



# Terms and Conditions

This Agreement is also available in larger print and in other accessible formats on request. Please call our Customer Services Team on 02392 253322 for more information.

## DEFINITIONS

### **“ADDITIONAL SERVICE”**

Means any service that is supplied by the Company to the Customer from time to time (whether or not set out in a Sales Order and/or Order Form (as applicable)) that is not already specifically described within the definition of “Service” within this Agreement and/or not already governed by any Service Specific Terms;

### **“AFFILIATES”**

Means any Group Company and any entity or person that, directly or indirectly, is controlled by, controlling or under common control with the Company. For this purpose “control” means the power, directly or indirectly, to either:

- (i) Vote 10% or more of the securities having ordinary voting power for the election of directors of such entity; or
- (ii) Direct or cause the direction of the management and policies of such entity whether by contract or otherwise;

### **“AGREEMENT”**

Means the agreement between the Company and the Customer for the supply of Services and/or Equipment (as applicable) which comprises the Sales Order and/or Order Form (as applicable), any applicable Service Specific Terms, the General Terms and any supplementary terms or guidance published by the Company from time to time and any variations made to the same by the Company from time to time in accordance with Clause 1.4.2 of the General Terms;

### **“APPROVED”**

Means in relation to a Sales Order and/or Order Form, one which has been accepted and approved by the Company in accordance with the terms of this Agreement and Approval shall be evidenced by the Company doing at least one of the following:

- (i) Issuing written confirmation of a Sales Order;
- (ii) Countersigning and dating an Order Form;
- (iii) Executing a digital version of the Order Form; or
- (iv) Commencing the supply of the Service in question and “Approval” and “Approve” shall have the corresponding meaning;

**“ARTIFICIAL INFLATION OF TRAFFIC” OR “AIT”**

Means a situation where the flow of Calls to any particular revenue share service is as a result of any activity by or on behalf of the party operating that revenue share service disproportionate to the flow of Calls which would be expected from good faith commercial practice and usage of the network;

**“BROADBAND SERVICE”**

Means the broadband services to be supplied by the Company (as applicable) pursuant to the Broadband Service Specific Terms and as described on the relevant Order Form;

**“BROADBAND SERVICE SPECIFIC TERMS”**

Means the Service Specific Terms relating to the provision of the Broadband Service as may be published by the Company from time to time in accordance with Clause 1.4.2 of the General Terms;

**“BT”**

Means British Telecommunications Public Limited Company, incorporated in England and Wales with registered number 01800000 and whose registered office is at 81 Newgate Street, London, EC1A 7AJ registered in England;

**“BT SOCIAL TELEPHONY”**

Means any one of:

- (a) “Light User Scheme” as detailed from time to time in the BT retail price list; or
- (b) “In-Contact Scheme” as detailed from time to time in the BT retail price list; or
- (c) Any equivalent or replacement scheme which BT may introduce from time to time, subject to reasonable notice of BT’s intention to do so;

**“BUSINESS DAY”**

Means any day other than a Saturday or a Sunday or a public holiday in England;

**“BUSINESS HOURS”**

Means the hours of 9am to 5pm UK time during a Business Day;

**“CALL(S)”**

Means a signal, message or communication which can be silent, visual or spoken, excluding text messages;

**“CALLS SERVICE”**

Means the PSTN (Public Switch Telephone Network) service where telephone calls are routed over the PSTN. In some cases the Calls Service will involve ‘carrier pre-selection’, whereby calls are not routed directly over the BT network or least cost routing, in each case supplied by the Company pursuant to the Calls and Line Rental Service Specific Terms (if any) and as described on the relevant Order Form;

**“CALLS AND LINE RENTAL SERVICE PERIOD”**

Means the period commencing on the Commencement Date during which period the Calls Service and/or Line Rental Service is/are provided by the Company to the Customer pursuant to this Agreement; Terms and Conditions -

**“CALLS AND LINE RENTAL SERVICE SPECIFIC TERMS”**

Means the Service Specific Terms relating to the provision of the Calls Service and/or the Line Rental Service as may be published by the Company from time to time in accordance with Clause 1.4.2 of the General Terms;

**“CARRIER PRE-SELECTION CALLS SERVICE”**

Means a service which enables certain outgoing Calls to be routed via telecommunications networks which are not operated by BT;

**“CHARGES”**

Means any charges or fees payable by the Customer to the Company in respect of a Service, which shall include (without limitation) Fixed Charges, Variable Charges, Set Up Charges, One Off Charges and/or Termination Fees or other charges as set out in this Agreement and/or set out in the Sales Order and/or Order Form and varied from time to time in accordance with Clause 4.8 of the General Terms;

**“COMMENCEMENT DATE”**

Shall mean the date specified as such on the relevant Order Form or, when no date is specified or no Order Form is completed, the first date on which the Company commences the provision of the Service(s) or supplies the Equipment to the Customer or otherwise in accordance with Clause 1.4 of the General Terms;

**“COMPANY”**

Means Red Gorilla (Company Registration Number 08373600) whose registered office address is at Larch house Parklands Business Park, Forest Road, Denmead, Waterlooville, Hampshire, PO7 6XP and references to “we” and “our” shall be construed accordingly;

**“CONSUMER”**

Shall have the meaning given in Clause 9.7(b) of the General Conditions;

**“CREDIT LIMIT”**

Means the maximum permitted amount, determined by the Company, of credit applied to the Customer in respect of billed or unbilled Charges (excluding VAT) as may be notified by the Company to the Customer in writing from time to time in accordance with Clause 5.1 of the General Terms;

**“CUSTOMER”**

Means the customer of the Company in respect of the Services and/or Equipment, whose details are stated in the Sales Order and/or Order Form or is otherwise the recipient of the Service(s) and/or Equipment from the Company and references to “you” and “your” shall be construed accordingly;

**“CUSTOMER DATA”**

Shall include, but not be limited to, data transmissions (including the originating and destination numbers and internet protocol addresses, date, time and duration of voice or data transmissions and other data necessary for the establishment, billing or maintenance of the transmission), data containing personal and/or private information of the Customer, its employees or authorised users of the Services (including “personal data” as defined in Section 1 of the Data Protection Act 1998) and other data provided to or obtained by the Company, a Group Company and their respective agents in connection with the provision of Services and/or Equipment;

**“CUSTOMER EQUIPMENT”**

Means hardware, software, systems, cabling and facilities provided by the Customer and used in conjunction with the Service Equipment in order to receive a Service or operate any Equipment;

**“CUSTOMER SITE”**

Means the site identified as such on any relevant Sales Order;

**“DATA SERVICE”**

Means the data services as supplied by the Company pursuant to the Data Service Specific Terms (if any) and as described on the relevant Order Form;

**“DATA SERVICE SPECIFIC TERMS”**

Means the Service Specific Terms relating to the provision of the Data Service as may be published by the Company from time to time in accordance with Clause 1.4.2 of the General Terms;

**“DEFINITIONS”**

Means the definitions and rules of interpretation set out herein together with any further definitions set out within any Service Specific Terms or other supplementary terms or guidance published by the Company from time to time;

**“DELAYED CHARGES”**

Shall have the meaning given in Clause 4.4 of the General Terms;

**“END USER”**

Means any ultimate recipient or user of the Services and/or Equipment;

**“EQUIPMENT”**

Means the telecommunications or routing equipment for connection to the Services supplied by the Company including (without limitation) the Line Rental Equipment, Service Equipment and Customer Equipment;

**“EQUIPMENT CHARGE”**

Means the Charge for the Equipment as specified on the relevant Order Form;

**“EQUIPMENT SPECIFIC TERMS”**

Means any specific terms and conditions other than the General Terms which are identified as being applicable to the Agreement (and the supply of the Equipment) on an Order Form or identified by the Company as applying to a Sales Order and/or Order Form;

**“FIXED CHARGE”**

Means any charge that predominantly remains fixed and recurs on a regular basis including (without limitation) Line Rental Charges, broadband charges, mobile line rental charges, blackberry subscription charges, mobile data (GPRS) subscription charges, mobile tariff charges, mobile tariffs and Mobile Bolt Ons and any charge which is not a Variable Charge or a Set Up Charge;

## **“FORCE MAJEURE”**

Means any act of God, insurrection or civil disorder, war or military operations, failure, interruption rationing or shortage of energy supplies, imposition of sanctions or embargo, inclement weather, flood, drought, explosion, lightning, volcanic eruptions or fire or exceptionally severe weather, epidemic, nuclear, chemical or biological contamination, sonic boom or solar flare, lock-outs (whether or not by that party), national or local emergency, acts or omissions of government or other competent regulatory authority, telecommunications network operators, industrial disputes (in each case, whether or not relating to that party's workforce), highway authority or other government or regulatory authority, compliance with any statutory obligation, industrial disputes of any kind, the acts or omissions of network operators, inability or delay in obtaining supplies of a Service or equipment due to the act of a third party, delay or failure of that party's supplier(s), act of animals or any other cause beyond that party's reasonable control;

## **“FRAUD”**

Means any fraudulent or other unauthorised use (whether actual or attempted) of any telecommunication services (including the Mobile Services), a Network, SIMs or Equipment or the use or attempted use of any telecommunication services (including the Mobile Services), any Electronic Communications Network, SIMs or Equipment by corrupt, dishonest or illegal means, at any time and by any person;

## **“GENERAL CONDITIONS”**

Means the General Conditions of Entitlement published by the Office of Communications (OFCOM) in accordance with Section 45 of the Communications Act 2003, as may be amended, modified or replaced from time to time;

## **“GENERAL TERMS”**

Means the Company's general terms governing the supply of the Services and/or Equipment as varied from time to time, a copy of which is available on the Website and on request by telephoning the Company on 02392253322, which terms apply in respect of all sales or other provision of Service(s) or Equipment by the Company to all Customers;

## **“GROUP”**

Means the Company, any subsidiary or holding company from time to time of the Company and any subsidiary from time to time of a holding company of the Company (where the terms “holding company” and “subsidiary” shall have the meanings given in Section 1162 of the Companies Act 2006) and “Group Company” shall have a corresponding meaning;

## **“INBOUND TELEPHONY SERVICE”**

Means the inbound telephony services supplied by the Company pursuant to the Inbound Telephony Service Specific Terms (if any) and as described on the relevant Order Form;

## **“INBOUND TELEPHONY SERVICE SPECIFIC TERMS”**

Means the Service Specific Terms relating to the provision of the Inbound Telephony Service as may be published by the Company from time to time in accordance with Clause 1.4.2 of the General Terms;

