



yappl

# Terms & Conditions

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**Business. Better Connected.**

Tel: 01773 522300 | [enquiries@yappl.com](mailto:enquiries@yappl.com) | [www.yappl.com](http://www.yappl.com)  
4 Maisies Way, South Normanton, Alfreton, DE55 2DS

## **1. DEFINITIONS**

**1.1** In these Conditions the following terms shall have the following meanings:

“Airtime” means the wireless airtime and network capacity procured by the Company from the Network Operator;

“Additional Charges” means Charges which may be made (in addition to the Annual Support Charge) for additional services supplied pursuant to condition 6.3.3;

“Annual Support Charge” means the support charge for the Maintenance Services as set out on the Order Form save where, and to the extent that, any Promotional Terms apply;

“Broadband Acceptable Use Policy” means the Company’s policy for the acceptable use of its broadband Service, which is available at [www.Yappl.com](http://www.Yappl.com) (or at such other URL as is notified to the Customer by the Company from time to time);

“Business Day” means any and all days from Monday to Friday (inclusive) in any week but excluding English bank holidays or public holidays;

“Call Commissions” means such sums payable by the Company to the Customer in accordance with condition 8.2.7;

“Call Charges” mean the charges payable by the Customer for accessing the Services, calculated by charging a rate per unit of usage for the element of the Services used;

“Carrier” means the relevant third party public telecommunications operator or third party network service provider;

“Charges” means the charges payable by the Customer to the Company for Services performed (excluding Installation Services) and/or Equipment provided. These include, without limitation Call Charges, Line Rental Charges, connection charges, Equipment prices, Software Licence fees, Minimum Spend Re-claim and all other charges payable by the Customer under these Conditions or for using the Services;

“Code” means any code of practice for Premium Rate Services published by PhonepayPlus (or equivalent) from time to time;

“Commencement Date” means the commencement date of the Minimum Term of the Maintenance Services being the date of Delivery of the relevant Equipment or such other date as specified on the Order Form, provided that if the Customer shall make any further orders for Services or Equipment after the Commencement Date, the commencement date shall, in relation to those Services or Equipment, be the date that is the later of the date of the dispatch of Equipment or the time the Services are activated;

“Company” means Yappl Limited a company registered in England and Wales with company registration number 10705246 whose registered office is Contract House, Turnpike Business Park, Alfreton, Derbyshire, DE55 7AD;

“Company Number” means as defined within the definition of “Number” below;

“Conditions” shall mean this document as varied by time to time by the Company;

“Connection Date” means the date when the Carrier, having received the relevant information from the Company, is in a position to and has agreed to commence provision of the Fixed Network Services to the Customer;

“Contract” means the agreement between the Customer and the Company for the provision of the Equipment and/or Services (or any of them) incorporating these Conditions, the Order Form and any other Service Specific Conditions and/or Promotional Terms incorporated into the Contract in accordance with condition 2.1;

“Contract Year” means a period of twelve months commencing from either (i) the Effective Date; or (ii) any subsequent annual anniversary of the Effective Date;

“Contractor” means any person who, on or prior to the Effective Date of the Contract (and/or prior to the date of the transfer of such services to the Company), supplied services to the Customer which were the same as or similar to those provided or to be provided by the Company to the Customer under that Contract;

“Customer” means the person, firm or company specified on the Order Form and any other person appearing to act within that person’s, firm’s, or company’s authority and includes, where relevant, the Customer’s permitted assigns;

“Customer Equipment” means any equipment or materials used by the Customer to access the Services not supplied by the Company to the Customer;

“Data Protection Legislation” means all applicable privacy and data protection laws including the Data Protection Act 2018, General Data Protection Regulation ((EU) 2016/679) and any applicable national implementing laws, regulations and secondary legislation in England and Wales relating to the processing of Personal Data and the privacy of electronic communications, as amended, replaced or updated from time to time, including the Privacy and Electronic

Communications Directive (2002/58/EC) and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426);

“Delivery” means the point at which the Equipment arrives at the Customer’s Site immediately prior to the unloading of such Equipment from the delivery vehicle and ‘Delivered’ shall be construed accordingly;

“Effective Date” shall mean the date on which the Company signs the relevant Order Form and all conditions precedent have been satisfied;

“Emergency Call” means a call to 999 or 112 or any other number associated with UK emergency services;

