provided through the use of email, telephone or similar means of communication, but specifically excludes attendance at the Customer’s premises.

**“Rental Charges”** means all sums (plus VAT) payable by the Customer to the Company in respect of any Services provided by the Company that incur a regular recurring Charge, including but not limited to Line rental, Broadband rental, support and maintenance

**“Service”** means all or part of the Service as detailed in this Agreement and / or the Schedules attached thereto, and any related products and / or services that the Company agrees to provide to the Customer under this Agreement

**“Service Credit”** means a reduction in certain charges or a compensation payment in respect of the Company failing to provide a specified Service

**“Service Provider”** means any Public Electronic Communications Network Provider as defined in the Communications Act 2003

**“SIM”** means a Subscriber Identity Module which contains Subscriber information and which, when used with Customer Equipment enables access to Services provided by means of the Systems

**“Spam”** means an unsolicited marketing message not permitted under the terms of the Data Protection Legislation

**“Special Entry”** means any additional entry to the Phone Book requested by the Customer supplemental to the regular information provided relating to the Customer in any phone book issued by BT

**“Subscriber”** means each subscription to a Service identified by its own unique mobile telephone number in respect of which invoices are raised by the Company for the provision of such Service and where a Customer is liable for such invoice

**“Subscriber Apparatus”** means the approved equipment and SIM card connected to the System

**“Switchover Date”** means the date on which a service is transferred from one supplier to another

**“System”** means a mobile telecommunication system that the relevant Network Operator is licensed to operate and has made available to the Company

**“Tariff”** means the price for calls or other services as set out set out on the Company website and/or available on request, as varied by the Company from time to time

**“Unprotected Circuit”** means an Ethernet circuit delivered over a single line

**“User”** means a person who is the ultimate user of services which depend upon the provision of a service by the Company

**“VAT”** means Value Added Tax as defined in the Value Added Tax Act 1994 and including any other tax from time to time replacing it or of a similar fiscal nature

**“Website”** means the website [www.jaguartelem.co.uk](http://www.jaguartelem.co.uk) and any other website that the Company may develop and publicise from time to time

## **2. GENERAL**

- 2.1 The Condition and Schedule headings are for convenience only and shall not affect the interpretation of this Agreement.
- 2.2 References to the singular include the plural and vice versa, and references to one gender include the other gender.
- 2.3 Any phrase introduced by the expressions “includes”, “including” or “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 2.4 Any reference to a statute, statutory provision or subordinate legislation (together “**legislation**”) shall (except where the context otherwise requires) (i) be deemed to include any bye-laws, licences, statutory instruments, rules, regulations, orders, notices, directions, consents or permissions made under that legislation and (ii) shall be construed as referring to any legislation which replaces, re-enacts, amends or consolidates such legislation (with or without modification) at any time.
- 2.5 Any illustrations, samples or descriptive material, including drawings, specifications of weight, capacity or dimensions shall not form part of any Order but shall be treated as approximate only unless specifically stated otherwise. Any savings quoted are illustrative only. All documents containing such illustrative or descriptive material (as well as copyright therein) shall remain the exclusive property of the Company and must not be copied or loaned or transferred.

## **3. SERVICES**

- 3.1 During the term of this Agreement, the Company shall provide the Services to the client in accordance with the provisions of this Agreement and any Schedules attached hereto in consideration of the charges.
- 3.2 The Company reserves the right to change the technical specification of the services (provided that such changes do not materially affect the performance of the services) where necessary for operational reasons, statutory or regulatory requirements.
- 3.3 The Company will use the reasonable skill and care of a competent telecommunications service provider to provide the Service however, the Company cannot guarantee that the Service will always be fault free as other third party companies may provide the Network.
- 3.4 The Company will use all reasonable endeavours to provide the Service by the date agreed with the Customer, such date being the date informed to the Customer via the Notification process.
- 3.5 From time to time the Company may have to:
  - a) change the code or telephone number or the technical specification of the Service due to mandatory changes imposed on the Company; or
  - b) interrupt the Service for operational or emergency reasons; although the Company will restore the interrupted Service as quickly as possible; or
  - c) give the Customer instructions that the Company believes are necessary for health or safety reasons, or to maintain the quality of the Service that the Company supplies to the Customer or to other customers.

## **4. CODES OF PRACTICE**

- 4.1 The Company has produced and will maintain all necessary Codes of Practice in accordance with guidelines laid down by OFCOM, and any other regulatory body. All Codes of Practice are available on the Company Website.

## **5. CALL MONITORING**

- 5.1 The Company may occasionally monitor and record calls made to or by the Company by or to the Customer, for training purposes, to improve the quality of its customer services and to assist with complaint handling.

## **6. CREDIT**

- 6.1 The Customer shall provide to the Company all financial information reasonably requested from time to time for the purpose of establishing or continuing any credit limit offered by the Company to the Customer. The Customer acknowledges and agrees that the Company shall have the right to decline to extend credit to the Customer.
- 6.2 The Company shall have the right from time to time, without notice, to change or revoke the Customer's credit limit on the basis of changes to the Customer's financial position and/or payment record. If credit facilities made available by the Company to the Customer are revoked or withdrawn all amounts due from the Customer shall become immediately payable.
- 6.3 The Company may carry out credit assessments of the Customer from time as reasonably required by the Company to assess the Customer's risk profile. The Company will at its sole discretion decide whether the Customer's credit status is acceptable.

## **7. USE OF CUSTOMER'S INFORMATION**

- 7.1 The Company complies with its obligations under the Data Protection Act 1998 ("the Act"). The Company will only use any Personal Data (as defined within the Act) obtained from the Customer as a result of providing the Service for the purposes of administering the Customer's account and notifying the Customer of changes to the Service, enabling the Company or its third party suppliers to supply the Service to the Customer and for invoicing purposes.
- 7.2 The Company will not pass Personal Data obtained from the Customer to any third parties for marketing purposes but may send the Customer information about the Company's own products and services which it considers may be of interest to the Customer, unless the Customer requests the Company not to do so.
- 7.3 The Customer agrees that the Company may search the files of credit reference agencies that will keep a record of that search. If the Customer gives false or inaccurate information and we suspect fraud, the Company will record this. The information may be used by the Company and other parties in assessing applications and making decisions about credit and credit related services from the Customer and for debt tracing, debt recovery, credit management and crime, fraud and money laundering detection and prevention. Information may be used by the Company and other parties for checking the Customer's identity, statistical analysis about credit, insurance, fraud and to manage the Customer's account and insurance policies. The Company may also perform subsequent searches for the purpose of risk assessment, debt collection and fraud prevention with one or more credit reference agencies and/or fraud prevention agencies whilst the Customer retains a financial obligation to the Company.
- 7.4 Information held about the Customer by credit reference agencies may be linked to records relating to the Customer's financial associate(s). For the purposes of this application you declare that the Customer and the Customer's financial associate(s) are financially independent and the Customer requests that their application be assessed without reference to any "associated" records, although the Customer recognises that this may adversely affect the outcome of their application. For the purpose of this clause a "financial associate" is someone with whom the Customer has a financial link, for example, a spouse, partner or family member.
- 7.5 The Customer authorises the Company to use and disclose, in the UK and abroad, information about them and their use of the Mobile Services and how they conduct their account for the purposes of operating their account and providing the Customer with the Mobile Services or as required for reasons of national security or under law to our associated companies, partners or agents, any telecommunications company, debt collection agency or credit reference agency and fraud prevention agency or governmental agency and other users of these agencies who may use this information for the same purpose as the Company. The Customer agrees to this information being used by the Company for credit control purpose and fraud and crime detection and prevention. The Customer can obtain further details from our public registration held by the Information Commissioner. If the Customer wishes to have details of the credit reference or the fraud prevention agencies from whom the Company obtains and with whom the Company records information about the Customer or receive a copy (the Company may charge a fee) of the information the Company holds about the Customer, please write to us at the address shown on the Company's website, stating the Customer's full name, address, account number and phone number.