## **“INSOLVENT”**

Means when the Customer is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;

## **“INTELLECTUAL PROPERTY RIGHTS”**

Means patents, registered designs, trademarks and service marks (whether registered or not), internet domain names, copyright (including all customer terms and conditions and other similar documentation and any software code including without limitation any source or object code), design rights, database rights and all similar property rights (whether or not registered) and all rights or forms of similar protection or having equivalent or similar effect including those subsisting (in any part of the world) in inventions, ideas, improvements, designs, drawings, performances, computer programs, software, semiconductor topographies, plant varieties, confidential information, business names, goodwill and the style of presentation of goods or services including any improvements or refinements to any of the foregoing and in application for protection of any of the above rights and all other intellectual property rights and similar and equivalent rights in the world which currently exist or are recognised in the future;

## **“IP NETWORK”**

Shall mean the points of presence, network hubs and host computers owned, operated or used by the Company or a Group Company in connection with the provision of an IP Service;

## **“IP SERVICE”**

Means any internet protocol telephony services supplied by the Company pursuant to the IP Service Specific Terms (if any) and as described on the relevant Order Form, including but not limited to “eve”;

## **“IP SERVICE SPECIFIC TERMS”**

Means the Service Specific Terms relating to the provision of the IP Service as may be published by the Company from time to time in accordance with Clause 1.4.2 of the General Terms;

## **“LAND LINE NETWORK”**

Means any fixed public telecommunications network;

## **“LIABILITY”**

Means all awards, compensation, costs, expenses, losses, (including any direct, indirect or consequential losses, loss of profit, loss of reputation), liabilities, damages, claims, proceedings, awards, fines, orders, demands, actions, payments by way of settlement, penalties, tribunal awards and other liabilities (including all interest, legal and other professional fees and expenses on an indemnity basis) whenever or howsoever arising or brought;

## **“LINE”**

Means a connection to the Land Line Network;

## **“LINE RENTAL SERVICE”**

Means the rental (and where applicable the installation and/or conversion) of analogue and digital telecommunication exchange lines as supplied by the Company pursuant to the Calls and Line Rental Service Specific Terms (if any) and as described on the relevant Order Form;

## **“LINE RENTAL CHARGES”**

Means the monthly line rental charge for the Line Rental Service as set out or referred to in a Sales Order and revised from time to time in accordance with Clause 4.8 of the General Terms;

**“LINE RENTAL EQUIPMENT”**

Shall mean the hardware, software, systems, cabling and facilities provided by the Company at the Customer Site (or any third party premises agreed by the parties) in order to make available the Service to the Customer (or any third party to which the Customer resells the service). Line Rental Equipment shall not include the Land Line Network or any hardware or software which is the subject of a separate supply contract between the Company or the Company Affiliate and the Customer;

**“MAINTENANCE SERVICE”**

Means the telephone system maintenance services supplied by the Company pursuant to the Maintenance Service Specific Terms (if any) and as described on the relevant Order Form;

**“MAINTENANCE SERVICE SPECIFIC TERMS”**

Means the Service Specific Terms relating to the provision of the Maintenance Service as may be published by the Company from time to time in accordance with Clause 1.4.2 of the General Terms;

**“MINIMUM PERIOD”**

Means a period of forty-eight (48) consecutive months from the Commencement Date or such other period as is agreed and stated in a Sales Order and/or Order Form;

**“MOBILE BOLT ON”**

Means a package for inclusive usage that can be added to a Customer’s Sales Order;

**“MOBILE SERVICE”**

Means the mobile telecommunications service supplied by the Company pursuant to the Mobile Service Specific Terms (if any) and as described on the relevant Order Form;

**“MOBILE SERVICE SPECIFIC TERMS”**

Means the Service Specific Terms relating to the provision of the Mobile Service as may be published by the Company from time to time in accordance with Clause 1.4.2 of the General Terms;

**“MOBILE TELECOMMUNICATIONS NETWORK”**

Means a telecommunications network used for the provision of mobile telecommunications services;

**“NETWORK”**

Shall mean the Land Line Network, the Mobile Telecommunications Network and the IP Network;

**“NETWORK OPERATOR”**

Means the network operator which operates the networks and from whom access to the relevant Network is procured by the Company for the benefit of the Customer, details of which are available upon request;

**“NETWORK TERMINATION POINT”**

Means the point where the relevant Customer’s wiring or equipment is connected to the Land Line Network;

**“ONE OFF CHARGE”**

Means any one off charge payable to the Company by the Customer as specified on an Order Form and/or Sales Order;

**“ORDER FORM”**

Means a document setting out the Sales Order for the supply of the relevant Service(s) and/or Equipment, which shall be in such form as is used by the Company and signed by the Customer from time to time and/or as the Company may in its sole discretion Approve;

**“PRICE LIST”**

Means the Company's list of prices and tariffs for the Services and Equipment and which is published on the Website (as may be amended by the Company from time to time);

**“SALES ORDER”**

Means a request by the Customer for Services and/or Equipment or a change or variation in respect of the same (but not a disconnection) which is submitted either:

(i) Using the Order Form as made available to the Customer by the Company; and/or

(ii) Such a request made orally and which is converted into an Order Form by the Company;

Which in either case shall constitute an offer by the Customer for the provision of Service(s) and/or Equipment subject to the terms of this Agreement;

**“SERVICE(S)”**

Means the Calls Service, Line Rental Service, Broadband Service, Data Service, Inbound Telephony Service, Maintenance Service, Mobile Service, IP Service and/or any Additional Service(s), which the Company provides to the Customer subject to the terms of this Agreement;

**“SERVICE EQUIPMENT”**

Shall mean the hardware, software, systems, cabling and facilities provided by the Company at the Customer Site in order to make available the Service to the Customer. Service Equipment shall not include the Land Line Network or any hardware or software which is the subject of a separate supply contract between the Company or the Company Affiliate and the Customer;

**“SERVICE PERIOD”**

Means the period commencing on the Commencement Date during which period the Services will be provided by the Company to the Customer pursuant to this Agreement;

**“SERVICE PROVIDER”**

Means a supplier to the Company from time to time in respect of the Services and/or Equipment;

**“SERVICE SPECIFIC TERMS”**

Means any terms and conditions (other than the General Terms) which are identified as being specific to a particular Service or piece of Equipment (including any terms referred to on an Order Form or identified by the Company as applying to a Sales Order), including without limitation the Calls and Lines Service Specific Terms, Broadband Service Specific Terms, Data Service Specific Terms, Inbound Telephony Service Specific Terms, Maintenance Service Specific Terms, Mobile Service Specific Terms and IP Service Specific Terms;



### **“SET UP CHARGE”**

Means any charge applicable for the set up or establishment of any particular Service or Equipment, as stated on the Order Form for the relevant Service or, where the relevant Order Form does not identify the charge, the applicable charge as stated in the Price List from time to time;

### **“SIM”**

Means the subscriber identity module supplied by the Network Operator (and which shall at all times remain the property of the Network Operator), which is allocated to the Customer by the Company;

### **“SMALL BUSINESS CUSTOMER”**

Means a Customer who is neither:

- (a) A communications provider; nor
- (b) An undertaking (whether a company, partnership or any other business whether incorporated or unincorporated) for which more than ten (10) individuals work (whether as employees or volunteers or otherwise);

### **“SOFTWARE”**

Means any software (excluding end-user licensed software) supplied to the Customer by the Company, the Service Provider, the Network Operator or any other supplier under the terms of or in respect of this Agreement which shall be on the terms of a non-exclusive, non-transferable licence and which software is to be used for the sole purpose of operating the Equipment in order to be able to obtain the Services;

### **“SUBSEQUENT PERIOD”**

Means a period of twenty-four (24) consecutive months commencing at the expiry of the Minimum Period and renewing at the expiry of each such twenty-four (24) consecutive month period;

### **“TERMINATION FEE”**

Means the fee which may be payable by the Customer to the Company (as the Company may decide in its sole discretion) on termination of this Agreement in accordance with Clause 14.6 of the General Terms, at the rate specified in the relevant Service Specific Terms or as otherwise reasonably specified by the Company from time to time, including (without limitation) any Equipment Termination Fee which may be payable and which is equal to an estimation (by the Company in its absolute discretion at the time of termination) of the costs incurred by the Company arising out of the early termination of the contract by the Customer without prejudice to any other rights and remedies as provided by law or pursuant to the Agreement;

### **“TERMINATION NOTICE”**

Means a notice to terminate this Agreement;

### **“VARIABLE CHARGE”**

Means any charge which generally varies each billing period and which is determined by reference to the variable use of a particular Service including (without limitation) call charges; and

### **“WEBSITE”**

Means the website of the Company with the address <http://redgorillauk.co.uk/> as may be varied from time to time.

## **RULES OF INTERPRETATION**

In this Agreement, unless the context otherwise prescribes:

- All headings are for convenience only and shall not affect its interpretation;
- References to a Clause shall, unless expressly stated otherwise, be to a Clause of this Agreement;
- All references to this Agreement shall include any permitted variation, amendment or supplement to it from time to time;
- Any reference to any statute shall include references to the same as it may have been or may from time to time be amended, consolidated or re-enacted and to any regulation or subordinate legislation made under it (or under any such amendment, modification, consolidation or re-enactment);
- References to the plural shall include the singular and vice versa and reference to one gender includes reference to all genders;
- Any reference to a person shall be to a legal person of whatever kind whether incorporated or unincorporated; and
- Words shall not be given a restrictive interpretation by reason of their being preceded or followed by words indicating a particular class of acts, matters or things.

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# **GENERAL TERMS AND CONDITIONS**

## **ABOUT THESE GENERAL TERMS AND CONDITIONS**

### **1 The purpose of this document and how it applies to you**

1.1 These General Terms apply to all of the Services and/or Equipment that the Company provides to the Customer in the United Kingdom. Certain capitalised terms in this document shall have the meaning given to them in the Definitions.

1.2 In addition to these General Terms, the Company may also publish Service Specific Terms from time to time, which concern matters that are specific to the particular Service(s) and/or Equipment that the Company provides to the Customer. Any such Service Specific Terms apply in addition to (and not instead of) these General Terms. If at any time the Company has not published any Service Specific Terms for a particular Service provided to the Customer, these General Terms shall continue to apply to the Customer in respect of that Service and any Equipment.