“Employee” means any employee, former employee, consultant, former consultant, contractor, former contractor, agent or former agent of the Customer or any Contractor or Subcontractor;

“Employment Regulations” means any laws in any country in the world implementing the provisions of EC Directives No. 77/187 dated 14 February 1977, 2001/23 dated 12 March 2001 or equivalent or similar regulations that protect the rights of employees on a transfer of a business or undertaking or any laws providing for the automatic transfer of employees on transfer of the whole or part of an undertaking, business or service provision change, including in the United Kingdom the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended or replaced from time to time;

“End User Service” means such entertainment, live or recorded information or other service (including, but not limited to, Premium Rate Services) made available by the Customer from time to time for itself or any Information Provider;

“Equipment” means the equipment and/or software related products to be supplied under the Contract, including any Mobile Equipment (with the exception of a SIM Card) as set out on the Order Form (and also has extended meanings under condition 5.4.2 and condition 6 in the case of and for the purposes of those conditions only);

“Fixed Network Services” means the network services (including where applicable website hosting) more particularly detailed on the Order Form (as modified or substituted by the Company from time to time) to be provided hereunder by the Company to the Customer;

“Force Majeure Event” has the meaning given to it in condition 20.14;

“General Conditions” means the general conditions of entitlement set by OFCOM, in accordance with section 45 of the Communications Act 2003, as may be amended, modified or replaced from time to time;

“GPRS Bearer” means the general packet radio service provided by the Network Operator that forms part of the Airtime;

“Group” means together a person, its Parent Undertakings, its Subsidiary Undertakings and the Subsidiary Undertakings of any of its Parent Undertakings from time to time;

“GSM Gateway” means a device that transfers a fixed line call to a radio network via a SIM Card and radio channel resulting in a mobile to mobile call rate rather than a fixed line to mobile call rate;

“Information” means information or other content which is made available to callers and which represents the subject matter of a Premium Rate Service in whole or in part;

“Information Provider” means any organisation or person providing Information or with whom the Customer contracts in respect of the provision of Premium Rate Services;

“Installation” means the physical installation of Equipment at the Site; “Installation Services” means services for the Installation of Equipment;

“Installed Equipment” means any Equipment that is to be installed for the Customer by or on behalf of the Company;

“Intellectual Property Rights” means all intellectual and industrial property rights including patents, know-how, registered trade marks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trade marks, rights to prevent passing off for unfair competition, copyright, database rights, topography rights and any other rights in any invention, discovery or process, in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions;

“Line Rental Charges” means the monthly or periodic charges payable by the Customer to access some parts of the Services;

“Maintenance Contract” means a contract that provides for the supply of Maintenance Services;

“Maintenance Services” means the maintenance services more particularly detailed on the Order Form (as modified or substituted from time to time) to be provided hereunder by the Company to the Customer;

“Minimum Spend Re-Claim” where a Minimum Spend Requirement is specified in the Order Form the Minimum Spend Re-claim shall be calculated as the greater of:

- a) Minimum Spend Requirement ÷ number of months of Minimum Term x number of months left in Minimum Term from the date of termination; or
- b) Minimum Spend Requirement – Overall Spend.

Reference to a month in this definition shall be to a calendar month or part thereof;

“Minimum Spend Requirement” the amount specified in the Order Form for a particular Service (where applicable);

“Minimum Term” shall mean the term specified in the Order Form;

“Mobile Web” means full colour internet and email access via a Mobile Device;

“Mobile Device” means a mobile telephone incorporating a SIM Card;

“Mobile Equipment” any mobile phone or other mobile related material (with the exception of a SIM Card) supplied to the Customer by the Company;

“Mobile Services” any service including but not limited to: provision of Airtime; Equipment; GPRS Bearer; Mobile Web; SMS; SMS Land to Mobile Text Messaging Service; location based services and any wireless services, supplied by the Company to the Customer in accordance with these Conditions and as set out in the Order Form;

“Monthly Minimum Call Spend” means the minimum monthly sum of money as set out on the Order Form that will be spent by the Customer on call charges commencing on the Connection Date;

“Network” means the third-party Mobile Device digital network over which some of the Services are provided;

“Network Operator” means the operator of the Network to which a SIM Card is connected;

“Non-Geographic Service” means any service comprising a non-geographic Number and/or Company Number and i bound calls to the relevant number;