## **8. SOFTWARE**

- 8.1 If the Company supplies or provides any third party software to the Customer pursuant to this Agreement then such software shall be supplied or provided subject to the standard terms and conditions of the proprietor of such software at the time of supply or provision, provided such terms and such conditions are not inconsistent with the Customer's rights under this Agreement. The Customer undertakes to use such software strictly in accordance with such terms and conditions, which have been provided to it by the Company.

## **9. DURATION OF THIS AGREEMENT**

- 9.1 This Agreement will come into force on the date on which the Customer orders the Service. The Service supplied by the Company is subject to a Minimum Term unless this Agreement is otherwise terminated prior to expiry of the Minimum Term in accordance with its terms. The Minimum Term will commence on the Commencement Date and / or Switchover Date.

## **10. FAULTS**

- 10.1 If there is a Fault, the Customer must report this directly to the Company in the first instance.
- 10.2 The process for Fault handling of each product or service is detailed in the individual schedule relating to that product or service.
- 10.3 The Company will not be responsible for any Faults in respect of any Customer who does not pay the Charges pursuant to this Agreement.
- 10.4 The Company will use its best endeavours to ensure that a fault exists prior to requesting an engineer to investigate. If, after investigation by an engineer it is apparent that no fault exists, or the fault is proved to lie with the customer's equipment, then the Company will raise a charge to cover the cost of engineering time.

## 11. PAYING FOR THE SERVICE(S)

- 11.1 The Customer agrees to pay all of the Charges due in respect of the Service as set out in the Order and / or Price List and / or Tariff.
- 11.2 The Customer is responsible for all Call Charges incurred as a result of use of the Service by the Customer or any third party using the Service at the Premises.
- 11.3 Invoices giving a summary of charges shall be supplied to the Customer monthly, via email to the Customers registered email address. Detailed invoice breakdowns will be available to the customer via electronic means (e-mail or via the Company website). Paper copies of invoices or breakdowns will not be supplied unless in exceptional circumstances.
- 11.4 The Company reserves the right to charge the Customer daily interest on any amounts that are overdue by more 14 calendar days, at a rate equal to 4% above the base lending rate of HSBC Bank PLC for the period beginning on the date on which payment is due and ending on the date on which payment is made.
- 11.5 The Company reserves the right to issue the Customer with an interim invoice if the Customer has significantly exceeded its Average Call Spend. The Company may also ask the Customer to pay a deposit at any time, as security for payment of future invoices.
- 11.6 Rental Charges are payable from the Commencement Date or Switchover Date of the service and are invoiced 2 months in advance. If the Company agrees to provide the Customer with a temporary Service, the Company may require the Customer to pay Rental Charges in advance for the whole period that the Customer requires the Service.
- 11.7 Where the Customer uses the Company for Line Rental then the Customer is required to also use the Company for Calls over that Line. Should the Customer use an alternative carrier for Calls once this Agreement has commenced, or prevent the Company from carrying Calls in any monthly period so that the Call Charges are materially reduced when compared to the Customer's current average invoicing profile, the Company shall be entitled to charge the Customer 50% of the Average Call Spend or £30 plus VAT per Line on the Customer's next monthly invoice, whichever is the greater.
- 11.8 Charges are payable by Direct Debit, unless agreed otherwise with the Company. If a Customer cancels an active Direct Debit, administrative charges, as set out in the Price List, may apply. The Company reserves the right to apply a charge for payment by means other than Direct Debit, as set out in the Price List.
- 11.9 The Customer must pay all Charges in accordance with their direct debit authority, or if, for some reason their direct debit payment fails, in accordance with the time for payment detailed in the invoice. Any deposit charges are payable upon presentation.
- 11.10 If the Customer's payment is rejected, or becomes, or is, invalid or unavailable, thereby preventing the Company from recovering the sums due under a Customer's account within 7 days following the due date for payment, the Company reserves the right immediately to withdraw access to some or all of the Services. The Customer will also be charged an administration fee as detailed in the Price List.
- 11.11 If the Customer's account remains unpaid for a period of 30 days after the original due date for payment the Company reserves the right to demand payment of a security deposit of three times the average monthly invoice or payment in full for the first year before the Services are reinstated.
- 11.12 If the Customer's account remains unpaid for a period of 35 days after the original due date for payment, the Services will then be suspended and the Customer's account will be referred to a debt collection agency for recovery of any outstanding sums.
- 11.13 If the Company is required to instruct their solicitors or other professional advisers to collect any outstanding sums on the Customer's account, the Customer will be responsible for, and the Company will look to the Customer to discharge, those costs that are incurred by the Company in taking such action.
- 11.14 The Customer must ensure that the account holder's name is the same as the name on the payment details that are provided.
- 11.15 The Company may amend the Charges at any time. The Company will notify the Customer in writing at least 14 days before any increase in the Charges takes place. If the Customer does not accept the proposed increase in the Charges, the Customer must notify the Company within 14 days of receipt of the notice of the proposed increase, otherwise the Customer will be deemed to have accepted the proposed increase.

## 12. CUSTOMER OBLIGATIONS

- 12.1 The Customer may only connect phones, extension wiring, sockets or other equipment to the Network using a Main Telephone Socket that the Company or the Network Operator have fitted unless the Parties agree otherwise.
- 12.2 The Equipment must only be used with the Network in a way that meets the Relevant Standards, is technically compatible with the Service and complies with the terms under which the Company or the Network Operator was granted Authorisation. If the Equipment does not meet the Relevant Standards, the Customer must immediately disconnect it, or allow the Company to do so at the Customer's expense. If the Customer asks the Company to test the Equipment to make sure that it meets the Relevant Standards, the Company may make a charge for doing so.
- 12.3 The Company may have to place equipment on the Premises to provide the Service. The Company requires a suitable place and safe conditions for this equipment. If the Company has to supply equipment that needs a continuous mains electricity supply and connection points, the Customer is responsible for providing this at its own expense.
- 12.4 It is the responsibility of the Customer to carry out any making good or decorator's work required in connection with the provision of the Service, but the Company accepts responsibility for any property damage caused by its negligence, subject to the limitation of liability provisions of this Agreement.
- 12.5 The Customer is responsible for obtaining all relevant permissions for the Company to carry out any work necessary to provide the Service

at the Premises.

- 12.6 The Customer agrees to take reasonable steps to provide access to the Customer's site for any Company employees and their representatives
- 12.7 The Customer agrees to provide a suitable and safe working environment for the Company and its representatives. The Customer agrees to indemnify the Company against all loss, damages, liabilities, costs and expenses arising or incurred in respect of any actions, claims or legal proceedings which are brought or threatened against the Company or its agents if the Customer is in breach of this Clause. The limitation of liability provisions of this Agreement do not apply to this indemnity.
- 12.8 The Company will comply with reasonable health and safety requirements notified to the Company at the Premises and the Customer shall comply with the Company's reasonable instructions to ensure a safe place for its engineers to carry out the work.
- 12.9 Nobody must tamper with the Company's equipment that is on the Premises. Other than fair wear and tear, if there is any damage to or loss of the Company's equipment (unless caused by the Company, its employees or agents), the Customer must pay for any necessary repair or replacement.
- 12.10 The Customer must ensure the Service is not used:
- a) to engage in conduct which amounts to improper or persistent misuse of a public telecommunications network or service within the meaning of Sections 127 to 128 of the Act;
  - b) to threaten, harass, stalk, abuse, disrupt or otherwise violate or infringe the rights (including but not limited to copyright, rights of privacy and publicity) of others;
  - c) in a way that does not comply with the terms of any legislation or any codes or practice, regulations or any licence or authorisation applicable to the Company, Customer or End User (as appropriate) or that is in any way unlawful or fraudulent or to the knowledge of the Company or End User has any unlawful or fraudulent purpose or effect;
- 12.11 In the event that the Customer uses the Service in breach of Clause 12.10, the Company reserves the right to suspend the Service pursuant to Clause 16. The Customer will fully reimburse the Company in respect of any sums the Company is obliged to pay to any third party, and any other costs incurred by the Company (including without limitation properly incurred legal fees), as a result of the Customer's misuse of the Services in breach of Clause 12.10.
- 12.12 If the Customer currently receives services from an alternative supplier the Customer is responsible for any contractual agreement the Customer has with them and any liabilities the Customer may incur for terminating the Customer's current agreement.
- 12.13 The Customer is expressly prohibited from reselling any of the Services provided by the Company to any other User or third party.
- 12.14 The Customer acknowledges that the Customer is liable for any charges (including without limitation any early termination charges) made by the Customer's existing Service Provider in relation to the transfer of services to the Company, unless it is clearly identified and agreed in writing that the Company will pay for or contribute towards such charges.