1.3 The Company will provide to the Customer the Service(s) and/or Equipment subject to the provisions of these General Terms, any applicable Service Specific Terms and the relevant Sales Order and/or Order Form, which together with the Definitions comprise the "Agreement" between the Company and the Customer in respect of the supply of the Service(s) and/or Equipment. In the event of any conflict between the following, the order of precedence shall be (in descending order, the first being the highest precedence):

1.3.1 Any Sales Order(s) and/or Order Form(s); then

1.3.2 Any applicable Service Specific Terms; then

1.3.3 Any applicable Service Level Agreement; then

1.3.4 These General Terms.

1.4 The Agreement shall be formed between the Company and the Customer in the following manner:

1.4.1 When the Customer orders new Services and/or Equipment or otherwise renews or wishes to vary its existing relationship with the Company, the Customer will be required to confirm its acceptance of these General Terms, any applicable Service Specific Terms and any additional terms agreed, as part of a Sales Order and/or by ticking a box on the relevant Order Form(s). By proceeding to use the Services and/or Equipment that the Company supplies (whether or not a Sales Order is completed or an Order Form has been executed), the Customer is deemed to have accepted all such terms; or

1.4.2 When the Company publishes new versions of or makes any variations to these General Terms, any applicable Service Specific Terms and any other supplementary terms or guidance from time to time, the Company will notify the Customer of the publication of such new or varied document. The Customer will be given at least thirty days' notice of the introduction of or variation to any such document where its terms may be of material detriment to the Customer and as much notice as is reasonably practicable in all other cases. When the Customer wishes to object to any new or varied terms that are of material detriment to it, the Customer must contact the Company by telephoning 02392 2533322 or writing to Larch House Parklands Business Park, Forest Road, Denmead, Waterlooville, Hampshire, PO7 6XP within 30 days of the date of the Company's notification of the new or varied terms. When the Customer continues to use the Services and/or Equipment after that time, then it will be deemed to have accepted them. For the avoidance of doubt, the Company's publication of new or varied terms shall not constitute either acceptance of or an admission by the Company that any proposed change is of material detriment to the Customer, nor shall the service of notice by the Customer under this Clause constitute or be deemed to constitute evidence that the relevant change is of material detriment to the Customer.

1.5 The General Terms, Service Specific Terms and Definitions, together with further information regarding the Charges, are all available to view and download on the Website or the Customer may request a hard copy by telephoning the Company on 02392 253322.

## **HOW THE SERVICES ARE ORDERED AND PROVIDED**

### **2 Ordering process**

2.1 A Sales Order constitutes the Customer's offer to the Company to purchase the Service(s) and/or Equipment from the Company in accordance with this Agreement.

2.2 The Sales Order shall be deemed to be Approved only when the Company either issues a written acceptance of the Sales Order (and when the Company executes a completed Order Form by electronic means or otherwise, this shall constitute its written acceptance of the Sales Order) or the Company commences the supply of the Service(s) and/or Equipment to that Customer.

2.3 At any time after the Commencement Date the Customer may request a change or a variation to the Service(s). Where the Company agrees to any such request, the Company reserves the right to:

2.3.1 Charge the Customer associated costs at its sole discretion including, without limitation, any cancellation costs charged by third party suppliers; and/or

2.3.2 Extend the remaining unexpired duration of this Agreement such that the duration of the remaining unexpired minimum term of this Agreement from the date of the Approval of such change is equal to the Minimum Period.

### **3 Provision of Services and Equipment**

3.1 The Company will use reasonable endeavours to provide the Service(s) and Equipment:

3.1.1 By the date(s) agreed with the Customer, but any such dates shall be estimated and time shall not be of the essence for the performance of the Service(s); and

3.1.2 With the reasonable care and skill that may be expected from a competent communications service provider; and

3.1.3 In accordance with any description set out in any applicable Service Specific Terms.

3.2 The Company may vary the way in which the Service(s) are provided and/or the Equipment is supplied when the Company, any third party supplier, the Network Operator and/or any national or international regulatory body requires such variations in order to maintain and/or improve service quality, to meet any unforeseen circumstances or in order to comply with any applicable law or regulation.

3.3 The Company reserves the right to add to, substitute and/or discontinue any item of Equipment and/or to change the specification of the Equipment at any time. The Company does not guarantee the continuing availability of any particular item of Equipment and the Customer acknowledges that the Company may be dependent upon third parties in this respect.

3.4 The Company does not provide any Services or Equipment to Consumers and by entering into this Agreement the Customer is deemed to represent to the Company that it is not a Consumer.

## **PAYING FOR THE SERVICES**

**\*Your attention is drawn to this Clause\***

### **4 Charges and payment**

4.1 The Company shall charge the Customer for the Service(s) and/or Equipment in accordance with the rates stated on the Order Form or, when no rate is stated on the Order Form or agreed by the Company in a Sales Order that is Approved, at rate(s) that are not higher than those published by the Company in the Price List (as amended from time to time in accordance with the provisions of this Agreement). The Price List is available on the Website (and in hard copy by contacting the Company on 02392 253322).

4.2 The Customer shall pay the Fixed Charges (for example, Line Rental Charges), the Variable Charges (for example charges for making Calls), any Termination Fee(s) and any Set Up Charges in accordance with this Agreement.

4.3 Subject to any provision to the contrary in any Service Specific Terms or a Sales Order:

4.3.1 The Fixed Charges shall accrue from the date upon which the Sales Order is Approved and shall be invoiced monthly in advance or as otherwise agreed in writing by the parties; and

4.3.2 The Variable Charges shall accrue from the date upon which the Sales Order is Approved and shall be invoiced monthly in arrears or as otherwise agreed in writing by the parties; and

4.3.3 Set Up Charges, Equipment Charges and any other one-off charges shall accrue from the date upon which the Sales Order is Approved and shall be invoiced by the Company at any time after such Approval.

4.4 The Company shall, following the end of each calendar month or on such other date as is determined by the Company from time to time, submit to the Customer one or more invoice(s) itemising the Charges payable by the Customer. In the event of any omission or delay by the Company in invoicing the Charges in accordance with this Agreement ("Delayed Charges") the Company shall not be prohibited from invoicing the Customer at a later date (and the Customer shall continue to be liable to pay the Company) for Delayed Charges, save where the Customer is a Small Business Customer, where the Company's right to invoice Delayed Charges shall only exist where the Delayed Charges are invoiced no later than:

4.4.1 The fourth monthly invoice after the month in which the Delayed Charges were incurred by the Customer (where the Customer is invoiced monthly for the applicable Charges); or

4.4.2 The next invoice after the invoice on which the Customer should have been invoiced for the Delayed Charges in accordance with the Agreement (where the Customer is invoiced quarterly or less frequently than quarterly for the applicable Charges).

4.5 The Customer shall pay the Charges and any other sums due within fourteen (14) days of the date of the Company's invoice(s) (unless otherwise expressly agreed in writing with the Company) demanding payment of such Charges. The Charges shall be paid by direct debit (protected by the direct debit guarantee, the details of which can be found at <https://www.directdebit.co.uk/Pages/Home.aspx>) or such alternative method as may be agreed in writing by the Company.

4.6 When payment of any sum payable to the Company is not made on or before the due date stated on any invoice, the Company shall be entitled to charge and the Customer shall be liable to pay interest, a further fixed sum and reasonable costs, in each case as provided for under the Late Payment of Commercial Debts (Interest) Act 1998.

4.7 Charges for the Service(s) and/or Equipment are calculated using the data provided by the Company and not the Customer.

4.8 The Company may only increase the Charges for the Service(s) and/or Equipment during the contracted period by publishing the relevant changes to the Price List on the Website (or at such other website as is notified to the Customer by the Company from time to time) and notifying the Customer that such publication has been made and/or that changes have been made to Charges that affect them:

4.8.1 Pursuant to a direction from OFCOM or any other competent authority, by the amount set out or otherwise required by such direction; and/or

4.8.2 Pursuant to a direction from HMRC or any other competent authority, by the amount set out or otherwise required for the increase or introduction of new taxations.

**Red Gorilla UK LTD make no provision to increase the price for equipment or services provided, during the contracted term of the agreement. Other than where instructed to the contrary by OFCOM, HMRC or any other regulatory or Government body.**

4.9 Unless the Customer notifies the Company in writing that it requires paper invoices, all invoices (or a web link to such invoices) shall be sent to the Customer electronically to the contact email address specified on the relevant Order Form(s) or otherwise communicated to the Company.

4.10 Additional administrative fees as detailed in the Price List are payable by the Customer where:

4.10.1 A direct debit is unpaid;

4.10.2 The Customer elects to receive paper invoices;

4.10.3 The Customer makes payment other than by direct debit; and/or

4.10.4 The Company writes to the Customer chasing payment of an invoice.

4.11 All Charges are subject to Value Added Tax (VAT) and any other relevant tax, duty or levy imposed by present or future law of the United Kingdom or elsewhere, which is or may be payable as a result of the Company providing the Service(s) and/or Equipment and such tax(es) shall be payable by the Customer in addition at the prevailing rate from time to time as applicable.

4.12 The Company will only consider billing queries regarding Charges (including without limitation the Equipment Charge) from the Customer when made within sixty (60) days of the date of the relevant invoice and in accordance with the Company's Code of Practice on Complaint Handling and Dispute Resolution, which is published on the Website and as may be amended by the Company from time to time.

4.13 The Customer shall pay all amounts properly due and payable under the Agreement in full and without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part.

4.14 The Company may, without limiting its other rights or remedies, set off any amount owing to it by the Customer under this or any other agreement against any amount payable by the Company to the Customer.

4.15 In the event that any invoice issued by the Company contains an error (howsoever arising) the Company may invoice the Customer for the difference between the amount so invoiced and the amount that ought to have been invoiced had the error not been made and the Customer shall pay any such invoice on demand.

4.16 The Customer shall be liable for all costs incurred in the usage of the Service(s) supplied under these General Terms and/or any Service Specific Terms. Any Fraud, Artificial Inflation of Traffic or other improper use of the Service(s) committed by the Customer and/or by any third party shall not relieve the Customer of its payment obligations to the Company under this Agreement.

4.17 The Customer shall notify the Company immediately on becoming aware of the occurrence of any Fraud. The Customer shall be liable for all Charges incurred in connection with any Fraud, Artificial Inflation of Traffic or other improper use of the Service(s) until the affected Service(s) are suspended. The Customer acknowledges that the Company relies on third parties in relation to the supply of the Service(s) and therefore there might be a delay between the notification of the Fraud to the Company and the suspension of the affected Service(s).

