

Please read these Terms in conjunction with our Privacy Notice

1. DEFINITIONS AND INTERPRETATION

Microenterprise, Small Enterprise Customer or Not-For-Profit Customer of less than 10 individuals – Defined as per OFCOM Implementation of the European Electronic Communications Code (EECC) (ofcom.org.uk)

1.1. In these terms and conditions (**Terms**) the following words shall have the following meanings:

Agreement the agreement between you and us for the supply of the Services in accordance with the Order and these Terms.

Applicable Data Protection Laws means:

- (a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.
- (b) To the extent the EU GDPR applies, the law of the law of the European Union or any member state of the European Union to which the Supplier is subject, which relates to the protection of personal data

Artificially Inflated Traffic the flow of calls to any particular revenue share service which is, as a result or consequence of any activity by or on behalf of the Customer, disproportionate to the flow of calls which would be expected from good faith commercial practice and usage of the Network.

Bonus any introductory or anniversary bonus or credit made available to the Customer by Us or Our supplier. The financial value of the bonus shall be specified in the Order or otherwise notified to the Customer by Us in writing.

Call Charge the charges for calls made on the System (including reverse charge calls) as notified to the Customer from time to time and payable by the Customer to Us for the Services.

Charges any or all of the charges and fees payable by the Customer for the Services pursuant to the Agreement.

Company, We, Us, Our Southern Communications Limited (Company Number: 01328040) whose Registered Office is at Glebe Farm, Down Street, Dummer, Basingstoke RG25 2AD.

Confidential Information any and all information whether disclosed in written or oral or machine-readable form or otherwise including without limitation information relating to the Company's services, equipment, operations, know-how, trade secrets and information of commercial value;

Connection Charge the non-refundable charge (if any) payable by the Customer for installation and connection to the System as specified in the Order or otherwise notified by Us in writing.

Customer, you the individual, company, entity, organisation or business that purchases the Services from the Company.

Early Termination Fee means:

- (c) the Monthly Charge for each Line supplied by Us until the end of the Minimum Term, Renewed Term or Subsequent Term (as the case may be) of each Line or handset supplied; and
- (d) the pro rata amount of any Bonus paid (in cash and/or in kind) to the Customer by Us in respect of any existing Line until the end of the Minimum Term, Renewed Term or Subsequent Term (as the case may be).

Equipment	any equipment and hardware (including without limitation handsets) supplied by Us to the Customer, as specified in the Order or otherwise notified by Us in writing.
EU GDPR	means the General Data Protection Regulation ((EU) 2016/679), as it has effect in EU law.
Fair Usage Policy	means the Network Provider's fair usage policy (if any) as available on the Network Providers website (as amended from time to time) including: O2: https://www.o2.co.uk/termsandconditions/mobile/unlimited-tariff-terms EE: https://ee.co.uk/help/help-new/offers-and-services/other/unlimited-plans#article-title-2 . Please refer to the specific Network Providers website for the latest version.
Gateway	any equipment containing a SIM which enables the routing of calls from fixed apparatus to equipment by establishing a mobile to mobile call.
Hardware Fund	means a fixed credit amount as stated in the Agreement for the Minimum Term, Renewed Term or any Subsequent Term (or, if different and if specifically agreed in writing, the fixed credit amount in respect of each Line made under the Agreement during the Minimum Term or any Renewed Term or Subsequent Term.
IPR	patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
Line	one or more cellular connections that are connected to the network via a SIM(s).
Minimum Spend	the minimum value of Call Charges (excluding VAT) per calendar month (or pro rata in relation to the first and final months) per Line

as specified in the Order or otherwise notified by Us averaged over the total number of Lines supplied by Us to the Customer.

Minimum Term	Twenty four (24) months (or such other period as is set out on the Order) from the date of connection for each Line to the Network Provider's network or date of delivery of a handset upgrade whichever is later. Where We provide further Equipment in respect of any Line at a subsidised rate (upgrade) or financial support in lieu of Equipment (upgrade support) then the Minimum Term that relates to that Line is extended by a further Minimum Term from the date of the supply of the upgrade or upgrade support, or such other period as has been agreed between the Parties in writing.
Monthly Charge	the monthly line rental charge per Line to obtain the Services, as set out in the Order or otherwise notified to the Customer by Us in writing.
Network	the network operated by a Network Provider.
Network Provider	a network provider who operates a Network in accordance with an agreement between the Network Provider and the Company.
OFCOM	the Office of Communications or other replacement authority.
Order	the Customer's order for the Services and / or Equipment.
Renewed Term	the renewed term agreed with the Company in writing in accordance with Clause 9.2.
Services	the business mobile services as set out in the Order and that We agree to supply to the Customer.
SIM	a subscriber identification module.
Subsequent Term	a minimum of twelve (12) months (or such other period set out in the Order) or a fixed term of 30 days rolling for the Microenterprise or Small Enterprise Customer or Not-For-Profit Customer of less than 10 individuals.
System	
UK GDPR	the Network that We use to provide the Services.
Working Day	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018. 09:00 to 17:00 Monday to Friday but excluding public holidays in the United Kingdom recognised by the Company.

1.2. **Construction.** In these Terms, the following rules apply:

- 1.2.1. a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.2.2. a reference to **writing** or **written** includes faxes and e-mails.
- 1.2.3. a reference in these Terms to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 1.2.4. headings in the Agreement shall not affect interpretation.