### 13. LIABILITY

- 13.1 The Company's liability under this Agreement for a failure in provision of the Service or the Services itself is detailed in this Clause 13.
- 13.2 Nothing in this Agreement shall exclude or restrict either Party's liability for fraud, death or personal injury resulting from that Party's negligence.
- 13.3 Neither party shall be liable to the other under or in connection with this Agreement, whether in contract, tort (including negligence), misrepresentation (other than where made fraudulently), and in breach of statutory duty or otherwise for:
- a) any loss of business, contracts, profits, anticipated savings, goodwill, wasted management time or revenue;
  - b) any loss or corruption of data;
  - c) any indirect, special or consequential loss whatsoever incurred by either party,
- whether or not the party relying on this clause 13.3 was advised in advance of the possibility of any such loss
- 13.4 The Company cannot guarantee that the Services will operate Fault free as other third party companies provide the Network or Service. However, the Company accepts liability, subject to the limitations in clauses 13.2, 13.4 and 13.5, in respect of its failure to report a Fault which has been notified to the Company by the Customer, to the Network Operator or third party operator as soon as reasonably practicable.
- For the avoidance of doubt the Company shall not be liable for any delay in the repair of the Fault except to the extent that the Company delays or fails to report the Fault as notified to the Company by the Customer under clause 10 to the Network Operator or third party operator as soon as reasonably practicable.
- 13.5 Subject to clause 13.3 above, the Company's total liability to the Customer (in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) in respect of any loss or damage howsoever arising shall not exceed the lesser of £100,000 or the Charges due to the Company in the previous 12 month period.
- 13.6 Except as set out expressly in this Agreement, all conditions, warranties, undertakings and obligations implied by statute, common law, custom, trade, usage or otherwise are excluded to the extent permissible in law.
- 13.7 Nothing in this clause 13 will exclude liability, which one Party would otherwise have to the other Party in respect of any statements made

fraudulently.

- 13.8 The express terms of this 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.
- 13.9 The Company does not accept liability for the acts or omissions of other providers of telecommunication services (including for the avoidance of doubt the Network Operator) unless such other providers have been specifically engaged by the Company as subcontractors or assignees in respect of performing the Company's obligations under this Agreement.

#### 14. FORCE MAJEURE

- 14.1 The Company will not be liable for failure to comply with its obligations as set out in this Agreement due to matters beyond its reasonable control including but not limited to lightning, flood, or exceptionally severe weather, fire or explosion, terrorism, civil disorder, riot, war, or military operations, national or local emergency, anything done by government or other competent authority or industrial disputes of any kind or in respect of any acts or omissions of OFCOM or any other Public Electronic Communications Network Providers as defined in the Communications Act 2003.

#### 15. TERMINATION OF THIS AGREEMENT

- 15.1 The Company or the Customer may terminate this Agreement at any time upon giving the other one-month's prior written notice of its intention to terminate this Agreement. Termination of the agreement by the customer prior to the expiry of the Minimum Term will incur Early Termination Charges as detailed in clauses 15.4 and 15.5.
- 15.2 The Customer may terminate this Agreement by written notice to the Company, if the Company is in material breach of its terms and fails to remedy such breach within 30 days of receiving notice from the Customer requiring such breach to be remedied; or if the Customer does not accept any proposed increase in the Charges notified to it by the Company pursuant to clause 11.15, provided that the Customer notifies the Company of its intention to terminate this Agreement within 14 days of receiving notification of the proposed increase pursuant to clause 11.15.
- 15.3 In the event that the Customer cancels a signed Order whilst any Equipment and/or Services are in the process of being provided and/or supplied, the Customer shall be liable for the charges for the Equipment and/or Services already provided and/or supplied as detailed in the Order. Examples of such Equipment and/or Services include, but are not limited to, hardware, software, hosted telephony licences, cabling, pre-configuration labour and network installation charges. On payment to the Company of such Charges, title to the Equipment shall pass to the Customer.
- 15.4 In the event that the Customer terminates this Agreement prior to expiry of the Minimum Term, other than in respect of termination by the Customer pursuant to clause 15.2, the Customer shall pay the Early Termination Charges, calculated in accordance with clause 15.5.
- 15.5 The Early Termination Charges shall be, for each Service that a Customer cancels:-
- a) the sum of the Charges payable by the Customer from the date of actual termination until the date of the first anniversary of the Commencement Date; as well as
  - b) 25% of any Line Rental charges payable from the first anniversary of the Commencement Date until the expiry of the Minimum Term; and
  - c) 25% of any SIP Trunk Rental charges payable from the first anniversary of the Commencement Date until the expiry of the Minimum Term; and
  - d) 50% of any Maintenance and Support Rental charges payable from the first anniversary of the Commencement Date until the expiry of the Minimum Term; and
  - e) 100% of any Internet Access Rental charges (including Ethernet circuits) payable from the first anniversary of the Commencement Date until the expiry of the Minimum Term; and
  - f) 100% of any Hosted VoIP Licence Rental charges payable from the first anniversary of the Commencement Date until the expiry of the Minimum Term; and
  - g) any actual Call Charges accrued up to and including the date of termination
- 15.6 In the event that the Company terminates this Agreement after the expiry of the Minimum Term, other than in respect of termination by the Company pursuant to clauses 16.1 d), or 16.1 e), the Customer shall pay the Charges up to the end of the notice period.
- 15.7 In the event that the Customer terminates this Agreement after the expiry of the Minimum Term, other than in respect of termination by the Customer pursuant to clause 15.2, the Customer shall pay the Charges up to the end of the notice period in accordance with clause 15.1 or until 30 days from the date the notice is received by the Company whichever is the later.
- 15.8 If this Agreement ends, the Company will refund any money owed to the Customer, after first deducting any money the Customer owes to the Company under this Agreement or any other agreement the Customer has with the Company.
- 15.9 In the event that the Customer terminates any service prior to expiry of the Minimum Term, other than in respect of termination by the Customer pursuant to clauses 15.2, 15.3 and 15.4, the Company shall be entitled to charge the Customer such an amount as would be reasonable in covering the Company's losses as a result of such a termination. This would include *inter alia* instances where the Company has provided free line installations to the Customer that have been subsequently cancelled prior to the expiry of their minimum term.
- 15.10 In the event of the termination of this Agreement for whatever reason the Customer shall permit the Company or any nominated representative to enter the site during any Business Day for the purpose of removing any Equipment that is the property of the Company.