## **5 Credit limit**

5.1 The Customer may be allocated a Credit Limit on or before the Commencement Date or at any subsequent time, which may be varied by the Company from time to time without prior notice. When the Customer accrues Charges that exceed the Credit Limit, the Company may:

(i) Demand immediate payment of the amount of Charges in excess of the Credit Limit and/or

(ii) Suspend the Service(s) and/or the supply of Equipment (including any installation of them) until such excess sum has been repaid to the Company in full and the Customer shall remain liable to the Company to pay any and all Charges properly due and payable under this Agreement during or arising out of any such period of suspension.

5.2 The Customer hereby consents to and shall procure that its owners, directors, officers and assigns consent to the Company (with or without prior notice) passing information about the Customer to credit reference agencies and/or any third party who may be supporting the Company in performing searches with credit reference agencies relating to the creditworthiness of the Customer and/or its owners, directors, officers and assigns. The Customer undertakes to supply or procure the supply of all information requested for a credit search with a credit reference agency and further consents that information collated for the purposes of any such credit searches and the results of the same may be provided to the Court.

5.3 In the event that:

5.3.1 A periodical credit check reveals scoring that the Company, in its sole discretion, believes is unacceptable; and/or

5.3.2 A Court judgment is issued against the Customer; and/or

5.3.3 The Customer incurs Charges or other costs incurred in the usage of the Service(s) which in each case the Company reasonably considers to be abnormal; and/or

5.3.4 The Customer fails to pay Charges when due under this Agreement; and/or

5.3.5 The Company suspends all or any of the Service(s) under this Agreement pursuant to Clause 10, the Company may require the Customer to provide a deposit, to be used as security against any Charges due to the Company or which may become so due, which will be returnable to the Customer only when:

(i) The Company is satisfied that payment has been made to it of all Charges due and payable and outstanding under this Agreement; or

(ii) Upon termination of this Agreement when no Charges remain outstanding at termination (in which case the deposit shall be applied against such Charges before any balance is returned to the Customer), whichever is the later.

The Customer shall not be entitled to any interest on any deposit held by the Company.

## **YOUR RESPONSIBILITIES**

### **6 Customer responsibilities**

6.1 The Customer shall be responsible for the safe use of the Service(s) and/or the Equipment and, without prejudice to the generality of the foregoing, the Customer agrees and undertakes to:

6.1.1 Grant or to procure the grant, to the Company and (as applicable) any relevant third party (prior to installation or delivery when necessary) such rights of access to the Customer Site (or third party premises when necessary), data and other facilities (including obtaining any necessary licences, waivers or consents) as reasonably required by the Company or such third party to enable it to perform its obligations or exercise its rights under this Agreement;

6.1.2 Advise the Company in writing of all health and safety rules and regulations and any other reasonable security requirements applicable at the Customer Site and to use reasonable endeavours to observe and ensure that its employees and authorised representatives observe such regulations and requirements whilst at the Customer Site (or third party premises);

6.1.3 Prepare the Customer Site (or third party premises) at its own cost in accordance with the Company's reasonable instructions so that the Service(s) can be provided and/or the Equipment can be installed and in order to ensure the health and safety of the Company's (or Service Provider's) employees, agents or sub-contractors whilst at the Customer Site (or third party premises) and to provide a suitable and safe working environment for the Company and/or any relevant third party and anyone acting on the Company's behalf at the Customer Site or third party premises;

6.1.4 Make available a suitable place and conditions and connection points required for the provision of the Service(s) and/or Equipment supplied in accordance with the Company's (or Service Provider's) reasonable instructions, if any;

6.1.5 Provide, at no charge to the Company or the Service Provider, power connection points and sufficient electricity to power any Equipment supplied by the Company and/or Service Providers in respect of the provision of the Service(s);

6.1.6 Use the Service(s) and/or Equipment in accordance with all laws, licences or regulations and such conditions, codes or procedures (including any acceptable use policies) as may be notified to it in writing by the Company, published on the Website, issued by the Network Operator, issued pursuant to the General Conditions or by any competent authority from time to time and to use the Service(s) in a way that does not cause any disruption to the operation of the Service(s) or the network supporting the Service(s);

6.1.7 Ensure that the Customer Equipment for use with the Service(s) meets all legal and regulatory requirements and is approved for use with the Service(s) and conforms to any specific requirements (including any operating system/housing or infrastructure specifications) notified to the Customer by the Company;

6.1.8 Use the Service(s) and/or Equipment in accordance with any reasonable instructions given to protect the integrity and quality of the Network;

6.1.9 Comply with any acceptable use policies and fair use policies notified to the Customer by the Company, Service Provider and/or any other third party or that are published by the Company on the Website from time to time;

- 6.1.10 Provide the Company with all such information as it reasonably requests relating to the Customer's telecommunications apparatus;
- 6.1.11 Implement adequate control and security (and at least to a level which is considered to be industry standard) over the Service(s) provided to the Customer including but not limited to the prevention of viruses, logic bombs or worms, "Trojan horses" and any other types of disruptive, destructive or nuisance programs and/or any calls generated by rogue diallers or hackers;
- 6.1.12 Provide the Company, the Service Provider and/or the Network Operator with any information that they may require in connection with any action it is engaged in with a regulator or other competent authority or which is required in pursuance of their respective duties;
- 6.1.13 Restore the condition of the Customer's Site (or third party premises) including any re-decorating that may be required after installation or conversion work is completed;
- 6.1.14 In relation to the Customer Site and any third party premises or land in or on which the premises is situated, 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 Equipment supplied hereunder (including any ancillary infrastructure or equipment that may be necessary) on their property; and
- 6.1.15 At all times use the Service(s) and/or Equipment in a manner that is consistent with a reasonable customer's good faith use of them.
- 6.2 The Customer agrees that it shall not:
- 6.2.1 Use the Service(s) and/or Equipment in a way that breaches any legislation, regulation, code, directive or any licence for the time being in force and applicable to the Customer or that is in any way illegal, unlawful, immoral or fraudulent and the Customer shall not be involved in or knowingly, recklessly or negligently allow any party to be involved in Fraud or Artificial Inflation of Traffic or any other fraudulent, immoral or unlawful activity; and/or
- 6.2.2 Use the Service(s) to communicate, deliver, knowingly receive, upload, download, use or re-use any material or information which is intended to be a hoax call to emergency services or is of a defamatory, offensive, abusive, indecent, obscene or menacing character or which does or is intended to cause annoyance (including "spam" calls), inconvenience or worry to any person or which in the Company's reasonable opinion brings the Company's name into disrepute or which in any way causes damage or disruption to the Network, the Network Operator or the Service(s) or any other services or systems operated by or supplied by the Company to any third party; and/or
- 6.2.3 Use the Service(s) in a manner that constitutes a violation or infringement of the rights of any other party; and/or
- 6.2.4 Use the Service(s) in a manner prejudicial to the interests of the Company, any customer of the Company and/or the Service Provider and/or Network Operator or in a manner that is likely to have an adverse impact on other users' service performance, their use of the Network or the Network as a whole; and/or
- 6.2.5 Send or procure the sending of any unsolicited advertising or promotional material; and/or
- 6.2.6 Use the Service(s) and/or Equipment for any purpose other than that for which it was designed or intended or specified in any materials or documentation supplied by the Company.
- 6.3 When the Customer fails to take delivery or allow installation of the Service(s) and/or Equipment on any agreed installation date or delivery date, the Company may arrange storage of any Equipment at the sole risk and cost of the Customer and may also charge a Cancellation Fee (as stated on the Price List) together with any other reasonable costs incurred by the Company in relation to such cancellation.
- 6.4 Should the Customer fail to perform any of its obligations under this Agreement (and in particular the provisions set out at this Clause 6) then the Company will not be responsible for any delay, increased costs or other consequences arising from such failure and the Customer shall promptly reimburse the Company for any costs or expenses incurred due to such failure.
- 6.5 The Customer hereby confirms that:
- 6.5.1 It is procuring the Service(s) and/or Equipment solely for its and its employees' own use and furthermore that it will not resell or otherwise act as any form of distributor in respect of the Service(s) and/or Equipment;
- 6.5.2 The director or other person who agreed or completed any Sales Order forming part of this Agreement has the necessary authority to act on behalf of the Customer and bind the Customer to this Agreement;
- 6.5.3 All details of the Customer which were provided in respect of the Sales Order by that director or other person acting on the Customer's behalf are accurate and up to date and the Customer shall notify the Company immediately when any such details change during the term of this Agreement; and



6.5.4 By completion of the Sales Order and/or Order Form, the Customer agrees to be bound by the terms of this Agreement.

6.6 The Customer undertakes to comply with all compulsory rules, standards, regulations and guidance for the provision of services, technical interfaces and network functions, issued by:

6.6.1 The Official Journal of the European Union;

6.6.2 The European Standards Organisation (i.e.: European Committee for Standardisation (CEN), the European Committee for Electrotechnical Standardisation (CENELEC) and the European Telecommunications Standards Institute (ETSI)); and OFCOM or any other competent authority.

## **PROTECTING CONFIDENTIAL INFORMATION, PERSONAL DATA AND INTELLECTUAL PROPERTY**

### **7 Confidentiality**

7.1 The parties will each keep confidential all business, technical or proprietary information, information obtained or shared regarding network access or negotiations relating to network access and/or any information obtained from the other in connection with this Agreement (including, for the avoidance of doubt, details of the Charges payable under this Agreement the prices which the Company charges for the Service(s) and/or Equipment) or which is reasonably identified by either party as commercially confidential or which is obviously confidential in nature and neither party will, without the consent in writing of the other, divulge the same to any third party, save that the Company may disclose confidential information to:

7.1.1 Such of its employees, contractors and agents, Service Providers and/or Network Operators as the Company deems necessary for the purposes of the implementation of this Agreement;

7.1.2 To the Service Provider, the Network Operator, any other service providers of the Service(s) and/or any Group Company or its professional advisers on a confidential basis; and/or

7.1.3 As required by law or to any third party upon assignment of this Agreement in accordance with Clause 17.2.

7.2 The obligations in Clause 7.1 shall not apply to any material or information that is:

7.2.1 In the public domain (other than as a result of a breach of this Agreement); or

7.2.2 Already known to the receiving party and the receiving party has written evidence of its prior knowledge; or

7.2.3 Lawfully received from a third party and/or ordered to be disclosed by any Court or other tribunal or regulatory authority of competent jurisdiction.