2. ORDERS AND MINIMUM PERIOD

- 2.1. The Order constitutes an offer by the Customer to purchase the Services in accordance with these Terms.
- 2.2. No order placed by the Customer shall be deemed accepted by Us until the Order is accepted by Us in writing or (if earlier) We provide the Services to the Customer.
- 2.3. Once an Order has been accepted by Us, the Customer may not cancel an Order.
- 2.4. We shall be under no obligation to provide the Services until acceptance of the relevant Order by Us. We may accept or reject an Order at our sole discretion.
- 2.5. The Agreement for each Line shall commence on the date of connection by Us to the Network and will continue for the Minimum Term and any Renewed Term or Subsequent Term in accordance with these Terms. The commencement date for each Line may vary and the Minimum Term and any Renewed Term or Subsequent Term in accordance with these Terms will apply to each individual Line.
- 2.6. The Customer acknowledges that it has limited rights to terminate the Agreement during the Minimum Term, Renewed Term or Subsequent Term (as the case may be). These rights are set out in Clause 9.3. If the Customer terminates the Agreement before the expiry of the Minimum Term, Renewed Term or Subsequent Term, the Customer shall pay any applicable Early Termination Fee.
- 2.7. The Customer may place orders for further Lines or Equipment after the date of the original Order. If We accept such orders, they will become an Order for the purposes of the Agreement and these Terms will apply.
- 2.8. The Agreement constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty We have made or given or which has been made or given on Our behalf which is not set out in the Agreement.
- 2.9. These Terms apply to the Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3. THE SERVICES

- 3.1. In order for Us to enable the Customer to use the Services the Customer agrees to comply with the following:
 - 3.1.1. the Customer will comply with and implement such terms and codes of practice, procedures and directions as are established and/or adopted by Us or Our suppliers from time to time in relation to any numbers and/or the allocation, re-allocation and/or transfer of them;
 - 3.1.2. the Customer will comply with such procedures as We may notify from time to time in relation to the ordering management and the use of the SIMs.
 - 3.1.3. We will charge the Customer for SIMs at the rate specified by Us from time to time and the Customer will pay Our charges applicable for such SIMs.
 - 3.1.4. We reserve the right to charge the Customer:
 - 3.1.4.1. for the replacement of lost or damaged SIM cards; or
 - 3.1.4.2. for any additional stocks of SIM cards the Customer wishes to hold,

at the rate specified by Us from time to time.

- 3.2. The Customer will not have any rights in numbers allocated to it, except as expressly set out in the Agreement.
- 3.3. If any number allocated to the Customer remains unconnected to or is disconnected from the Network for any reason for a continuous period of two (2) months, We may withdraw and re-allocate to a third party without liability or notice to the Customer.
- 3.4. We reserve the right to require the Customer to pay a charge in respect of the allocation of certain numbers.
- 3.5. The Customer shall indemnify Us against all costs, damages, expenses and losses and reasonable professional costs and expenses suffered or incurred by Us arising out of or in connection with the use or misuse of the Services by the Customer.

WHAT SERVICES WE WILL PROVIDE TO YOU

- 3.6. Whilst we provide the Services to you, you authorise us to act on your behalf in all dealings with any Network Provider or third party supplier in connection with any matter that enables us to provide or to continue to provide you with the Services.
- 3.7. Calls to international, premium rate and other higher rate numbers are not barred from the Equipment and/or SIM Card and you will be responsible for the Charges in respect of calls to such numbers. You may request that we bar such numbers if you wish to do so.
- 3.8. Data usage is not capped to the data amount specified in the Agreement and you may not receive a notification that you are close to or have exceeded your data limit. It is your responsibility to monitor and / or control data usage in respect of the Equipment, and you will be responsible for any excess data charges arising from use above the such monthly data amount.
- 3.9. We may select and at any time change any Network Provider or third party supplier, carrier or other service provider for the purposes of providing the Service(s), and you authorise us to give all notices, nominations and other authorisations that are necessary for us to provide, the Service(s) to you.
- 3.10. You agree that your use of the Service(s) is subject to the applicable Fair Usage Policy.

4. SUPPLY OF EQUIPMENT

- 4.1. We may supply certain Equipment to the Customer as set out in an Order. We shall use reasonable endeavours to meet any agreed delivery dates for Equipment but will not be liable for a failure to do so. Time shall not be of the essence in respect of delivery dates.
- 4.2. The Customer will pay the cost of delivery in addition to the price of the Equipment. The Customer will have three (3) days to inspect the Equipment. Upon expiry of the three (3) days the Equipment will be deemed accepted by the Customer.

PURCHASE OF EQUIPMENT BY THE CUSTOMER

- 4.3. Subject To Clause 4.4, in relation to Equipment purchased by the Customer from the Company:
 - 4.3.1. the Equipment is at the risk of the Customer from the time of delivery;
 - 4.3.2. ownership of the Equipment other than Equipment provided to the Customer free of charge shall pass to the Customer on the later of completion of delivery or when We have received in full in cleared funds all sums due to it in respect of

- 4.3.2.1. the Equipment; and
- 4.3.2.2. all other sums which are or which become due to Us from the Customer on any account.