## **16. SUSPENSION OR TERMINATION OF THE SERVICE FOR BREACH**

- 16.1 The Company reserves the right to suspend the Service or terminate this Agreement immediately at any time without giving the Customer prior notice, and without prejudice to the Company's other rights and remedies, if:
- a) the Customer breaches this Agreement or any other agreement it has with the Company for telecom Services and fails to remedy the breach within 14 days of the Company notifying the Customer of such breach and requesting that such breach is remedied;
  - b) The Company believes that the Service is being used in breach of clause 12.10, whether the Customer is aware of such misuse or not;
  - c) the Customer, being an individual, partnership or firm has entered into any composition or arrangement with its creditors, has a petition presented by it or by any other person for its bankruptcy or has a bankruptcy order made against it; or, being a company, is subject to any winding up or administration proceedings, or in any event ceases, or threatens to cease to trade;
  - d) The Company's Authorisation (or the Authorisation of any relevant third party telecommunications supplier or regulator) expires or is revoked or modified in any respect which materially or adversely affects the Company's ability to provide the Services; or
  - e) The Company has to do so to comply with any order, instruction or request of any authorised government body or authority or any emergency service; or
  - f) any direct debit details submitted by the Customer for payment are found not to be or cease to be valid; or
  - g) The Company is directed by any competent authority to cease the provision of the Services or any part of it; or
  - h) The Company's contract with any third party who assists the Company in providing the Services to the Customer is terminated.
- 16.2 If the Company suspends the Service pursuant to this clause 16 (other than pursuant to clauses 16.1 d) and e)), the Company will not be obliged to recommence provision of the Service until the Customer does what it is obliged to do under and in accordance with the terms of this Agreement or satisfies the Company that the Service will not be used in a way that is in breach of this Agreement.
- 16.3 The Customer is still liable to pay the Charges applicable to any period of suspension of the Service (other than in respect of a suspension pursuant to clauses 16.1 d) or e)).
- 16.4 In the event the Service is suspended by the Company for reasons as set out in clause 16.1 c) above, the Company reserves the right to charge the Customer an administration fee for such suspension. This charge is set out in the Price List.
- 16.5 In the event the Service is recommenced following suspension, the Company reserves the right to charge a reconnection fee for each suspended Line. This charge is set out in the Price List.

## **17. VALIDITY**

- 17.1 If any provision of this Agreement becomes invalid or unenforceable the other provisions of this Agreement shall not be affected by such invalidity or unenforceability.

## **18. DISPUTES**

- 18.1 For information on how complaints and disputes are handled please see our 'Code of Practice on Complaint Handling and Dispute Resolution' on our website or available on request.
- 18.2 Nothing in this clause 18 will prevent either Party from:
- a) seeking injunctive relief in the case of any breach or threatened breach by the other Party;
  - b) commencing any proceedings where this is reasonably necessary to avoid any loss of a claim due to the rules on limitation of actions; or
  - c) commencing proceedings in the case of non-payment of the Charges.

## **19. CHANGING THIS AGREEMENT**

- 19.1 If the Customer asks the Company to make any change or changes to the Service the Company may ask the Customer to confirm its request in writing. If the Company agrees to a change, this Agreement will be changed when the Company confirms the change to the Customer in writing.
- 19.2 The Company can change the conditions of this Agreement including its Charges at any time. The Company will notify the Customer in writing at least 14 days before the changes takes place.

## **20. ASSIGNMENT**

- 20.1 The Company shall have the right to assign or otherwise delegate all or any of its rights and obligations under this Agreement to any Associated Company third party.
- 20.2 The Customer cannot assign or try to assign this Agreement or any part of it to a third party without the Company's prior written consent.

## **21. INTELLECTUAL PROPERTY RIGHTS**

- 21.1 All Intellectual Property Rights in the Services shall be owned by the Company and its Service Providers, save to the extent that any of the



same contain Intellectual Property Rights owned by third parties.

## **22. NOTICES**

- 22.1 Any notice given under this Agreement must be delivered by hand, sent by email or sent by prepaid post:
- a) to Jaguar Telecom Ltd, 4 Imperial Place, Maxwell Road, Borehamwood, Herts, WD6 1JN or such other address as may be notified to the Customer; or
  - b) to the Customer at the address to which the Customer has asked the Company to send invoices.

## **23. CONFIDENTIAL INFORMATION**

- 23.1 The parties will at all times keep confidential all Confidential Information acquired in consequence of this Agreement, except for information which they are bound to disclose by law, or they are required to disclose by regulatory agencies or information given to their professional advisers where reasonably necessary for the performance of their professional services.
- 23.2 The obligations of confidentiality set out in this clause 23 will remain in full force and effect despite termination of this Agreement for a period of 2 years
- 23.3 The Company will only use Personal Data

## **24. ENTIRE AGREEMENT CLAUSE**

- 24.1 This Agreement constitutes the entire agreement between the Company and the Customer and supersedes all prior negotiations, representations, proposals, understandings and agreements whether written or oral relating to the Services.
- 24.2 Each of the parties acknowledges and agrees that in entering into this 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 this Agreement or not) other than as expressly set out in this Agreement. Nothing in this clause shall, however, operate to limit or exclude any liability for fraudulent misrepresentation.

## **25. BRIBERY**

- 25.1 The Customer acknowledges and agrees that the Company will not tolerate bribery in any form in connection with the conduct of its business. In dealing with the Company the Customer agrees to comply in full and without exception to the provisions set out in this clause 25.
- 25.2 The Customer shall:
- a) comply with all applicable laws, statutes, regulations, codes and guidance relating to anti-bribery and anti-corruption ("Anti-bribery Laws"), including without limitation the Bribery Act 2010.
  - b) not do, or omit to do, any act that will cause the Company to be in breach of Anti-bribery Laws

## **26. THIRD PARTY RIGHTS**

- 26.1 A person who is not a Party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

## **27. WAIVER**

- 27.1 The failure or delay by either party to this Agreement to exercise or enforce any right, power or remedy under this Agreement shall not be deemed to operate as a 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.

## **28. LAW AND JURISDICTION**

- 28.1 This Agreement or any term of this Agreement will be governed by English law and the English courts will have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

**SCHEDULE A**  
**TELEPHONE LINE RENTAL AND CALLS**

**A1. CHARGES**

A1.1 The Company will calculate the Call Charges using the details recorded by the Network Operator. Call Charges will normally be invoiced monthly in arrears. Where possible, Call Charges will appear on the Customer's next invoice, but sometimes there may be a delay.

**A2. PHONE BOOK AND DIRECTORY ENTRIES**

A2.1 The Company will enter the Customer's name, address and the phone number for the service in the phone book for the Customer's area and make the phone number available from a directory enquiries service unless the Customer requests the Company not to do so within 14 days of entering into this Agreement.

A2.2 If the Customer requires a Special Entry in any phone book issued by the Network Operator it must let the Company know. The Customer acknowledges that an additional charge may be payable for a Special Entry.

**A3. NUMBER PORTING**

A3.1 The Customer accepts that when a number is ported only the number is transferred – all associated services are removed by the losing operator at the time of the port.

A3.2 The Customer agrees that all information it has provided is accurate and complete, and agrees to provide such further accurate and complete information as the Company requests in connection with the port. Failure to provide such information may result in a delay to the number port.

A3.3 The Customer accepts that there are minimum industry and Company lead times associated with number porting, and that sometimes delays can occur. Estimated porting times will be advised to the Customer at the time of placing an Order.

**A4. FAULTS**

A4.1 If there is a fault the Customer must report this directly to the Company.

A4.2 If the Customer reports a fault in respect of a Line, the Company will report the fault to the Network Operator as soon as reasonably practicable. Engineering response times to faults will vary depending on the level of maintenance cover on the Line in question. Levels of cover and response times are as follows:

- a) Service Level 1  
Fault resolved by the end of the next working day + 1, Monday to Friday excluding Public and Bank Holidays. This service only applies to residential Lines
- b) Service Level 2  
Fault resolved by the end of the next working day, Monday to Saturday excluding Public and Bank Holidays.
- c) Service Level 3  
Fault resolved by midnight of the same day if reported by 13.00, otherwise resolved the following day. Operates 24 hours a day 365 days a year.
- d) Service Level 4  
Fault resolved within 6 hours. Operates 24 hours a day 365 days a year.

A4.3 The Company will not be responsible for any Faults in respect of any Customer who does not pay Line Rental pursuant to this Agreement.