7.3 The provisions of this Clause 7 shall survive the termination or expiry of this Agreement.

### **8 Data protection**

8.1 The Customer acknowledges and agrees that the Company, its Affiliates and their respective agents may use, process and/or transfer Customer Data:

8.1.1 In connection with the provision of the Service(s) and/or supply of any Equipment; or

8.1.2 To incorporate Customer Data into databases controlled by the Company or the Company's Affiliates for the purpose of administration, provisioning, billing and reconciliation, verification of Customer identity and solvency, maintenance, support and product development, fraud detection and prevention, sales, revenue and customer analysis and reporting, market and customer use analysis; or

8.1.3 To communicate to the Customer regarding products, offers, discounts and services or associated services of the Company and/or its Affiliates.

8.2 The Company and the Customer will each ensure that they comply with all applicable data protection law and regulation in the supply and use of the Services and Equipment, including the Data Protection Act 1998. In particular but without limiting the generality of the foregoing words, all Customer Data that constitutes "personal data" as defined in the Data Protection Act 1998 will be held and processed by the Company and the Customer in accordance with such Act. In addition, the Company and shall ensure that appropriate technical and organisational measures are in place to safeguard against any unauthorised access, loss, destruction, theft, use or disclosure of such personal data.

8.3 The Customer may withdraw consent for such use, processing or transfer of Customer Data as set out in this Clause 8, unless it is required by the Company to:

- (i) Provide, manage, account and bill for the Service(s);
- (ii) Carry out fraud detection; or
- (iii) Comply with any statutory obligation, regulatory requirement or Court or other public authority order or to protect life and limb by providing such information to the emergency services, in each case by sending written notice to the Company in accordance with the prescribed form, available from the Company on request.

8.4 The Customer warrants, undertakes and agrees that it has obtained and will obtain all legally required consents and permissions from relevant parties including data subjects (and including any End Users) for the use, processing and transfer of Customer Data as set out in this Clause 8.

8.5 The Company may monitor and record calls received by or made by the Customer for customer service or marketing purposes. The Company may also contact the Customer during the provision of any services for billing, administration, development and support and maintenance purposes and the Customer hereby consents to such contact.

8.6 Customer Data may be processed for and on behalf of the Company by other Group Companies or other third parties. Where any such third party is based outside of the European Economic Area, the Company shall ensure by way of contractual agreement between the Company and such third party an adequate level of protection in respect of any Customer Data that constitutes "personal data" as defined in the Data Protection Act 1998.

## **9 Intellectual property**

9.1 Unless stated otherwise, all Intellectual Property Rights in or arising out of this Agreement including (without limitation) any Software, associated documents and all parts thereof shall be owned by and will be and remain vested in and be the absolute property of the owner of the Intellectual Property Rights (whether or not this is the Company, the Service Provider, the Network Operator or any of the Company's licensors), which owner shall be entitled to enforce any of the terms of this Agreement relating to the Customer's use of that Intellectual Property Right (including without limitation any Software, associated documents and all parts thereof), directly against the Customer.

9.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's brochures (the Intellectual Property Rights in which are and remain vested in the Company or its licensors) are issued or published for illustrative purposes only and they do not form part of the Agreement (unless otherwise specified by the Company in writing).

9.3 When Software, documentation or manuals are provided to enable the Customer to receive and use the Service(s) and/or Equipment, the Company grants the Customer, for the duration of this Agreement, a non-exclusive, non-transferable licence to use such software, documentation or manuals for the Customer's own internal use for that purpose and for no other reason.

9.4 Except as permitted by applicable law or as expressly permitted under this Agreement the Customer must not, without the Company's prior written consent, copy, de-compile or modify the Software, nor copy the manuals or documentation or any other materials supplied by the Company to the Customer, nor knowingly allow or permit anyone else to do so.

9.5 The Customer shall not use or permit anyone else to use the Intellectual Property Rights of the Company or a Service Provider or Network Operator where such use constitutes or would constitute an infringement of the Company's, Service Provider's or Network Operator's registered trade mark or common law rights or any other Intellectual Property Rights without the prior written consent of the Company.

9.6 Nothing in this Clause 9 prohibits the Customer from making legitimate use of the Intellectual Property Rights whether in the form of factual statements or in accordance with the terms of Section 10(6) of the UK Trade Marks Act 1994.

9.7 The Customer shall indemnify the Company against any action, claim, loss, damage, proceedings and/or expenses (including legal costs) suffered or incurred by the Company arising from any act in the course of the Customer's use of the Service(s) and/or Equipment that is directly or indirectly related to infringement of the Company's or any third party's Intellectual Property Rights.

## **WHEN WE MAY SUSPEND A SERVICE**

### **10 Suspension of Services**

10.1 Without prejudice to any other right of the Company to suspend and/or terminate the Service(s) under this Agreement, the Company may suspend the provision of the Service(s) under the Agreement or any other contract between the Customer and the Company until further notice and without liability to the Customer in whole or in part, with immediate effect:

10.1.1 On the occurrence of any of the events listed in Clause 14 (other than Clauses 14.1.1 and 14.1.3, which are dealt with in Clauses 10.1.4 and 10.1.5 below, respectively);

10.1.2 Where the Company is obliged to comply with an order, instruction or request of Government, an emergency services organisation or other competent administrative or regulatory authority (including OFCOM) or for the Customer's own security;

10.1.3 Where the Company, any Service Provider or the Network Operator needs to carry out work relating to the upgrading or maintenance of anything relating to the Service(s) and/or Equipment, including without limitation the Network, the Equipment and the telecommunications and information technology system which the Company, the Service Provider and/or the Network Operator operates or subcontracts so as to offer the Service(s);

10.1.4 The Customer does not pay any sum due and owing to the Company or the Company has reasonable grounds to consider that the Customer will not or is unable to make any payment which is due or is to fall due to the Company under this Agreement;

10.1.5 The Customer is in breach of any provision of this Agreement; and/or

10.1.6 The Company is entitled to suspend the provision of any other telecommunications service under the terms of any other agreement with the Customer.

10.2 During any period of suspension arising from the circumstances detailed in Clause 10.1, the Customer shall remain liable for all Charges payable in accordance with this Agreement.

10.3 The Customer shall reimburse to the Company all reasonable costs and expenses incurred in the implementation of a suspension pursuant to Clause 10.1 and/or the recommencement of the provision of the Service(s), in the form of a Suspension Administration Fee as specified in the Price List.

10.4 When the Company exercises its right to suspend the Service(s) (or part thereof) pursuant to Clauses 10.1.2 or 10.1.3 it shall, whenever lawful and when reasonably deemed by the Company to be practicable and appropriate, give prior notice of such suspension to the Customer.

10.5 Subject to the provisions of Clause 11, the Company shall not be liable for any loss, damage or inconvenience suffered by the Customer as a result of any suspension made pursuant to this Clause 10, except to the extent that such suspension is solely and directly attributable to the gross negligence of the Company.

## **\*IMPORTANT\* THE EXTENT OF OUR LIABILITY TO YOU**

**\*Your attention is drawn to this Clause\***

### **11 Limitation of liability**

11.1 The Company shall not be liable to the Customer in respect of any matter arising out of or in connection with this Agreement in contract or tort (including negligence), for breach of statutory duty or otherwise for any direct or indirect losses of:

11.1.1 Profit, business or revenue; or

11.1.2 Time or opportunity; or

11.1.3 Anticipated savings, profits or revenue; or

11.1.4 Business interruption or wasted expenditure; or

11.1.5 Data (or corruption of data) and/or any other direct loss or indirect or consequential loss or damage whatsoever save that nothing in this Clause 11.1 shall operate to exclude the losses of the type(s) described in Clauses 11.2.1, 11.2.2, 11.3 and 11.8 below.

11.2 Subject to Clause 11.3, the Company's maximum aggregate liability to the Customer under this Agreement in any 12 month period, in respect of all and any claims (whether one or more such claims) for direct or indirect loss or damage howsoever arising, including without limitation:

11.2.1 Loss of or physical damage to any tangible property; and/or

11.2.2 Costs incurred as a result of procuring the supply of the Service(s) to a similar standard by an alternative telecommunications supplier, shall in no circumstances whatsoever exceed the amount that is the lesser of:

(i) The aggregate amount of Charges paid or payable by the Customer to the Company in the preceding 12 month period (or, during the first year of this Agreement, the Charges that would become payable over such first full year); and

(ii) Five thousand pounds sterling (£5,000).

11.3 Nothing in this Agreement shall exclude or restrict the liability:

11.3.1 Of either party for fraud, death or personal injury resulting from the negligence of the party concerned or of its employees acting in the course of their employment;

11.3.2 For any proven fraudulent misrepresentation;

11.3.3 Under the indemnities given by the Customer under Clauses 9.7, 11.6 and 11.7 of this Agreement; or

11.3.4 For anything for which the parties cannot at law limit or exclude their liability.

11.4 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.

11.5 The Company does not accept liability for the acts, omissions or failures of:

11.5.1 Service Providers or other providers of telecommunication services to the Company in relation to the provision of the Service(s) and/or Equipment under this Agreement; or

11.5.2 The Customer or anyone acting on behalf of the Customer.

11.6 Subject to Clause 11.3, the Customer shall indemnify the Company against any and all losses, damages, costs, claims, expenses and/or other liabilities which the Company incurs directly or indirectly as a result of any breach, performance or non-performance of this Agreement and/or negligent act or omission or reckless or wilful misconduct by the Customer in the performance of its obligations contained in this Agreement.

11.7 Subject to Clause 11.3, the Customer shall indemnify the Company against any and all losses, damages, costs, claims, expenses and/or other liabilities suffered by the Company that arise directly or indirectly out of any actions brought by the Customer against a Service Provider.

11.8 Nothing in this Clause 11 excludes or limits the Customer's liability to pay the Charges due under this Agreement.

## **HOW DISPUTES ARE HANDLED**

### **12 Dispute Resolution**

12.1 The Company will use all reasonable endeavours to attempt to resolve any dispute that the Customer may have with the Company in accordance with the Company's Code of Practice on Complaint Handling and Dispute Resolution, which is published on the Website and as may be amended by the Company from time to time.

12.2 When the dispute cannot be resolved by the parties within eight (8) weeks of the Customer raising the dispute with the Company, then the Customer may refer the matter to:

12.2.1 Ombudsman Services: Communications, via the website (<https://www.ombudsman-services.org/communications.html>) or by telephone on 0330 440 1614; or

12.2.2 OFCOM, the communications regulator via the website (<https://www.ofcom.org.uk>) or by telephone on 020 7981 3040 or 0300 123 3333.