4.4. In relation to:

- 4.4.1. Equipment purchased by the Customer from the Company; and
- 4.4.2. where such Equipment is paid for by the Customer via the Monthly Charge(s) payable by the Customer and to which the Equipment relates or the Hardware Fund,
then,
- 4.4.3. the Equipment is at the risk of the Customer from the time of delivery to the Customer;
- 4.4.4. ownership of such Equipment shall pass to the Customer on:
 - 4.4.4.1. the later of expiry of the Minimum Term or the final payment of the Monthly Charge(s) payable by the Customer to which the Equipment relates or when We have received in full in cleared funds all sums due to it in respect of the Equipment; or
 - 4.4.4.2. the later of the final offset of the Charges for the Equipment from the Hardware Fund or when We have received in full in cleared funds all sums due to it in respect of the Equipment,

as the case may be.

LOAN OF EQUIPMENT BY THE COMPANY

4.5. In relation to Equipment loaned to the Customer free of charge:

- 4.5.1. risk in such Equipment will pass immediately to the Customer when they leave Our physical possession or control;
- 4.5.2. risk in such Equipment will not pass back to Us from the Customer until such Equipment is back in Our physical possession;
- 4.5.3. ownership of such Equipment remains at all times with the Company. The Customer has no right, title or interest in such Equipment except that they are provided to the Customer for the duration of and on the terms of the Agreement;
- 4.5.4. the Customer cannot deal with the ownership or any interest in such Equipment. This includes but is not limited to selling, assigning, mortgaging, pledging, charging, securing, hiring, withholding, exerting any rights to withhold, disposing and/or leasing.

4.6. Risk in the SIMs shall pass to the Customer on delivery. Ownership of SIMs remains with Us or the Network Provider at all times. The Customer has no right, title or interest in the SIMs except that they are provided to the Customer for the duration of and on the terms of the Agreement.

4.7. The Customer shall ensure that any equipment (excluding the Equipment provided by Us) that it uses in connection with the Services meets any legal or regulatory requirements and is approved for connection to the System. If not, the Customer must immediately disconnect it or allow Us to do so at the Customer's expense.

- 4.8. The Customer shall be responsible for any loss or damage to the Equipment caused by an act or omission or negligence of the Customer, and shall (subject to any manufacturer's warranty) also be responsible for the maintenance of the Equipment.

5. THE COMPANY'S GENERAL OBLIGATIONS

- 5.1. We shall supply the Services to the Customer from the commencement date for the term of the Agreement and in accordance with these Terms.
- 5.2. We shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and We shall notify the Customer in any such event.
- 5.3. We shall use reasonable endeavours to meet any agreed dates but shall not be liable for failure to meet them. Time shall not be of the essence of the Agreement.
- 5.4. The Customer shall report any fault to the Services or the Equipment to the Company's Customer Services Department, where it will be dealt with in accordance with the agreed fault repair service. We shall not be obliged to fix any fault if:
- 5.4.1. the defect arises because the Customer failed to follow the manufacturers user manual or other documentation available from the manufacturer or the Company's oral or written instructions as to the storage, use or maintenance of the Services or Equipment or (if there are none) good trade practice;
 - 5.4.2. the defect is caused by improper use of the Equipment or use outside its normal application;
 - 5.4.3. the defect arises due to circumstances set out in Clause 5.7.2;
 - 5.4.4. the defect arises due to normal wear and tear; or
 - 5.4.5. the Customer, its employees, agents or subcontractors alter or repair the Equipment without Our prior written consent.

If We agree to fix a fault caused by the circumstances set out in this Clause 5.4 or a fault caused by the Customer or that otherwise falls outside Our responsibility or where no fault is found, We may charge the Customer for any work that We have undertaken at Our applicable man-hour rate.

- 5.5. We shall not be liable for any fault whether under Clause 5.4 or otherwise unless:
- 5.5.1. the Customer gives Us written notice of the defect within seven (7) days of the time when the Customer discovers or ought to have discovered the fault or defect; and
 - 5.5.2. after receiving the notice, We are given a reasonable opportunity to investigate such fault and the Customer (where applicable and if asked to do so by Us) returns the Equipment to Our place of business in its original packaging.
- 5.6. We will request the Network Provider to connect the Customer to the System. We cannot be responsible for the coverage or quality of service that the Customer receives from the System.
- 5.7. We shall exercise the reasonable care and skill of a competent telecommunications operator. The Customer acknowledges that:
- 5.7.1. We cannot guarantee that the Services will be available without interruption or will be free from error; and

- 5.7.2. the operability and quality of the Services, both in and out of the UK, may sometimes be affected by factors outside the Company's or Network Provider's control including without limitation coverage area, local physical obstructions, atmospheric conditions, features or functionality of the Services, network coverage and other interference with reception both natural and manmade;
 - 5.7.3. the Services and the Equipment has not been developed to meet their individual requirements and that it is therefore the Customer's responsibility to ensure that the facilities and functions of the Services and the Equipment meets their requirements;
 - 5.7.4. the existence of any minor errors in the Services or the Equipment shall not constitute a breach of the Agreement;
 - 5.7.5. We or the Network Provider may at any time and without liability modify, expand, improve, maintain or repair the Services and this may require suspension of the operation or provision of the Services.
- 5.8. Unless otherwise agreed in writing, the Customer will receive the manufacturer's standard warranty in relation to all Equipment. It is acknowledged and agreed that no warranties or representations are made by Us in relation to such Equipment and We shall have no obligation to the Customer in relation thereto. We will endeavour to provide, in respect of any Equipment, the benefit of the warranty that the supplier of the Equipment has provided to Us or any additional warranty expressly provided by Us in writing. The Customer will only be able to rely on any warranty if it can show that it has used the Equipment in accordance with any documentation or reasonable instructions provided by Us.
- 5.9. Notwithstanding Clause 7.12 the Customer acknowledges that, in respect of any international roaming services forming part of the Services:
- 5.9.1. such service will only be available in those countries where We or Our third party supplier has international roaming agreements from time to time; and
 - 5.9.2. certain additional terms and conditions may be imposed by third party operators on Us which may affect Our provision of the Services.