**SCHEDULE B**  
**BROADBAND**

**B1. SERVICES**

- B1.1 The Company may at any time make any changes to the Services supplied as it deems necessary provided always that:
- a) The Company shall provide to the Customer as much notice as practicable prior to any such change taking effect (having due regard to the likely impact on the Client and the nature of such change); and
  - b) If any such change has a detrimental and material effect on the nature or quality of the Services (as evidenced in writing by the Customer) then within 30 days of the change being implemented the Customer shall have the right to terminate this Agreement by giving the Company not less than 30 days notice in writing.
- B1.2 The Customer acknowledges that the speed of any broadband service is dependant on a number of factors including distance from the exchange, local availability and traffic volumes. The Company gives no guarantee that the Customer's service will produce top speeds up to the maximum speed advertised, as the final speed is governed by factors that are outside the Company's control.

**B2. USE OF THE SERVICES**

- B2.1 The Customer shall not itself or knowingly permit any User to use the Services to do any of the following:
- a) Publish, post, distribute or disseminate defamatory, infringing, obscene, indecent or other unlawful material or information
  - b) Threaten, harass, stalk, abuse, disrupt or otherwise violate the rights (including rights of privacy and publicity) of others
  - c) Engage in illegal or unlawful activities through the Network
  - d) Knowingly make available or upload files that contain software or other material, data or information not owned by or licensed to the Customer, the User or Additional User (as appropriate)
  - e) Knowingly make available or upload files that contain a virus or corrupt data
  - f) Falsify the true ownership of software or other material or information contained in a file that the Customer, any User or Additional User makes available via the Network
  - g) Act in a manner which utilises excessive amounts of bandwidth
  - h) "Spam" or otherwise deliberately abuse any part of the Network
  - i) Breach the rights of third parties
  - j) Obtain access, through whatever means, to notified restricted areas of the Network
  - k) Act in a manner that restricts or inhibits any other User from using or enjoying the Network Operator's products or services
- B2.2 If the Customer becomes aware that any User or Additional User is using the Network to perform any of the activities listed in clause B2.1 it shall enforce the applicable terms in its agreement with its User and shall use all best endeavours to stop such User from doing so. In the event that the Company becomes aware that a User or any Additional User is performing any of the activities listed in clause B2.1 the Company shall bring the breach to the attention of the Customer in writing. The Customer is required, within 1 business day of dispatch of such message, to provide a satisfactory response detailing the actions that have been taken to stop a User or Additional User performing in this way. If such response is not forthcoming the Company reserves the right to restrict the access of and/or disconnect the User or Additional User in question, and if necessary the entire Service. If the Company exercises its rights to disconnect a User or Additional User it will notify the Customer as soon as reasonably practicable.
- B2.3 Each Party shall provide the other with all reasonably necessary co-operation, information and support to prevent and/or stop any misuse of the Network by a User or Additional User.

**B3. FAULTS**

- B3.1 The Company shall not be liable for any fault or defect in the Services due to items of hardware or software provided by the Customer, and the Customer shall be liable for any charges incurred by the Company in dealing with any problems with the Service due to any such items.
- B3.2 If there is a fault the Customer must report this directly to the Company in the first instance.
- B3.3 The Customer shall provide a complete description of the fault and any reasonable information requested by the Company.
- B3.4 On receipt of a fault notification the Company will report the same to the Network Operator as soon as reasonably practicable, and normally within 1 hour.
- B3.5 The Company shall use all reasonable endeavours to resolve faults within the following timescales, measured from the time the fault is logged with the Network Operator:
- a) Priority 1 (Service is unavailable to multiple Customers); resolution within 6 hours, plus an additional 4 hours if hardware support is required.
  - b) Priority 2 (Service is unavailable to a single User or Additional User); resolution within 40 clock hours
  - c) Priority 3 (Service fails to in a non-material way to meet the availability level set out in clause 4 below); resolution within 2 working

days

B3.6 The Company will not be responsible for any Faults in respect of any Customer whose account is in arrears.

#### **B4. AVAILABILITY**

B4.1 The Company will aim to provide a weekly average overall network availability of not less than 99.5%.

B4.2 Planned Maintenance will not exceed 2 hours in total in any calendar month.

B4.3 Emergency Maintenance will not exceed 2 hours in total in any calendar month

#### **B5. SUSPENSION OF THE SERVICE**

B5.1 The Company may suspend or block the Customer's (or any User's or Additional User's) access to the Service in the following circumstances:

- a) If the Company or any third party providing Equipment or Services to the Company in connection with the provision of the Services is required to do so in order to comply with any law, regulation, court order, or request, order, direction, determination or consent by or of a governmental or regulatory body or authority;
- b) If the Company is unable to obtain for any reason the relevant Services or equivalent from its suppliers, thereby preventing the Company from performing its obligations under this Agreement;
- c) If the Company or any third party providing Equipment or Services to the Company in connection with the provision of the services requires to carry out any emergency maintenance or repair, which will include any necessary action to prevent interference with, damage to or degradation of the Network. Where possible the Company will give the Customer a minimum of 48 hours advance notice of such;
- d) To carry out planned maintenance or upgrade the Network or the Services, in which case the Company will provide not less than 48 hours prior notice of the suspension and, where practicable, will agree with the Customer when the Services will be suspended and for how long;
- e) If the Customer fails to comply with any of its obligations set out in this Agreement or if the Company has reasonable grounds to believe that the conduct of the Customer is likely to place it in breach of any such obligation;

B5.2 The Company will provide the Customer with as much notice of any suspension to the Service as reasonably possible, and the Customer acknowledges that on occasions no notice may be possible.

B5.3 The Company will restore suspended Services as soon as reasonably practicable after the cause of the suspension has been rectified.

B5.4 If the suspension of Services arises out of, or in connection with, an act or omission of the Customer, then the Customer will pay to the Company all reasonable costs that the Company incurs in reconnecting the Services.

B5.5 The Company may require the Customer (by notice in writing) to withdraw provision of the Services from a User or an Additional User where such User or Additional User is in breach of the provisions contained in clause 2.

B5.6 Any withdrawal or suspension of services under this Clause 5 will not amount to a suspension of any other Services to the Customer, nor a termination (in whole or in part) of this Agreement.

#### **B6. MAINTENANCE**

B6.1 The Company undertakes to advise the Customer as soon as reasonably practicable of any time periods for conducting routine maintenance or upgrades to the Equipment and/or the Network.

B6.2 The Company and/or its Suppliers shall be free to carry out emergency or urgent maintenance to the Equipment and/or the Network at any time to ensure the Services continue to be supplied. Wherever reasonably possible, any emergency or urgent maintenance will be carried out during such times as the traffic over the Network is at its lowest. The Company shall advise the Customer, if practicable, prior to the conducting of any such emergency or urgent maintenance.

#### **B7. FAIR USAGE POLICY**

B7.1 A Fair Use Policy applies to some Internet Access services with the exception of Ethernet circuits. If a Fair Use Policy applies to a particular service, this will be clearly shown on the Order Form. The Fair Use Policy provides for a maximum amount of data usage, which will be the combined amount of data uploaded and downloaded in one calendar month. This is known as the Monthly Allowance and will be stated in Gigabytes (GB).

B7.2 The Monthly Allowance will differ according to the service and product being provided, and is available on request.

B7.3 If the Customer exceeds the Monthly Allowance, a charge of £1 per 1GB in excess of the Monthly Allowance will be applied to the Customer's next invoice.

**SCHEDULE C**  
**ETHERNET**

**C1. DESCRIPTION**

- C1.1 Ethernet access is a high bandwidth, scalable, reliable and uncontended access service designed to deliver premium quality voice and internet products over a consistently available service. These services may share infrastructure with the Service Provider's Network and/or that of other Service Providers. These services are delivered as a Fully Managed service with 24/7 remote monitoring and management by the Service Provider.
- C1.2 The service configurations available are:
- Internet access only – A single Ethernet connection between the Customer and the internet
  - IP telephony only – A single Ethernet connection between the Customer and an IP telephony platform
  - Converged internet and IP telephony – An Ethernet connection providing connectivity to both the internet and an IP telephony service

**C2. SECURITY**

- C2.1 Ethernet circuits are not provided with any security or security features. The Customer is responsible for all security (e.g. firewall), even where the Company has provided a router.
- C2.2 Any voicemail service used in connection with an Ethernet circuit must have a sufficiently secure password in place.
- C2.3 The Company's Service Provider has systems and processes in place to detect fraudulent registrations. In the event that the Service Provider detects a potential fraudulent registration, they reserve the right to block access to the network.