12.3 Any dispute must be submitted in writing to the Company's Head Office at Larch House Parklands Business Park, Forest Road, Denmead, Waterlooville, Hampshire, PO7 6XP

12.4 Nothing in this Clause 12 shall prevent the Customer or the Company from exercising any rights and remedies that may be available in respect of any breach of the provisions of the Agreement.

## THE DURATION OF OUR RELATIONSHIP AND HOW IT MAY BE TERMINATED

**\*Your attention is drawn to this Clause\***

### 13 Commencement and duration

13.1 This Agreement will commence on the Commencement Date.

13.2 Subject to any provisions for earlier termination contained in this Agreement, this Agreement shall continue for the Minimum Period and shall continue thereafter for each Subsequent Period unless:

13.2.1 The Customer is a Small Business Customer, in each case receiving the Calls Service, Lines Service and/or Broadband Service, whereupon this Agreement will automatically expire at the end of the Minimum Period when the Customer has not given their express written consent for the Agreement to continue after such Minimum Period; or

13.2.2 The Customer gives to the Company written notice to terminate this Agreement at least 90 days before the end of the Minimum Period or any Subsequent Period, whereupon this Agreement will expire at the end of the Minimum Period or the subsisting Subsequent Period (as the case may be); or

13.2.3 The Company (at any time) gives the Customer one month's written notice to terminate this Agreement, whereupon this Agreement shall terminate one month after the service of such notice.

13.3 Where this Agreement expires pursuant to Clause 13.2.1 and the Customer continues to use the Service(s) after the expiry of this Agreement, it hereby agrees to be bound by the terms of this Agreement (except those terms relating to the duration of this Agreement) until either the Services are terminated by the Company (at any time at the Company's absolute discretion) or a new agreement is entered into between the parties.

**\*Your attention is drawn to this Clause\***

### 14 Termination

14.1 Subject to Clause 14.3 and without prejudice to any other rights or remedies of the Company contained in this Agreement, the Company may terminate this Agreement with immediate effect when:

14.1.1 The Customer fails to pay all or any Charges by the due date and fails to remedy such breach within two (2) Business Days of service of written notice by the Company to do so;

14.1.2 Any agreement between the Company and a supplier to the Company (including any Service Provider or Network Operator) is suspended or terminated or expires without being renewed or where the supply of Services and/or Equipment under such agreement is suspended or terminated or ceases and/or where such provider(s) is/are not permitted by law to supply the Service(s) and/or Equipment which affects the supply of (including without limitation the cost of supplying) the Service(s) and/or the Equipment;

14.1.3 The Customer is in breach of any obligation in this Agreement (whether or not such obligation is contained in the General Terms, any Service Specific Terms or any Order Form) and in the case of any breach capable of remedy (other than as mentioned in Clause 14.1.1) fails to remedy the breach within five (5) Business Days of service of written notice by the Company to do so;

14.1.4 The Customer repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement and/or the effect of such persistent breaches is to amount to a material breach;

14.1.5 The Company is aware or reasonably suspects that Fraud, Artificial Inflation of Traffic or any other improper use of the Service(s) has taken or is taking place;

14.1.6 The Company has reasonable grounds to consider that the Customer is or has been involved or connected with criminal activity or activity that is or may be detrimental to the Company;

14.1.7 When the Company ceases to be authorised to provide the Service(s) or supply the Equipment or is otherwise prohibited from providing the Service(s) or Equipment by OFCOM, some other competent authority or by some other regulation or law from supplying the Service(s) or Equipment;

14.1.8 The Company is unable to provide the Service(s) and/or Equipment;

14.1.9 The Customer is Insolvent;

14.1.10 The Customer's direct debit is cancelled;

14.1.11 The Customer fails to provide a deposit within ten (10) Business Days of a request to do so made pursuant to Clause 5.3; and/or

14.1.12 The Company has suspended one or more Service(s) pursuant to Clause 10 (other than 10.1.3) and such suspension has continued for at least five (5) days.

14.2 Either the Company or the Customer may terminate this Agreement by written notice in the following circumstances:

14.2.1 The Company is in default of a material obligation under this Agreement and, in the case of any breach capable of remedy, fails to remedy the breach within twenty-eight (28) Business Days (or such longer period as may be agreed between the parties) from receipt of written notice to do so from the Customer; or

14.2.2 When either party ceases to carry on a business.

14.3 The Company need not give prior notice under Clause 14.1 where to do so would be unlawful, inappropriate or impracticable.

14.4 In addition to the parties' rights to terminate under this Clause 14 and/or in any Service Specific Terms:

14.4.1 The Company may at any time during the Service Period terminate one or more Service(s) supplied under this Agreement on a minimum of thirty (30) days' notice; and

14.4.2 Subject to any provision within any Service Specific Terms, the Customer may terminate one or more of the Service(s) supplied under this Agreement on a minimum of ninety (90) days' prior written notice to expire at the end of the Minimum Period or (in accordance with Clause 13.2) at the end of any Subsequent Period thereafter, whereupon the Service(s) will expire at the end of the Minimum Period or relevant Subsequent Period (as the case may be).

14.5 Cancellation of a direct debit shall not constitute notice to terminate this Agreement.

14.6 Where this Agreement is terminated or one or more Service(s) supplied under this Agreement are terminated by the Customer prior to the expiry of the Minimum Period or Subsequent Period or otherwise as agreed under this Agreement, a Termination Fee will be payable by the Customer to the Company on demand, save that no Termination Fee shall be payable by the Customer in a case where any variation to the Agreement pursuant to Clauses 1.4 or 4.8 entitles the Customer to terminate the Agreement on 30 days' notice without paying a Termination Fee and the Customer exercises that right.

## **15 Consequences of termination**

15.1 Upon the expiry or termination of this Agreement the Company will cease to supply the Service(s) and/or Equipment and the Customer shall:

15.1.1 Pay immediately to the Company all sums invoiced by the Company and outstanding plus any applicable interest and, in respect of any unbilled Charges, the Company shall invoice the Customer for such Charges, which shall be payable by the Customer immediately;

15.1.2 Promptly pay to the Company any applicable Termination Fee;

15.1.3 Return all equipment (including without limitation any Equipment) to the Company that it does not own or have a legal title to retain at the date of expiry of any Termination Notice or otherwise upon the termination of this Agreement, in accordance with any Service Specific Terms and the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected.

15.2 Any termination of this Agreement shall be without prejudice to the accrued rights of the parties on the date of such termination and to the continuation in force of all provisions of this Agreement which expressly or implicitly survive such termination and expiry. For the avoidance of doubt the provisions of Clauses 7 (Confidentiality) (in so far as it relates to the Company's Confidential Information), Clause 9 (Intellectual Property) and this Clause 15 (Consequences of Termination) will survive termination or expiry of this Agreement.

## **HOW WE CAN CONTACT EACH OTHER**

### **16 Notices**

16.1 Save as otherwise expressly stated in the Agreement, any formal notice given or made under or in connection with this Agreement by the Company to the Customer, whether required to be written or otherwise will be sent by post, fax or email, to any address, email address, fax or phone number that the Customer has either specified in a Sales Order and/or on an Order Form or otherwise given to the Company in writing. For the avoidance of doubt this Clause 16.1 shall not prevent the Company from

publishing information generally to its customers at large (including without limitation the Price List) by posting such information on and making updates to the Website.

16.2 Save as otherwise expressly stated in the Agreement, any formal notice given or made under or in connection with this Agreement by the Customer to the Company, whether required to be written or otherwise shall be delivered to the Company by post or by hand to the registered office of the Company from time to time, addressed for the attention of the Legal Department.

16.3 A notice sent pursuant to this Clause 16 will be deemed received and properly served twenty-four (24) hours after it is sent other than in the case of a notice sent by post, which shall be deemed to be delivered two (2) Business Days after the date of posting.

## **OTHER LEGAL PROVISIONS**

### **17 Assignment and other dealings**

17.1 The Customer may not assign, charge, sub-contract, transfer or deal in any other manner with all or any of its rights or obligations under this Agreement without the prior written consent of the Company.

17.2 The Company may at any time assign, transfer, subcontract or deal in any other manner with all or any of its rights or obligations under this Agreement without at any time being required to consult with or requiring the consent of, the Customer.

### **18 Force majeure**

18.1 Other than in respect of the Customer's obligations to pay the Charges, which shall apply notwithstanding the provisions of this Clause 18, each party shall not be liable to the other for any breach of this Agreement or failure or delay to perform any obligation in this Agreement where such breach or failure or delay was the result of Force Majeure.

18.2 In such circumstances the party affected by Force Majeure shall give written notice of its being affected by Force Majeure and the breach of this Agreement or failure or delay that is subject to this Clause 18 within 24 hours of such breach or failure or delay and thereafter shall be entitled to a reasonable extension of the time for performing such obligations, provided that when the period of breach, failure or delay continues for forty-five (45) days, the other party may terminate this Agreement by giving thirty (30) days' written notice to the party affected by Force Majeure or, at its option, the Company may immediately cease the provision of the Service or provision of any Equipment to the Customer until further notice.

### **19 General provisions**

19.1 This Agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, representations, proposals, understandings and agreements (whether written, oral or by electronic means) relating to the subject matter of this Agreement. For the avoidance of doubt this Agreement shall supersede and take precedence over any other terms and conditions which the Customer may purport to apply under any purchase order, acknowledgement of delivery or similar document or otherwise and/or which have been established between the Company and the Customer by course of dealing.

19.2 Each party acknowledges that, in entering into this Agreement and the documents referred to in it, it does not rely on any statement, representation, assurance or warranty of any person (whether a party to this Agreement or not) other than as expressly set out in this Agreement.

19.3 Any quotation given by the Company to the Customer shall not constitute an offer and is only valid for a period of seven (7) Business Days from its date of issue.

19.4 When any of the provisions of this Agreement are, become or are held to be invalid, illegal or unenforceable, the relevant provisions shall be deemed not to be or never to have been or formed part of this Agreement and the validity or enforceability of the remaining provisions shall not in any way be affected or impaired. Furthermore, when any invalid, illegal or unenforceable provision of this Agreement would be valid, legal and enforceable when some part of it were deleted, the provision shall apply with the minimum modification necessary to make it valid, legal and enforceable.

19.5 The failure or delay by the Company 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.

19.6 Nothing in this Agreement shall create or be deemed to create, a partnership between the parties.

19.7 Save as provided by the terms of this Agreement, 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 by that Act. Notwithstanding the foregoing sentence, the exclusion in this Clause 19.7 shall not apply to any company within the Company's Group.