6. THE CUSTOMER'S OBLIGATIONS

- 6.1. The Customer may only use the Services:
- 6.1.1. as laid out in the Agreement; and
 - 6.1.2. for their own use. The Customer may not resell or commercially exploit any of the Services without the prior written consent of the Company.
- 6.2. The Customer shall not utilise and shall ensure that no other person uses the Services:
- 6.2.1. for storing, reproducing, transmitting, communicating or receiving any material in breach of any law, regulation, code of practice or in breach of the Company's acceptable use policy; or
 - 6.2.2. fraudulently or for any criminal, unlawful, immoral or illegal purpose or in a manner that is contrary to any regulatory or legal requirement; or
 - 6.2.3. to make defamatory, offensive, obscene, indecent, menacing, abusive, nuisance or hoax calls; or
 - 6.2.4. for accessing age restricted services (where the user is under 18); or
 - 6.2.5. to cause annoyance, inconvenience or needless anxiety to any person; or

- 6.2.6. contrary to any codes of practice or instructions that We may give to the Customer from time to time; or
- 6.2.7. to copy, store, modify, publish or distribute services or content (including ringtones), except where We give the Customer prior permission in writing; or
- 6.2.8. to download, send or upload content of an excessive size, quantity or frequency or knowingly send any viruses. We will contact the Customer if the Customers use is excessive; or
- 6.2.9. in violation of any applicable local, national, or international law or regulation; or
- 6.2.10. in a manner which infringes the rights of any person, including intellectual property rights and rights of confidentiality.

The Customer recognises and accepts that the Services may be suspended without prior notification in the case of suspected fraud or misuse.

6.3. The Customer shall not:

- 6.3.1. establish, install or use a Gateway so that services are provided via a Gateway; or
- 6.3.2. participate in any activities or conduct which may result in Artificially Inflated Traffic.

6.4. We shall have the right to deny access to the Services by any handset or Equipment:

- 6.4.1. which adversely affects the operation of the System or provision of the Services; or
- 6.4.2. which will or may adversely affect the operation of the System or any other third party network or provision of the Services; or
- 6.4.3. if We suspects fraudulent, criminal or illegal activities are being carried out, or are likely to be carried out, via that handset or the Equipment,

whether or not such handset or Equipment has been approved or tested by the Company.

6.5. The Customer shall co-operate with and comply with at all times:

- 6.5.1. any codes of practice, operating procedures and any other technical requirements as We may notify to the Customer from time to time;
- 6.5.2. Our reasonable instructions to ensure the proper use and security of the Services.

6.6. The Customer will provide Us with all up to date and accurate information that We need to provide the Services.

6.7. The Customer must report to Us as soon as the Customer becomes aware of any loss, fraud, deception, or unauthorised or unlawful use relating to the Equipment, SIM or Services and/or the Agreement and until We have had a reasonable opportunity to disconnect the Services, the Customer will be responsible for all Charges incurred.

7. **CHARGES AND PAYMENT**

7.1. The Customer shall pay the Charges.

7.2. We shall send an invoice to the Customer for:

- 7.2.1. the Connection Charge when the Services are available to the Customer;

- 7.2.2. for the Monthly Charge and any SIM charge monthly in advance;
- 7.2.3. for the Call Charges after the end of the month in which the relevant calls were made; and
- 7.2.4. for Equipment at any time after We accept an Order from the Customer for that Equipment.

If your use of the Service(s) exceeds the limits in the applicable Fair Usage Policy we may charge you for such excess use based our charges at that time, and you agree to pay any such Charges.

- 7.3. The Customer shall pay the full amount invoiced by Us by direct debit (or such other method of payment agreed by Us in writing, within fourteen (14) days of the date of invoice. If the Customer's credit rating decreases at any time, We shall be entitled to revise the credit terms to require payment upon invoice or in less than fourteen (14) days.
- 7.4. The Customer shall pay the Charges in pounds sterling without set-off or deduction.
- 7.5. The Charges are exclusive of Value Added Tax, which shall be payable by the Customer in addition to the Charges at the rate applicable from time to time.
- 7.6. Time for payment of the Charges shall be of the essence of the Agreement.
- 7.7. If the Customer fails to make payment in full by the due date, in addition to the Company's right to suspend the Services as set out in Clause 8.1, We may charge interest at the rate of 4% per annum above the base rate of the Bank of England on any amounts outstanding from the due date for payment until payment is made in full.
- 7.8. **Annual Price Increase.**
 - 7.8.1. Each year We may adjust the Charges by up to 6% or, if higher, according to the Retail Price Index (RPI) annual inflation rate prevailing at the date We notify the Customer of the applicable increase in the Charges.
 - 7.8.2. We will give the Customer as much prior notice as practicable of any alteration to the Charges and in any event not less than 1 month's prior notice of such change. This notice may be included in an invoice to the Customer.
 - 7.8.3. **Your right to terminate following a notice to increase the Charges.** If we notify you of any increase to the Charges in accordance with this Clause 7.8, you may terminate the Agreement within thirty (30) days of the date of such notice of increase by giving a minimum of thirty (30) days prior written notice to the Company.
 - 7.8.4. If the notice to terminate the Agreement served pursuant to Clause 7.8.3 expires before the expiry of the Minimum Term, Renewed Minimum Term or Subsequent Term (as the case may be), you will have to pay the Early Termination Fee to the Company.
 - 7.8.5. If:
 - 7.8.5.1. you are outside the Minimum Term, Renewed Minimum Term or Subsequent Term (as the case may be); or
 - 7.8.5.2. such notice to terminate the Agreement expires on the expiry date of the Minimum Term, the Renewed Term or Subsequent Term (as the case may be)

the Early Termination Fee will not apply.