**C3. INSTALLATION**

- C3.1 The customer acknowledges that it is not possible to provide Ethernet services at all locations. The Company will endeavour to confirm within 10 Business Days after receipt of the Customer's requirements whether the Service can be provided.
- C3.2 In some cases additional charges (known as Excess Construction Charges) may be payable. If Excess Construction Charges are applicable in order to provide the services, the Company shall notify the Customer in writing of the charges and the reason for them. The Customer will be required to provide written acceptance of the charges before any further work can be carried out.
- C3.3 The Company will deliver the Service by midnight on the target Commencement Date with handover notices made available the following Business Day. If the Company fails to do this, the Customer shall be entitled to Service Credits as set out in Table C1.

**Table C1**

No. of working days beyond target Commencement Date	Percentage of Installation Charge to be credited
1 - 10	5%
11 - 15	10%
16 - 20	15%
More than 20	20%

- C3.4 In the event that the Commencement Date is delayed by more than 60 days after the target Commencement Date and it cannot be demonstrated that the delay is caused by circumstances beyond the Company's reasonable control, then in addition to the compensation set out in Table C1, the Customer shall have the right to terminate the Service. The compensation and the right to terminate the Service in the circumstances set out herein shall comprise the Customer's sole remedy in respect of such a delay.
- C3.5 The maximum compensation that the Customer can receive for late provision of an Ethernet circuit is an amount equal to 20% of the installation Charge for the circuit.

**C4. USE OF THE SERVICE**

- C4.1 The Customer agrees that all Users, and shall procure that all Additional Users, be authenticated and where required be provided with a unique user name and password in order to access any part of the Service.
- C4.2 The Customer shall not itself or knowingly permit any User to use the Services to do any of the following:
- a) Publish, post, distribute or disseminate defamatory, infringing, obscene, indecent or other unlawful material or information
  - b) Threaten, harass, stalk, abuse, disrupt or otherwise violate the rights (including rights of privacy and publicity) of others
  - c) Engage in illegal or unlawful activities through the Network
  - d) Knowingly make available or upload files that contain software or other material, data or information not owned by or licensed to the Customer, the User or Additional User (as appropriate)
  - e) Knowingly make available or upload files that contain a virus or corrupt data
  - f) Falsify the true ownership of software or other material or information contained in a file that the Customer, any User or Additional User makes available via the Network

- g) Act in a manner which utilises excessive amounts of bandwidth
- h) "Spam" or otherwise deliberately abuse any part of the Network
- i) Breach the rights of third parties
- j) Obtain access, through whatever means, to notified restricted areas of the Network
- k) Act in a manner that restricts or inhibits any other User from using or enjoying the Network Operator's products or services

C4.3 If the Customer becomes aware that any User or Additional User is using the Network to perform any of the activities listed in clause C4.2 it shall enforce the applicable terms in its agreement with its User and shall use all best endeavours to stop such User from doing so. In the event that the Company becomes aware that a User or any Additional User is performing any of the activities listed in clause C4.2 the Company shall bring the breach to the attention of the Customer in writing. The Customer is required, within 1 business day of dispatch of such message, to provide a satisfactory response detailing the actions that have been taken to stop a User or Additional User performing in this way. If such response is not forthcoming the Company reserves the right to restrict the access of and/or disconnect the User or Additional User in question, and if necessary the entire Service. If the Company exercises its rights to disconnect a User or Additional User it will notify the Customer as soon as reasonably practicable.

C4.4 Each Party shall provide the other with all reasonably necessary co-operation, information and support to prevent and/or stop any misuse of the Network by a User or Additional User.

#### C5. SCHEDULED AND EMERGENCY MAINTENANCE

C5.1 From time to time it may be necessary to interrupt the Service to maintain, update or enhance software, Equipment or other aspects of the Service and / or the Network ('Maintenance Events'). The Company will, where possible give the Customer a minimum of 10 business days advance notice of such events, and where possible will schedule Maintenance Events so as to cause minimum interruption of the Service. For the avoidance of doubt, it may not be possible to give such notice where interruption to the Service is necessary to deal with Faults occurring in connection with the Service.

C5.2 From time to time it may be necessary to interrupt the Service to carry out emergency maintenance to the Network in order to maintain appropriate levels of service quality and to provide where possible minimum impact to the Service.

C5.3 The Customer shall give all reasonable assistance to the Company to enable maintenance to commence on the planned date.

C5.4 Any Maintenance Events that occur during Normal Business Hours and which were not requested by the Customer shall be considered downtime for the purpose of service availability measurement set out in Clause C7.

#### C6. INCIDENT REPORTING AND RESOLUTION

C6.1 The Company's Service Provider shall supply monitoring and management of Ethernet circuits 24 hours a day 7 days a week, together with pre-emptive incident reporting whenever reasonably possible.

C6.2 The Company shall assign a Priority Level to any Fault in accordance with Table C2 below.

C6.3 The Company shall use reasonable endeavours to clear Faults within the timescales specified within Table C2.

**Table C2**

Priority Level	Description	Target Resolution Time
1	Total loss of Service resulting from a single event	6 Clock Hours
2	Partial loss of Service or degradation of Service resulting from one event	1 working day
3	Service is available, but either reduced functionality or degradation is being experienced by the Customer without any significant business impact	3 working days

C6.4 Clock Hours are defined as the time between the Start Time and Stop Time, excluding Parked Time, where:

- Start Time means the time a fault has been validated and categorised as a Priority Level 1 fault
- Stop Time means the time a fault has been resolved
- Parked Time means the time during which the resolution of a fault is outside the Company's or the Service Provider's control

#### C7. SERVICE AVAILABILITY AND CREDITS

C7.1 The Company and its Service Provider will use all reasonable endeavours to comply with the service levels set out in this Clause, but these levels are target levels only and the Company has no liability for any failure to meet them except as set out in this Clause.

C7.2 The availability figures in this Clause C7 will be calculated for any calendar month in which the Customer experiences a loss of service.

C7.3 Where the availability of the service falls below the availability figures in this Clause C6, the Customer shall be entitled to receive a Service Credit in accordance with Table C3.

**Table C3**

Circuit availability in each calendar month	Service Credit
99.25% or greater	0% of one month's rental charge
Between 98.75% and 99.24%	25% of one month's rental charge
Between 98.25% and 98.74%	50% of one month's rental charge
Between 97.50% and 98.24%	75% of one month's rental charge
Less than 97.49%	100% of one month's rental charge

- C7.4 For the purpose of this Clause C7, overall service availability excludes:
- a) Scheduled maintenance events
  - b) Customer-caused or third party outages or disruptions (except to the extent that such outages or disruptions are caused by those duly authorised third parties sub-contracted to provide the Service), or
  - c) Outages or disruptions attributable in whole or in part to Force Majeure events as defined in Clause 14
  - d) Failure of any customer equipment connected to the service
- C7.5 For the purpose of calculating availability, the Service is deemed to be unavailable when there is a total break in transmission.