## **20 Variation of the Agreement**

Subject always to Clause 1.4.2, the Company may vary these General Terms and any Service Specific Terms at any time. Such varied terms shall be available to view and download on the Website and the Customer shall be notified that such variations have been made.

## **21 Governing law and jurisdiction**

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed, construed and take effect by and in accordance with the law of England and Wales. Each party irrevocably agrees that the Courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

v1.0\_01-November-2015



# **CALLS AND LINE RENTAL SERVICE SPECIFIC TERMS**

## **ABOUT THESE CALLS AND LINE RENTAL SERVICE SPECIFIC TERMS**

### **1 The purpose of this document and how it applies to you**

1.1 These Calls and Line Rental Service Specific Terms apply to all Customers to whom the Company supplies the Calls Service and/or the Line Rental Service. These Service Specific Terms are supplemental to the General Terms and take effect in accordance with Clause 1 of the General Terms.

1.2 These Calls and Line Rental Service Specific Terms together with the General Terms, the Definitions and further information regarding the Charges and our Price List, are all available to view and download on the Website or the Customer may request a hard copy by telephoning the Company on 02392 253322.

## **HOW WE PROVIDE THESE SERVICES**

### **2 Provision of the Calls Service and the Line Rental Service**

2.1 Subject to the terms of the Agreement of which this document forms part, the Company agrees that with effect from the Commencement Date it will use reasonable endeavours to facilitate the provision of the Calls Service and/or the Line Rental Service to the Customer in accordance with the applicable Sales Order. The Customer acknowledges that the Company may be reliant on third parties for the provision of certain aspects of the Services and/or Equipment and therefore there might be a delay between the Approval of a Sales Order and the commencement of the relevant Service.

2.2 When the Company provides the Customer with the Line Rental Service, the Customer agrees that the Company shall also provide the Calls Service to the Customer in relation to all Calls routed over the relevant Line(s). The Customer agrees that no other service provider may route Calls in respect of Lines provided via the Company and when they do then the Company reserves the right to bar these Calls.

2.3 Where the Company agrees to the transfer of a Line to it:

2.3.1 The Company shall provide an estimated time to transfer the Line from the current service provider but it shall not be liable for any delays in doing so; and

2.3.2 The Customer agrees to pay for any additional services that continue to exist on the relevant Lines at the time of transfer to the Company, which the Customer has not made the Company aware of at the time of ordering regardless of when such services are billed to the Company by the underlying supplier.

2.4 The Customer acknowledges and accepts the following non-exhaustive list of technical limitations and restrictions that may affect the Calls Service and/or the Line Rental Service and that the Company shall not be liable to the Customer or any End User for any failure to notify the Customer specifically of the same nor for the inability of the Company to supply the Calls Service and/or Line Rental Service (or any part thereof) as a result of the occurrence of any such circumstance:

2.4.1 Technical limitations within the Land Line Network, in relation to which the Calls Service and/or Line Rental Service (or the interoperability between them, including any associated supplied Equipment) may not become apparent until after the Calls Service and/or Line Rental Services (and any related Equipment) have been installed and working for some time. In such event, the Calls Service and/or Line Rental Services (or part thereof) for some Customers may be withdrawn, in which case the Company will provide as much notice of withdrawal to the Customer as is reasonably practical;

2.4.2 There are certain services that are unavailable and/or incompatible with the Land Line Network and/or the Calls Service and/or the Line Rental Service and/or any ancillary Equipment;

2.4.3 That the performance of some Customer Site equipment or other proprietary systems of the Customer or third parties may be adversely affected by the Calls Service and/or the Line Rental Service or any equipment installed or converted as a result;

2.4.4 There may be individual technical or geographical limitations that inhibit or prevent the installation and provision of the Calls Service and/or the Line Rental Services (or any part thereof).

2.5 Where the Calls are facilitated using the Carrier Pre-selection Calls Service, the Customer acknowledges that when the Customer is a BT Social Telephony customer, it will need to cease their BT Social Telephony service when they wish to use the Carrier Pre-selection Service and any other services notified by the Company to the Customer from time to time.

2.6 The Customer acknowledges and agrees that it is technically impracticable to provide the Calls Service and Line Rental Service fault free or on an uninterrupted basis and the Company and/or Service Provider does not undertake to do so. Subject to Clause 11.3 of the General Terms, the Company shall have no liability to the Customer in respect of any failure to provide an error-free or uninterrupted Calls Service and/or Line Rental Service.

2.7 The Customer shall co-operate fully with the Company and/or the Service Provider (and their employees, agents and/or sub-contractors) in respect of the installation of and ongoing supply of the Calls Service and/or Line Rental Service (or any part thereof) (including any installation and/or conversion services required). The Customer acknowledges that the installation of the Calls Service and/or Line Rental Service and provision of any ancillary Equipment is dependent on the Customer providing the requisite information and co-operation (to be updated as required or requested by the Company).

2.8 The Customer is responsible for making all arrangements necessary for it to access and/or receive the Calls Service and/or Line Rental Service.

2.9 The configuration of any equipment, network or any other materials is the Customer's responsibility and the Company and/or the Service Provider shall have no liability in respect of the same or any preparatory work (unless otherwise agreed in writing) to make the same ready for the Calls Service and/or Line Rental Service. Any interruption or loss of the Calls Service and/or Line Rental Service resulting from such configuration shall not be regarded as an interruption or suspension or failure of the Calls Service and/or Line Rental Service and the Company shall have no liability to the Customer for the same.

2.10 The Customer acknowledges that the Company's obligations may be carried out by a Service Provider or other sub-contractor or agent.

### **3 Service Management**

3.1 The Company may make alterations to any aspect of the Calls Service and/or Line Rental Service (or their description) including conversions, shifts, reconfigurations and renumbers, withdrawal or introduction of features, which may include changes in the technical specification of the Calls Service and/or Line Rental Service or particular components of the Calls Service and/or Line Rental Service including service or system upgrades and/or major changes to the telecommunications systems (or Line Rental Equipment). Such alterations may result in disruption to the relevant Calls Service and/or Line Rental Service. Where such changes are within the control of the Company (and not a Service Provider or other third party), the Company will use reasonable endeavours to minimise any disruption to the Customer and, where practicable, the Company will give the Customer prior notice of such alterations that the Company in its absolute discretion believes is reasonable in the circumstances.

3.2 The Customer shall report all faults to the Company and not to the Service Provider. When the fault is not attributable to the Line Rental Equipment, the Calls Service and/or the Line Rental Service or otherwise is not attributable to any act or omission of the Company or when the fault is attributable to damage, theft or removal of equipment occurring on the Customer Site or any premises at which the same is supplied, then the Customer shall be liable to pay an Abortive Visit Fee as specified in the Price List together with all other costs incurred by the Company to third parties (including Open Reach or other suppliers to the

3.3 As part Company).

Of providing the Calls Service and/or Line Rental Service, the Service Provider may need to contact the Customer either via the Company or directly and the Customer hereby consents to such contact.

### **4 Service standards**

The Company shall use its reasonable endeavours to:

4.1 Perform its obligations in this Agreement with the reasonable care and skill that may be expected from a competent communications service provider;

4.2 Keep complete and accurate records of call data (including any relevant Customer Data) so as to ensure accurate billing; and

4.3 Operate a helpdesk for Customer faults and queries during Business Hours.

## **EQUIPMENT SUPPLIED IN RELATION TO THE SERVICES**

### **5 Service Equipment**

5.1 The Line Rental Equipment remains the property of the Company or, where indicated, the relevant Service Provider at all times unless otherwise stated or sold pursuant to any Equipment Specific Terms.

5.2 The Customer must not add to, modify, carry out any maintenance on or in any way interfere with the Line Rental Equipment nor allow anyone else to do so (other than someone authorised by the Company or the Service Provider of the Line Rental Service).

5.3 The Customer is solely responsible for all Line Rental Equipment used by the Customer and shall be liable to the Company for any loss of or damage to the Line Rental 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) and shall remain liable for all Charges accrued during any period of loss, theft, damage or other inability to use the Line Rental Equipment.

5.4 The Customer shall be liable for any and all damage to Line Rental Equipment or the Land Line Network which is caused by:

5.4.1 The act or omission of the Customer or the Customer's breach of the terms of this Agreement; or

5.4.2 Malfunction or failure of any Line Rental Equipment or facility provided by the Customer or its agents, employees or suppliers, including but not limited to the Customer Equipment, nor shall the Company be liable for any costs incurred by the Customer arising out of any malfunction or failure of any such equipment or facility, including Customer Equipment.

5.5 Any equipment (including the Customer Equipment) connected to or used with the Line Rental Equipment will bear the European Consumer Equipment standards "CE" mark. The Customer shall ensure that all such equipment (including Customer Equipment) is technically compatible with the Calls Service and/or Line Rental Service and specifically the Line Rental Equipment and used in compliance with all relevant instructions and safety and security procedures.

## **PAYING FOR THE CALLS SERVICE AND/OR LINE RENTAL SERVICE**

### **6 Charges and billing arrangements**

6.1 All Charges for the Calls Service and the Line Rental Service shall be based upon call and billing data recorded by the Company pursuant to this Clause 6 of these Calls and Line Rental Service Specific Terms and the General Terms.

6.2 The Company shall bill Calls in units of sixty (60) seconds, rounding upwards.

6.3 Call set up fees will apply to all Calls made by the Customer at a rate specified in the Price List or as otherwise stated on the Order Form.

6.4 The Customer shall pay the standard charges levied by the Company from time to time applicable to repair work on Line Rental Equipment requested by the Customer or required to be undertaken to facilitate the provision of the Calls Service and/or Line Rental Service to the Customer.

### **7 Revenue share services**

7.1 The Company shall be entitled to withhold any sums payable to the Customer and any rebate otherwise due to the Customer in connection with a revenue share service when:

7.1.1 In the Company's reasonable opinion, fraud or Artificial Inflation of Traffic has taken place; or

7.1.2 The corresponding repayment or rebate from the Service Provider or any other originating operator or any other transit operator to the Company has been withheld; or

7.1.3 The Service Provider, BT or any other originating operator or any other transit operator seeks to or threatens to withhold from the Company payment of revenue or other payments deriving from or attributable to the same revenue share service; or

7.1.4 The rebate is less than £5.

7.2 In the event that a claim is made against the Company by a Service Provider or any other originating operator or any other transit operator, under an interconnection agreement or otherwise for recovery of sums

previously paid and in respect of which revenue share has already been paid or a rebate given to the Customer, the Company shall be entitled to recover the revenue payments and rebates made by it to the Customer which derived from the same revenue share service as gave rise to the revenue which the Service Provider or the other network provider is reclaiming from the Company.