For the avoidance of doubt, any increase to the Charges that would not have increased the Customer's immediately previous monthly total bill for that specific Service (if the increase(s) had applied for the whole of that month) by more than the RPI or 6% shall not entitle the Customer to terminate the Agreement under this Clause 7.8.

- 7.9. The right to terminate a Service pursuant to Clause 7.8 shall not apply where the increases in the Charges arise as a consequence of a change in prices made by third party manufacturers, suppliers (including Network Operators) or a regulatory body.

HARDWARE FUND

- 7.10. The Hardware Fund (where applicable) is offered on the following terms:
- 7.10.1. We may vary the Hardware Fund or the terms of this Clause 7.10 at any time by giving you notice. The variations will apply after the effective date of the notice of change.
- 7.10.2. We reserve the right at any time during the Agreement to withdraw the Hardware Fund including any remaining credit amount of the Hardware Fund and/or the right to any future credits against the Hardware Fund in respect of new Lines (if applicable).
- 7.10.3. At any time from two (2) years after the applicable commencement date (as determined in accordance with Clause 2.5), you may drawdown from the Hardware Fund by providing us with a pre-authorised (by a duly authorised representative) purchase order or emailing us at mobile@southern-comms.co.uk with your drawdown request.
- 7.10.4. On receipt of your written request in accordance with Clause 7.10.3, the value of the order will be offset against the Hardware Fund (where applicable) and any amount over and above the available Hardware Fund shall be treated as a Charge payable in accordance with this Clause 7.
- 7.10.5. Unless otherwise agreed by the Company in writing, the Hardware Fund can be used solely for the purposes of offsetting Charges for Equipment listed in our price list available from the Company on request.
- 7.10.6. In the event that the Agreement is suspended for any reason under Clause 8 below, we reserve the right to suspend the Hardware Fund or any terms thereof.
- 7.10.7. In the event that the Agreement is terminated for any reason under Clause 9 below, the Hardware Fund will be withdrawn and any residual credit balance of the Hardware Fund will be retained by us. For the avoidance of doubt, any residual credit balance of the Hardware Fund shall have no monetary value and you shall have no right to any payment, future use or credit in relation to such residual balance.
- 7.10.8. We reserve the right to offset any credit amount of the Hardware Fund against any monies due and payable by you to us,
- 7.10.9. No VAT is applied to the Hardware Fund or any drawdown from the Hardware Fund and no invoice or credit note will be issued by us in respect of any VAT in this regard.
- 7.11. Unless otherwise agreed in writing, any credits (including the Hardware Fund) accrued under your Agreement may be used solely for the purposes of offsetting Charges for Equipment, do not have any monetary value, and you are not entitled to:
- 7.11.1. use any credits accrued in the Hardware Fund to offset any other Charges; or
- 7.11.2. offset any credits accrued in the Hardware Fund against any outstanding debt; or
- 7.11.3. any payments from any credits accrued in the Hardware Fund; or

- 7.11.4. any future use of credits accrued in the Hardware Fund upon termination of the Agreement.
- 7.12. The Charges, unless expressly agreed otherwise, are based upon there being facility to make international calls or to make or receive calls whilst abroad. If these facilities are used, We may levy additional Charges (in accordance with Our tariff or otherwise notified by the Company) and/or require payment of a deposit. In the event that the Customer uses the Services abroad, Call Charges will include incoming calls received whilst abroad.
- 7.13. The Customer shall pay all Monthly Charge and Call Charges whether the Customer or someone else uses the Services (including use following a theft of the Equipment). The Call Charges will be calculated using the details recorded or logged by Us and not details recorded by the Customer.
- 7.14. The Monthly Charge shall continue to be payable during any period of suspension or restriction whether or not requested by the Customer in addition to any Charges for such suspension or restriction.
- 7.15. If the Network Provider exercises any right against the Company to withhold or claw-back payments made by the Network Provider to the Company, the Company shall be entitled to charge, claw-back or adjust payments, tariffs or discounts made or given by Us to the Customer to the extent that they are based on payments from the Network Provider.
- 7.16. If any Line is not being used for commercial purposes, which includes chargeable calls or data transmission during the first ninety (90) days following the date of connection, then We shall be entitled to charge, claw-back or adjust any payments, tariffs or discounts made or given in respect of that connection.
- 7.17. If the Customer receives a discount on the Company's standard tariff and/or line rental and the Agreement is terminated (other than validly by the Customer under Clause 9.6) prior to expiry of the Minimum Term, Renewed Term or Subsequent Term (as the case may be), then We shall be entitled (without prejudice to any other rights) to charge the Customer the difference between the Company's standard tariff and line rental and the discounted tariff or line rental for all calls made for the period prior to the date of termination.
- 7.18. We are not able to raise billing queries with the Network Provider unless made within six (6) months of the date of the Network Provider's invoice for call charges (the **Dispute Period**). Accordingly the Customer agrees that it shall not be entitled to raise any billing enquiries relating to Call Charges unless We receive notice in writing prior to three (3) months from the date of the Company's invoice.
- 7.19. If the Customer fails to achieve the Minimum Spend in any calendar month, it shall pay to the Company the difference between the actual value of the Call Charges (excluding VAT) and the Minimum Spend within fourteen (14) days of the date of the Company's invoice.