**C8. LIMITS AND EXCLUSIONS ON COMPENSATION**

- C8.1 Any Service Credits due to the Customer shall be the Customer's sole and exclusive remedy with respect to any Service or Delivery failures and shall be in lieu of any other remedy which the Customer may have at law.
- C8.2 The maximum compensation that the Customer can receive for Unavailable Time in any one month is an amount equal to 100% of the rental due in respect of that service for the month in which the failure(s) occur and the maximum compensation in aggregate the Customer can receive is an amount equal to 35% of the annual rental for the period covered by a 12 month cycle, the first such cycle starting on the Commencement Date.
- C8.3 Any compensation payable will be credited on the Customer's next invoice unless no further invoices are due in which case a specific payment will be made. The Company may offset all or part of any such amounts against any outstanding amounts due which have not been paid by the Customer, except where such amounts have been disputed.
- C8.4 Service levels, service guarantees and Service Credits will not apply if:
- a) The failure is due to the Customer's own network or equipment
  - b) The customer is in breach of any part of this Agreement, or the service is suspended in accordance with this Agreement.
  - c) Through no fault of its own or because of circumstances beyond its reasonable control, the Company or any of its suppliers is unable to carry out any necessary work at, or gain access to the Customer's site or the Customer fails to agree an appointment date or work is aborted
  - d) The Customer and the Company agree a different timescale for performance of the Service, but will apply to any new target Commencement Date agreed, provided that the new date is after any previous target Commencement Date
  - e) Reasonable assistance is required or information is reasonably requested by the Company, and such assistance or information is not provided
  - f) Through no fault of its own the Company is unable to obtain any necessary permissions or consents required in connection with the performance of a particular service level.
  - g) The failure is due to a force majeure event
  - h) The failure is due to a scheduled Service outage

**C9. ADDITIONAL CHARGES**

- C9.1 The Company reserves the right to pass on to Customers any charges levied by the Service Provider to which it is exposed as a result of the Customer's actions.

**C10- EQUIPMENT**

- C10.1 All Services Equipment remains the property of the Company at all times.
- C10.2 The Customer agrees to:
- a) Prepare the site and provide a suitable place, conditions, connection points and electricity for the Company's Equipment at the Site in accordance with the Company's reasonable instructions and
  - b) Obtain all necessary consents including for example consents for any necessary alterations to buildings, permission to cross other people's land or permission to put the Company's Equipment on their property
  - c) Accept responsibility for the Company's Equipment and agrees to take reasonable steps to ensure that nobody (other than someone authorised by the Company) adds to, modifies or in any way interferes with it. The Customer will be liable to the Company for any loss of or damage to the Company's Equipment, except where such loss or damage is due to fair wear and tear or

is caused by the Company or anyone acting on the Company's behalf.

**C11. CONNECTION OF EQUIPMENT**

- C11.1 Any Equipment connected to the Service must be:
- a) Technically compatible with the Service and not harm the Network, the Service or the Company's Equipment or another party's Network or Equipment.
  - b) Connected and used in accordance with any relevant instructions or laws
  - c) Connected and used in line with any relevant standards including, in the order of precedence set out below  
Any legal requirements imposed upon the parties including requirements arising from General Condition 2 under Section 45 of the Act.  
Any relevant specification notified by OFCOM in implementation of the recommendations of the Network Interoperability Consultative Committee  
Any recommendations by the European Telecommunications Standards Institute  
Any recommendations by the Telecommunications Standards Bureau (formerly the International Telegraph and Telephone Consultative Committee) of the International Telecommunication Union
- C11.2 The Company will not be liable for failure to meet any service level or other obligations under this Agreement if any Equipment is found to be connected otherwise than in accordance with this clause.
- C11.3 The Company reserves the right to disconnect any Customer Equipment if the Customer does not fulfil its obligations under Clause C11 or if in the reasonable opinion of the Company such Equipment is liable to cause the death of or personal injury to any person.



**SCHEDULE D**  
**HOSTED TELEPHONY**

**D1. SERVICES**

- D1.1 Service shall be deemed to commence one day after dispatch of the Equipment to the Customer, except where a number is being ported from another Service Provider in which case service shall be deemed to commence upon completion of the porting process.
- D1.2 The Customer acknowledges that any VoIP Service:
- a) May not offer all the features or resilience that the Customer may expect from a conventional telephone line
  - b) May sometimes be limited unavailable or disrupted due to circumstances beyond the Company's control e.g. power disruptions, Network failures or other loss of broadband service.
  - c) When used outside of mainland England, Wales, Scotland and Northern Ireland may not result in the User being connected to the domestic emergency services upon dialling the appropriate emergency number.

**D2. EMERGENCY CALLS**

- D2.1 IP Telephony services support 999 / 112 emergency call services and such calls will be routed to the national emergency call handling services. However, these services do not operate in the same way as PSTN fixed line 999 / 112 emergency call services and connection to such services may not be possible in the event of a service outage caused by loss of End User connectivity to the internet for whatever reason. In such circumstances the End User should use a PSTN line or mobile phone to make the emergency call.
- D2.2 It may on occasions not be possible for emergency services personnel to identify the End User's location and telephone so this information should be stated promptly and clearly by the End User when making a call.

**D3. PORTAL**

- D3.1 The Company will provide each Customer with an internet portal through which the service can be controlled online. The Company will use reasonable endeavours to maintain (but does not guarantee) access to such portal at all times and the Company shall not be liable for any losses caused by any restrictions to such access.

**SCHEDULE E**  
**MOBILE**

**E1. SERVICES**

- E1.1 The Company's mobile telecommunications services are provided by Daisy Wholesale, hereinafter referred to as Daisy. However the Company acts for its own account and is not an agent of Daisy.
- E1.2 The Company shall use reasonable endeavours to provide and maintain the availability of the services, subject to these Terms and Conditions. The Company does not represent or warrant that the Services shall be available without interruption or free from error.
- E1.3 Where the Company is obliged to do so under a Service Provider Agreement, relevant legislation, regulations and/ or statutory instruments or in times of national emergency, the Company may (on giving as much notice as reasonably practicable in the circumstances) give priority access to the Services and in such situations the Company shall have no liability to the Customer in respect of an interruption or cessation of the Services. The Customer acknowledges that in certain circumstances (such as national emergencies) the Company (acting reasonably and in good faith) may not be able to provide any notice.
- E1.4 The Company will use reasonable endeavours to ensure the relevant Service Provider provides the Services using reasonable skill and care.
- E1.5 Subject to these Terms & Conditions, the Company will connect and maintain the connection of the Subscriber Apparatus to the System and, subject to the geographical coverage of the System from time to time and other limiting factors not under the Company's control, will endeavour to make the Services available to the Subscriber throughout the terms of this Agreement.
- E1.6 The Subscriber recognises and acknowledges that the Services depend on the availability of the Systems which may, from time to time, by their very nature, be adversely affected by physical features, atmospheric conditions and other causes of interference may fail or require maintenance without notice.
- E1.7 The Company shall bear no liability whatsoever to the Subscriber in connection with any service provided by an overseas network, third party or premium rate provider.
- E1.8 This Agreement is subject to the continuing right of the relevant Service Provider to provide mobile telecommunications services to the Company. Notwithstanding any other provision in this Agreement, if at any time the licences or any right of the Service Provider to provide mobile telecommunications services to the Company is withdrawn or terminated, any Agreement between the Company and the Customer in respect of those Services affected by such an event shall terminate automatically without either party being liable to the other, save for breaches by either party occurring prior to such termination.
- E1.9 This Agreement is also subject to the continuing right of the Company to provide the Services to the Customer. Notwithstanding any other provision in these Terms & Conditions, if at any time the right of the Company to provide the Services is withdrawn or terminated, any Agreement between the Company and the Customer in respect of those Services shall terminate automatically without either party being liable to the other, save for breaches by either party occurring prior to such termination.

**E2. GATEWAYS**

- E2.1 The Customer shall not connect or continue connection by itself nor knowingly allow any Subscriber to connect or continue connection of any gateways to the Systems for illegal purposes including without limitation the illegal provision of telecommunications services to a third party.
- E2.2 The Customer shall co-operate with the Company at all times to ensure that such Gateways as are connected to the System remain compliant with the applicable law. If the Customer becomes aware that any Subscriber or any other party has established installed or is using a Gateway in an illegal manner the Customer shall notify the Company as soon as reasonably practicable and shall upon request from the Company provide technical particulars of the Gateway and its use to the Company's reasonable satisfaction. The Customer shall follow the Company's instructions to facilitate the disconnection of any Gateway that breaches any applicable laws.