7.3 In the event that any claim of any kind is made against the Company relating to goods, facilities or services made available as a result of a revenue share service call or as a result of any act or thing which happens in consequence of the revenue share service call, either by a Service Provider or any other intermediate interconnecting network or by a Customer or acquirer of any such goods, facilities or services or by a party suffering allegedly as a result of any such act or thing who has obtained access to such goods, facilities or services by use of the revenue share service number, the Customer shall indemnify and keep indemnified the Company against any and all Liabilities howsoever suffered or incurred in connection with any such claim.

## **YOUR RESPONSIBILITIES**

### **8 Customer's obligations**

8.1 In addition to its obligations set out in the General Terms, the Customer undertakes to the Company that throughout the Service Period it will (and will procure that its customers, employees, agents and sub-contractors will):

8.1.1 Comply with any safety or security procedures applicable to the use of Line Rental Equipment, the Calls Service and Line Rental Service;

8.1.2 Use its reasonable endeavours to secure the Land Line Network from external sources and shall safeguard the Line Rental Equipment and any other equipment which is proprietary to the Company or Service Provider or any third party against the deployment of viruses, Trojans and worms or other destructive devices and otherwise from any tangible or intangible damage or corruption;

8.1.3 Supply such facilities and information to the Company, the Service Provider and/or the Network Operator or other third parties and do such acts and things as the Company, the Service Provider and/or the Network Operator may reasonably require to perform their obligations and exercise their respective rights under this Agreement and to ensure that the Network Operator is able to perform and observe the requirements of the General Conditions, any law or regulation and any modifications thereof which the Network Operator itself cannot reasonably perform without the supply of such information and/or the doing of such acts and things by the Customer;

8.1.4 Only connect the Line Rental Equipment (or other Equipment supplied by the Company) to the Land Line Network by using a main telephone socket or approved connection point. Where the Line Rental Equipment (or other Equipment supplied) is connected to the Land Line Network other than in accordance with this Clause, the Line will be cut off immediately without notice.

8.2 In addition to its obligations set out in the General Terms, the Customer undertakes with the Company that throughout the Service Period it will not (and will procure that its customers, employees, agents and sub-contractors will not):

8.2.1 Use the Calls Service and/or Line Rental Service for purposes other than the genuine conveyance of calls for the benefit of members of the public using a telecommunications service;

8.2.2 Use the Calls Service and/or Line Rental Service or Line Rental Equipment:

8.2.2.1 To generate AIT; or

8.2.2.2 To send multiple (SPAM) mail (other than for marketing purposes in the normal course of its business); or

8.2.2.3 For attempting to gain unauthorised access to other services, accounts or systems; or

8.2.2.4 Otherwise in a manner which is inconsistent with a reasonable customer's good faith use of the same;

8.2.3 Reconfigure any Line Rental Equipment at any time; and

8.2.4 Undertake any activity that has the effect of disrupting the Line Rental Service or other services provided by the Company to the Customer or other customers.

8.3 The Customer will indemnify the Company against all and any Liability suffered or incurred by the Company as a result of or in connection with the Calls Service and/or the Line Rental Service being used in breach of this Agreement. Terms and Conditions - Happy Telecom.doc Page 29 of 30

8.4 The Customer shall update the Company immediately on any change to its registered company details and shall indemnify the Company for all and any Liability arising out of its failure to comply with this Clause 8.4.

8.5 Where the Customer requests the Calls Service but not the Line Rental Service, the Customer hereby confirms that it has a valid contract for the use of a suitable existing Line which terminates on a Network Termination Point or of a suitable bearer supporting an existing ISDN2 or ISDN30 service (as appropriate).

8.6 The Customer agrees that it is procuring the Calls Service and/or the Line Rental Service and any Line Rental Equipment solely for its and its employees' own use and furthermore that it will not resell or otherwise act as any form of distributor in respect of the Calls Service and/or the Line Rental Service and/or Line Rental Equipment and any other Services.

8.7 In the event that Line Rental Equipment and/or Software is damaged, destroyed, lost or stolen then the Customer agrees to pay the applicable replacement or repair charges as set out from time to time in the Price List and shall be liable to the Company in respect of any charges, losses or expenses associated with such damage, destruction, loss or theft.

## **SUSPENSION AND TERMINATION OF THE SERVICES**

**\*Your attention is drawn to this Clause\***

### **9 Suspension and termination**

9.1 Clause 15 (Consequences of Termination) of the General Terms shall apply specifically to the Calls Service and/or Line Rental Services where the Calls Service and/or Line Rental Service are terminated independently of the Agreement as a whole.

9.2 In addition to the rights to suspend or terminate the Calls Service and/or Line Rental Service under this Agreement as set out in the General Terms, the Company may from time to time and without notice suspend the Calls Service and/or Line Rental Services in whole or in part when:

9.2.1 The Customer allows to be done anything which in the Company's reasonable opinion may have the effect of jeopardising the operation of the Calls Service and/or Line Rental Services whether to the Customer or any other party or which puts (or may in the Company's sole discretion put) the Company in breach of any contractual obligation it has to any third party (including a Network Operator or Service Provider); and/or

9.2.2 When the Company has reasonable cause to suspect fraudulent use of the Calls Service and/or Line Rental Service or Line Rental Equipment (including any non-compliance with Clause 8 of these Calls and Line Rental Service Specific Terms); and/or

9.2.3 There is any unusual or excessive usage of the Calls Service and/or Line Rental Service; and/or

9.2.4 Where any telephone number is advertised in or on a BT phone box without the Company's or BT's prior consent.

9.3 The Customer acknowledges and agrees that the Company or a Service Provider may:

9.3.1 occasionally, for operational reasons, introduce or withdraw the Line Rental Service features, introduce process changes, change the technical specification of the Calls Service and/or Line Rental Service (or any service on which the Calls Service and/or Line Rental Service rely) or particular components of the Calls Service and/or Line Rental Service (or any service on which the Calls Service and/or Line Rental Service relies) including service or system upgrades;

9.3.2 Change the codes or the numbers allocated only in order to meet the national numbering requirements of OFCOM; and/or

9.3.3 Give the Customer instructions that it believes are necessary for reasons of health, safety or the quality of the Calls Service and/or Line Rental Service (including any calls or other usage within the same).

9.4 During any period of suspension (as provided for under this Agreement) the Customer shall remain liable for all Charges levied in accordance with this Agreement.

9.5 Where one or more of the Calls Service and/or Line Rental Service (or part thereof) are terminated at any time after the Approval by the Company of a Sales Order and prior to the expiry of the Minimum Period or Subsequent Period that subsists at that time in respect of the particular Service, a Termination Fee (which the Customer hereby acknowledges to be reasonable and a genuine pre-estimate of the Company's loss arising from such early termination) shall be payable. The Termination Fee in this instance shall be equal to:

9.5.1 100% (one hundred per cent) of the Fixed Charges which remain payable by the Customer for the unexpired portion of the subsisting Minimum Period or Subsequent Period (as applicable) in respect of that terminated Calls Service and/or Line Rental Service; and

9.5.2 Any termination charges or other costs or expenses incurred by the Company or a Company Affiliate for the termination of or cancellation of any services or equipment (or part thereof) provided to the Company in connection with the terminated Calls Service and/or Line Rental Service.

9.6 Upon termination of a Calls Service and/or Line Rental Service, the Customer shall allow (or procure the appropriate permissions to allow) the Company (or its agents, sub-contractors or employees) access to each Customer Site (or third party premises as applicable) on or over which the Calls Service and/or Line Rental Service is stored/supplied to remove the Line Rental Equipment. Should any construction or alteration to the Customer Site (or third party premises) have occurred to facilitate any Calls Service and/or Line Rental Service, the Company shall not have any obligation to restore the Customer Site (or third party premises) to the same physical state as it was in prior to the initial delivery of the respective Service.

## **PROTECTION OF INTELLECTUAL PROPERTY**

### **10 Intellectual property**

10.1 The Customer has no title in the number allocated to any Line it rents from the Company. The number may not be sold or transferred unless the Company has given its prior written permission. Changes to the number allocated to the Line will be provided to other communications providers with services on that Line.

10.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's brochures (the Intellectual Property Rights in which are and remain vested in the Company or its licensors) are issued or published for illustrative purposes only and they do not form part of the Agreement (unless otherwise specified by the Company in writing).

10.3 The Company will use all reasonable endeavours to provide the Customer with number portability provided that:

10.3.1 There are no technical reasons preventing the Company from doing so; and

10.3.2 The Customer pays any associated charges applicable with regard to such transfer.

10.4 Where the Company (using reasonable endeavours) is unable to secure a number transfer from the Customer's then-current supplier, it will provide the Customer with a new number subject to payment of any associated Charges for the same.

## **OTHER LEGAL PROVISIONS**

### **11 General**

11.1 Delivery of any Line Rental Equipment by the Company to the Customer shall only be to an address within the United Kingdom.

11.2 The Company's employees, contractors and agents are not authorised to make any contractually binding representations concerning the Calls Service and/or the Line Rental Service or Line Rental Equipment. In entering into the Agreement, the Customer acknowledges that it does not rely on and waives any claim for breach of, any such representations which have not been confirmed in writing by an authorised officer of the Company. However, nothing in these Calls and Line Rental Service Specific Terms limits the Company's liability for fraudulent misrepresentation.

11.3 For the purpose of Section 1(2) of the Contracts (Rights of Third Parties) Act 1999 (the "1999 Act") the parties agree that they do not intend any term of these Calls and Line Rental Service Specific Terms to be enforced by any third party except that the Company's rights pursuant to these Calls and Line Rental Service Specific Terms may be enforced by the Network Operator, a Service Provider that supplies the Company in relation to the Calls Service, Line Rental Service and/or any Line Rental Equipment or the Company's licensors (as applicable), in accordance with the 1999 Act. Furthermore the parties agree that:

11.3.1 The Company may amend and/or vary or terminate all or any part of this Agreement (including these Calls and Line Rental Service Specific Terms) without the consent of any person who is not party to it; and

11.3.2 Nothing stated in this Clause 11.3 shall affect any third party right which exists or is available independently of the 1999 Act.