8. **SUSPENSION AND VARIATION OF THE SERVICES**

- 8.1. We reserve the right (at Our option) to terminate the Agreement or suspend or vary the Services without notice and without incurring any liability to the Customer:
- 8.1.1. if We are obliged or requested to comply with an order or instruction of, or a recommendation or request to take such action received from the Government, OFCOM, Radio Communications Agency, an emergency services organisation or a competent administrative authority;
- 8.1.2. if We reasonably believe the Customer has provided false or misleading details about the Customer;
- 8.1.3. if We reasonably suspects or believes that the Customer is in breach of Clause 6.2 or Clause 7.1; or

- 8.1.4. if We need to modify, expand, improve, maintain or repair the Services or vary Network capacity;
 - 8.1.5. if We need to vary the technical specification of the Services in order to comply with any relevant law or regulation or direction from a competent authority;
 - 8.1.6. if We advise the Customer that the Customers excessive use of Services is causing problems for other users, and the Customer is continuing to use the Services excessively;
 - 8.1.7. if We receive a serious complaint against the Customer which We believe to be genuine;
 - 8.1.8. if We reasonably believe that the Customer has used the Services for illegal or improper purposes in contravention of the Company's acceptable use policy or requirements;
 - 8.1.9. if the Customer fails to comply with its obligations under the Agreement including the obligation to pay the Charges; or
 - 8.1.10. the Customer's credit rating decreases at any time, and the Customer fails to supply reasonable security in response to a request from Us; or
 - 8.1.11. We are advised by the Network Provider that it is necessary or desirable because of technical problems or work on the System or for reasons of safety; or
 - 8.1.12. the Network Provider suspends its agreement with the Company.
- 8.2. We shall have the right, without notice, to suspend or deny access to the Network:
- 8.2.1. by any equipment which will or may adversely affect the operation of the Network or provision of the Services whether or not such equipment has been approved or tested by Us; or
 - 8.2.2. if We suspect fraudulent, criminal, immoral or illegal activities are being carried out, or are likely to be carried out, via that equipment,
 - 8.2.3. whenever it in its absolute discretion it considers necessary or desirable in order to monitor or reduce the incidence of fraud.
- 8.3. We will use reasonable endeavours to notify the Customer promptly of the details of any incident where We have relied on Our rights under Clause 8.2.3.
- 8.4. The Customer will be responsible for all Charges incurred in respect of the Services even if such Charges were incurred through, or as a result of, fraudulent or unauthorised use of the Services (other than by the Company or its representatives). We are not obliged to detect unauthorised or fraudulent use of the Services.
- 8.5. The Customer shall reimburse the Company for all reasonable costs and expenses incurred as a result of the suspension and any recommencement or variation of the Services where suspension or variation is implemented as a result of any act or omission of the Customer, its employees, agents or subcontractors.

9. **TERMINATION**

- 9.1. If upon the expiry of the Minimum Term, Renewed Term or Subsequent Term (as the case may be) the Customer has not:
 - 9.1.1. agreed a Renewed Term; or

- 9.1.2. given notice to the Company to terminate the Agreement in accordance with Clause 9.3,

We will continue to supply the Services to the Customer for the Subsequent Term.

- 9.2. If a Renewed Term has been agreed We will continue to supply the Services to the Customer for the Renewed Term.

- 9.3. The Customer may:

- 9.3.1. terminate the Agreement pursuant to Clause 7.8.3 and, in such case, Clause 7.8.4 shall apply;

- 9.3.2. terminate the Agreement (without incurring any Early Termination Fee) by giving a minimum of three (3) months prior written notice or thirty (30) days written notice for the Microenterprise or Small Enterprise Customer Not-For-Profit Customer of less than 10 individuals. to the Company such notice to expire on the expiry date of the Minimum Term, the Renewed Term or Subsequent Term (as the case may be); or

- 9.3.3. terminate the Agreement before the Minimum Term, the Renewed Term or Subsequent Term (as the case may be) has expired by giving a minimum of 90 days prior written notice to the Company but will have to pay the Early Termination Fee to Us unless the Customer has terminated the Agreement pursuant to Clause 9.6 or Clause 12.2.

- 9.4. We may terminate the Agreement for each Line by giving a minimum of four (4) weeks written notice, to be served on or at any time after the end of the Minimum Term, Renewed Term or Subsequent Term (as the case may be) for any applicable Line.

- 9.5. Termination of the Agreement pursuant to Clause 7.8, Clause 9.6 or Clause 12.2 will automatically terminate all Lines from the date of termination of the Agreement.