**E3. PAYMENT**

- E3.1 The Subscriber will pay all call charges in excess of any call charges that may be included in the minimum airtime charge but without rebate for any unused element of call charges in such charge, including charges incurred from other networks, virtual networks, premium rate and overseas cellular and network operators and also any handling charges set out in the tariff.
- E3.2 The Subscriber is solely responsible for the Subscriber Apparatus and / or SIM card and shall remain liable for all call charges including any incurred during a period of theft, damage or loss until such theft damage or loss is reported to the Company and the Service Provider, and will remain liable for the monthly access charge until the Agreement has ended.
- E3.3 The Company may require that a deposit be paid in cases where the Customer incurs excessive monthly charges.

**E4. OBLIGATIONS OF THE SUBSCRIBER**

- E4.1 The Subscriber acknowledges that the System is operated under Licence and by agreement with the Service Provider and that the provisions of said Licences and agreements apply to the use of the Service.
- E4.2 The Subscriber will promptly advise the Company by phone and in writing in the event of loss or theft of the Subscriber Apparatus and / or SIM card.
- E4.3 The rates / tariffs / equipment subsidies that the Company makes available to the Subscriber are subject to the length of contract chosen and its terms and are based upon the predicted or anticipated revenue over the contract term including notice period. The Subscriber is therefore expected to honour the contract, revenue and its terms. In the event that the Subscriber fails to do so, the Company reserves the right to invoice the predicted or anticipated revenue at full retail price without discount over the full contract term including notice period

and to recover any benefits received and losses incurred.

#### **E5. SUSPENSION OF SERVICES**

- E5.1 In addition to Clause 16, the Company shall be entitled to interrupt the access of the Customer to the Services or any part thereof, or require the Customer to cease the Services or any part thereof, if:
- a) In the reasonable opinion of the Company, the Customer fails to take or unreasonably delays taking any necessary action in respect of any Post Pay Fraud when the particular circumstances of such Post Pay Fraud have been notified to the Customer or the Customer otherwise becomes aware of the Post Pay Fraud
  - b) The Company believes that, as a result or consequence of the use of Services, Artificially Inflated Traffic is occurring on the network(s)
  - c) The Company, or any Network Operator believes that a connection is being used for the purpose of a Gateway in relation to which the Company or the relevant Network Operator have not provided their consent.

#### **E6. NOTICES**

- E6.1 In the absence of a commercial dispute and in the event of an un-remedied default by the Company, the Company may assign to Daisy the right to receive any and all monies due from the Customer for unpaid and future airtime without requiring the consent of the Customer.
- E6.2 Should the Company cease trading or enter into any arrangement with its creditors or in the event of an un-remedied default by the Company, or in other circumstances as set out in these Terms & Conditions, the Company shall if required by Daisy assign all their rights benefits and entitlements whatsoever to Daisy without requiring the consent of the Customer.

#### **E7. NETWORK OR SERVICE FAULTS**

- E7.1 If there is a Network or Service fault the Customer must report this directly to the Company in the first instance.
- E7.2 The Customer shall provide a complete description of the fault and any reasonable information requested by the Company.
- E7.3 The Company will not be responsible for any faults in respect of any Customer who does not pay for the Services pursuant to this Agreement.

#### **E8. SUPPLY OF HARDWARE**

- E8.1 The Customer must inspect any supplied Goods at the time of delivery or collection. Any claim for non-delivery (including, but not limited to short shipment, transit damage or dead on arrival) of any Goods shall be notified in writing to the Company within 48 hours of the scheduled delivery. The Company shall be under no liability for any damage or shortages that would be apparent on reasonable careful inspection if the provisions of this clause are not complied with and, in any event, will be under no liability if a written notification is not received by the Company within 48 hours of delivery. In all cases where the Customer advises of defects or shortages, the Company shall be under no liability in respect thereof unless an opportunity to inspect the Goods is supplied to the Company before any use is made of the Goods or if any alteration or modification is made to the Goods by the Customer.

Subject to the remainder of this clause E8 the Company shall make good any shortage in the Goods and where appropriate replace any Goods damaged in transit as soon as it is reasonable to do so, but otherwise shall be under no liability whatsoever arising from such shortage or damage.

- E8.2 Any claim which is based on any defect in the quality or condition of the Goods shall be notified to the Company within 30 days of the date of delivery. In this instance the Customer must:
- a) Inform the Company in writing giving full details of the fault or defect within 5 days of discovering the same
  - b) Comply with the provisions of clause E.8 (and where applicable clause E9) and in so doing give the Company (and, if relevant, the manufacturer of the Goods in question) a reasonable period of time to inspect and examine the Goods to determine if they are faulty or defective in any way.

If a fault in any Goods becomes apparent after the date that is 30 days after the date of delivery of the Goods to the Customer, then the Customer must rely on the terms of any manufacturer's warranty that applies to the Goods and the Company shall have no liability in respect of such fault or defect.

- E8.3 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods is notified to the Company in accordance with Clause E8.2, the Company shall, at its sole discretion, replace the Goods (or the part in question) free of charge within a reasonable period or refund to the Customer the price of the Goods but the Company shall have no further liability to the Customer.
- E8.4 The seller shall be under no liability in respect of:
- a) Any defect arising from fair wear and tear
  - b) Any wilful damage caused by the Customer or any third party (or their respective agents, sub-contractors or employees)
  - c) Customer and / or end user negligence and / or failure to follow the Company's or the manufacturer's instructions
  - d) Customer and / or end user misuse or alteration of the Goods without the Company's prior written approval
  - e) Any other act or omission on the part of the Customer or the end user, their respective employees or agents

- f) Any Goods returned by the Customer which are alleged to have been faulty and / or defective in any way, but following inspection and / or testing by the Company or the relevant manufacturer (or their authorised agents, employees or contractors), are determined by such person(s) in their absolute discretion, not to be faulty or defective in any way.

E8.5 The Customer shall be entitled to the benefit of any warranty or guarantee as is given by the manufacturer to the Company.

E8.6 Subject as expressly provided in these Conditions, all warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

E8.7 The Customer shall be responsible for ensuring that, except to the extent that instructions as to the use or sale of the Goods are contained in the packaging or labelling of the Goods, any use or sale of the Goods by the Customer is in compliance with all applicable statutory requirements and that handling and sale of the Goods by the Customer is carried out in accordance with directions given by the Company or any competent governmental or regulatory authority.

## **E9 RETURNS**

E9.1 All returns of mobile handsets shall be subject to the following:

- a) Any fault must be confirmed by the Company or the manufacturer
- b) Any fault must be notified to the Company within 30 days of delivery
- c) Units must be returned in their original box with all supplied accessories
- d) The Company shall have no liability to the Customer in the event that a handset supplied by the Company to the Customer is faulty or defective at any time after the date that is 30 days after the date of delivery of such handset, and the Customer will need to deal directly with the original equipment manufacturer of the handset and rely upon the terms of any manufacturer warranty supplied (if any) with the handset

E9.2 All returns of faulty accessories shall be subject to the following:

- a) Any fault must be confirmed by the Company or the manufacturer
- b) Any fault must be notified to the Company within 60 days of delivery
- c) The Company shall have no liability to the Customer in the event that an accessory supplied by the Company to the Customer is faulty or defective at any time after the date that is 60 days after the date of delivery of such accessory, and the Customer will need to deal directly with the original equipment manufacturer of the accessory and rely upon the terms of any manufacturer warranty supplied (if any) with the accessory

E9.3 The Company may, as a gesture of goodwill, refund credit or replace an alleged faulty Good prior to determining whether or not such Good is faulty or defective in any way. In the event that the Company has refunded, credited or replaced an alleged faulty Good and the Good is determined not to be faulty or defective the Customer irrevocably and unconditionally undertakes to repay to the Company any amount refunded or credited or the value of any replacement Good supplied pursuant to this clause E9.3.