- 9.6. Either Party may immediately terminate the Agreement by written notice if the other party:

- 9.6.1. commits a material breach of any of the terms of the Agreement and (if such a breach is remediable) fails to remedy that breach within 14 days of receipt of notice in writing to do so;

- 9.6.2. commits a material breach that is not capable of being remedied; or

- 9.6.3. commits an act of bankruptcy or goes into or is put into liquidation (other than solely for the purposes of a reconstruction or amalgamation) or if a receiver or administrator is appointed over all or part of the other Party's assets or the other Party suffers seizure of any of its property for non-payment of monies owing.

- 9.7. We may, without prejudice to any of Our other rights under the Agreement, terminate the Agreement with immediate effect by notice in writing without liability to the Customer in the event that:

- 9.7.1. We are, for whatever reason, permitted or authorised to provide the Services;

- 9.7.2. the Network Provider terminates its agreement with the Company;

- 9.7.3. We reasonably consider that the breach, act, omission or default of the Customer may result in the Company's failure to comply with any applicable legislation or may place the Company in breach of its agreement with the Network Provider;

- 9.7.4. use by the Customer of the Network or the Services is, or is likely to cause damage to, interrupt or otherwise prevent the Company from supplying the Services to other customers or complying with obligations owed to other customers;
 - 9.7.5. the Customer fails to pay the Charges when due;
 - 9.7.6. such action is required in order to comply with any legislation;
 - 9.7.7. We have reasonable grounds to suspect that the Customer is involved in fraudulent or other unlawful activity.
- 9.8. If the Agreement is signed before We have completed Our credit check of the Customer, We shall be permitted to terminate the Agreement immediately by written notice if the Customer fails to pass the Company's credit policy.
- 9.9. We shall be permitted to terminate the Agreement immediately by written notice at any time for the reasons set out in Clauses 8.1.1 and 8.1.3.
- 9.10. The rights to terminate the Agreement given by this Clause 9 shall be without prejudice to any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.
- 9.11. On termination of the Agreement and of each Line:
- 9.11.1. We will disconnect the Customer from the System and the Customer must pay all Charges owed to Us;
 - 9.11.2. all numbers shall revert to the Company and the Customer shall return all SIMs that are not connected and permit the disconnection of all and any SIMs that are connected and shall indemnify the Company against all liability howsoever arising for such disconnection; and
 - 9.11.3. the Customer shall refund (and We shall be entitled to set-off against any payments due to the Customer) the pro rata value of the Bonus for each day from the date of termination to the end of 12 months from the date the Bonus was made available.
 - 9.11.4. the Customer shall immediately return to the Company any Equipment provided free of charge by the Company in good and complete condition, fair wear and tear excepted.
- 9.12. If the Customer wishes to change its supplier of mobile services after any of the relevant Minimum Term, Renewed Term or Subsequent Term (as the case may be) has expired, We will arrange for the transfer of the telephone number to the new supplier provided that the Customer has given the appropriate period of notice to terminate the Line and paid a reasonable administration fee and all Charges due to the Company and agreed in writing to pay for any unbilled calls.
- 10. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**
- 10.1. This Clause 10 sets out the Company's entire liability (including any liability for acts or omissions of the Company's employees, agents or subcontractors) to the Customer in tort, contract or otherwise arising in connection with the performance, non-performance or contemplated performance of the Agreement.
- 10.2. Except as set out in these Terms, the Company provides no warranties, conditions or guarantees as to the description or quality of the Services, and all warranties, conditions or guarantees implied by or expressly incorporated as a result of custom and practice, statute, common law or otherwise are hereby expressly excluded so far as permitted by law.

- 10.3. Subject to Clause 10.5, the Company's aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement shall not exceed £1,000,000 (one million pounds sterling).
- 10.4. Subject to Clause 10.5, We shall not be liable to the Customer whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise the Agreement, for:
- 10.4.1. any loss of profits; or
 - 10.4.2. loss of revenue;
 - 10.4.3. loss of income or business;
 - 10.4.4. depletion or loss of goodwill, reputation or similar losses;
 - 10.4.5. loss of anticipated savings;
 - 10.4.6. loss of or corruption of data or information;
 - 10.4.7. loss of use;
 - 10.4.8. loss of contract; or
 - 10.4.9. any indirect or consequential or special loss or damage or pure economic loss, costs, damages, charges or expenses whatsoever and howsoever caused.
- 10.5. Nothing in these Terms shall exclude or limit the liability of the Company for:
- 10.5.1. death or personal injury resulting from the Company's negligence; or
 - 10.5.2. for fraud or fraudulent misrepresentation; or
 - 10.5.3. for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability.
- 10.6. Subject to Clause 10.5, the Company shall not be liable for any direct or indirect loss or damage (whether physical, financial or otherwise) howsoever arising from the act or default of the Network Provider.
- 10.7. The provisions of this Clause 10 shall survive termination or expiry of the Agreement.
- 10.8. If your organisation is classified as a Microenterprise or Small Enterprise Customer Not-For-Profit Customer of less than 10 individuals, if we make changes to your service, we will give you notice of such changes. You may have the right to terminate your contract within one month after notification, at no additional costs, if any changes are not exclusively of benefit to you. This does not apply if the change is purely administrative and has no negative effect you.
11. **OWNERSHIP AND IPR**
- 11.1. Ownership of the SIMs and the System shall remain with the Company or its licensors, as appropriate. The Customer may only use the SIM on a limited licence to enable access to the Services, in accordance with these Terms. We may recall the SIMs at any time for upgrades, modifications, misuse or on termination of the Agreement.
- 11.2. All IPR in the Equipment, relating to the Lines and the subject matter of the Agreement shall vest in the Company or its licensors, as appropriate. The Customer:

- 11.2.1. Acknowledges that it shall have no licence, right, title or interest in or to any IPR of the Company or its licensors or the Company's Equipment, the SIMs or the System except as expressly set out in the Agreement;
- 11.2.2. may not include the Company's name or any other trade mark, brand name, logo or get-up associated with the Company without the Company's prior written consent.
- 11.3. This Clause shall survive termination or expiry of the Agreement.

12. CIRCUMSTANCES BEYOND REASONABLE CONTROL

- 12.1. For the purposes of the Agreement, **Force Majeure Event** means an event beyond the reasonable control of the Company including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 12.2. We will not be liable to the Customer for any failure or delay in performing Our obligations under the Agreement or supplying the Services:
 - 12.2.1. as a result of a Force Majeure Event;
 - 12.2.2. if another supplier delays or refuses the supply of an electronic communications service to the Company or any of the Company's suppliers and no alternative service is available at reasonable cost; or
 - 12.2.3. if legal or regulatory restrictions are imposed upon the Company or any of the Company's suppliers that prevent the Company or any of the Company's suppliers from supplying the Service.
- 12.3. If the Force Majeure Event prevents the Company from providing any of the Services for more than 12 weeks, We shall, without limiting its other rights or remedies, have the right to terminate the Agreement immediately by giving written notice to the Customer.

13. CONFIDENTIALITY AND DATA PROTECTION

- 13.1. During the term of this Agreement and for three (3) years after termination, the Customer shall:
 - 13.1.1. keep all Confidential Information confidential;
 - 13.1.2. disclose Confidential Information only to its employees that need to know it for the purposes contemplated by the Agreement; and
 - 13.1.3. use the Confidential Information exclusively for the purposes contemplated by the Agreement.

This Clause shall not apply to information that the Customer can prove:

 - 13.1.4. is in the public domain otherwise than by the Customer's breach;
 - 13.1.5. it already had in its possession prior to obtaining the information directly or indirectly from the Company; or
 - 13.1.6. a third party subsequently disclosed to the Customer free of restrictions on disclosure and use.
- 13.2. Both parties will comply with all requirements of the Applicable Data Protection Legislation. This Clause 13 is in addition to, and does not relieve, remove or replace, a party's obligations under the Applicable Data Protection Legislation.
- 13.3. The Company's Privacy Notice [\[insert LINK to the applicable Group Privacy Notice\]](#) sets out the scope, nature and purpose of processing by the Company, the duration of the processing and the types of personal data (where **Personal Data** has the meanings as defined in the Applicable Data Protection Legislation) and the Company collects.

- 13.4. Without prejudice to the generality of Clause 13.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data (as defined in the Applicable Data Protection Legislation) to the Company for the duration and purposes of the Agreement.

14. NOTICES

- 14.1. Notices must be in writing. The address for service on the Company (subject to any change notified by Us) is: Southern Communications Ltd, Glebe Farm, Down Street, Dummer, Hants, RG25 2AD. The address for service on the Customer is as set out in the most recent invoice.
- 14.2. Notices may be delivered by hand, sent by first-class mail, fax or e-mail. Correctly addressed notices if delivered by hand, shall be deemed to have been delivered at the time of delivery, if sent by first-class mail shall be deemed to have been delivered 72 hours after posting, correctly directed faxes shall be deemed to have been received instantaneously on transmission and in proving the service of any notice by e-mail, it will be sufficient to prove that such e-mail was sent to the specified e-mail address of the addressee.

15. ENTIRE AGREEMENT

- 15.1. It is acknowledged and agreed that the Agreement (including the documents and instruments referred to herein) (the **Documents**) shall supersede all prior representations arrangements understandings and agreements between the parties relating to the subject matter hereof and shall constitute the entire complete and exclusive agreement and understanding between the parties hereto;
- 15.2. The parties irrevocably and unconditionally waive any right they may have to claim damages for any misrepresentation arrangement understanding or agreement not contained in the Documents or for any breach of any representation not contained in the Documents (unless such misrepresentation or representation was made fraudulently);
- 15.3. It is further acknowledged and agreed that no representations arrangements understandings or agreements (whether written or oral) made by or on behalf of any of the other parties have been relied upon other than those expressly set out or referred to in the Documents.

16. GENERAL

16.1. Assignment and other dealings.

- 16.1.1. We may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of Our rights under the Agreement and may subcontract or delegate in any manner any or all of Our obligations under the Agreement to any Authorised Party, third party or agent.
- 16.1.2. The Customer shall not, without Our prior written consent, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Agreement.

- 16.2. **Severance.** Each of the Clauses of these Terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining Clauses will remain in full force and effect.
- 16.3. **Waiver.** Any failure by the Company to exercise or enforce its right under the Agreement shall not be a waiver of that right, nor prevent Us from exercising or enforcing such right at a later time.
- 16.4. **No partnership or agency.** Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

- 16.5. **Third parties.** A person who is not a party to the Agreement shall not have any rights to enforce its terms.
- 16.6. **Variation.** Except as set out in these Terms, no variation of the Agreement, including the introduction of any additional terms and conditions, shall be effective unless it is agreed by the Company in writing and signed by an authorised representative of the Company.
- 16.7. **Governing law.** The 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 by, and construed in accordance with English law.
- 16.8. **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).