“Normal Working Hours” means 9.00am to 5.30pm on any Business Day;

“Number” means either (i) a telephone number from within a national number group range (used by the Customer in connection with an End User Service) as may be allocated by the Company to the Customer from time to time (“Company Number”) or (ii) a telephone number not being a Company Number and which may be programmed by the Company for the purposes of making available a Fixed Network Service in respect of such telephone number;

“OFCOM” means the Office of Communications and/or any successor body;

“Order Form” means the order form to which either these Conditions are attached or which is expressed to be subject to these Conditions which sets out the details of the order, including (without limitation) the Customer’s details and the Equipment and/or Services to be supplied under the Contract;

“Overall Spend” where a Minimum Spend Requirement is specified in the Order Form, the aggregate Charges incurred and paid by the Customer to the Company during the Minimum Term for the Service to which the Minimum Spend Requirement relates but excluding any charges relating to Equipment;

“PAC” means a unique code used to signify the incumbent service providers consent to a Customer being entitled to request and have their mobile number ported to an alternative service provider;

“Parent Undertaking” has the meaning given to it in section 1162 of the Companies Act 2006;

“Personal Data” has the meaning given to it in the Data Protection Legislation;

“PhonepayPlus” means the regulatory agency for Premium Rate Services or any similar body which may be appointed in addition to or in substitution of PhonepayPlus by any competent authority;

“Port” means the transfer of a mobile telephone number connected to a Network from that Network to another Network operated by a different Network Operator;

“Premium Rate Service” means any service comprising live or recorded telephone information and/or entertainment and or similar services which are charged at a premium and which are defined as such in the Code;

“Price” means the price payable by the Customer for the Equipment and Installation Services (where applicable);

“Promotional Terms” means any additional terms which apply to the Price and/or Charges and which may be specified on the Order Form and/or notified by the Company in writing to the Customer in relation to the Equipment and/or Services, at the time the relevant Order Form was submitted;

“Rate of RPI” means the retail price index percentage change over 12 months announced by the Office for National Statistics (or successor body) in the month preceding an RPI Increase.

“Relevant Laws” means any statute, regulation, bylaw, ordinance or subordinate legislation which is in force for the time being to which a party is subject; the common law as applicable to the parties (or any one of them); any binding court order, judgment or decree applicable to the parties (or any one of them); and any applicable industry code, policy, guidance, standard or accreditation terms (i) enforceable by law which is in force for the time being, and/or (ii) stipulated by any regulatory authority to which a party is subject, in each case, for the time being;

“Roaming Policies” the Company’s roaming policies in force from time to time as notified to the Customer in writing;

“RPI Increase” means an increase in the Charges pursuant to condition 8.2.9 or condition 8.3.3;

“RRP Line Rental Charges” the recommended retail prices in respect of the Line Rental Charges stated in the Order Form;

“Service(s)” means any of the services supplied by the Company and as set out on the Order Form including, without limitation, the Mobile Services, Installation Services, the Fixed Network Services and the Maintenance Services, (as applicable);

“Service Specific Conditions” means any additional terms and conditions which are to apply to the Contract as specified on the Order Form or these Conditions in respect of specific Services, for example (and without limitation) the Broadband Acceptable Use Policy (but excluding Promotional Terms);

“SIM Card” means a subscriber identity module supplied by the Network Operator containing data enabling use of certain Equipment on the Network;

“Site” means a place of business at which the Services and/or Equipment are to be provided as specified on the Order Form;

“Small Business Customer” means a Customer who has been identified on the Order Form as being a Customer who: (i) is not a communications provider; and (ii) has 10 or fewer workers (whether as employees or volunteers or otherwise);

“SMS” means the short messaging service enabling text messages to be sent to and from Mobile Devices;

“SMS Land to Mobile Text Messaging Service” means SMS for text messages to be sent to SIM Cards via a software application in conjunction with a private or virtual private circuit linking the Customer’s wireless private or virtual private data network with wireless services;

“Software” means the computer programs, software packages or modules or any part of the same that are supplied by licensors or the Company;

“Software Licence” means the licencing terms and conditions setting out obligations in relation to the use of Software and the rights of the user and owner of Software;

“Special Entry” means any additional entry to the appropriate phone book requested by the Customer in addition to the regular information published about the Customer in any phone book issued by or on behalf of British Telecommunications plc;

“STAC” means the service termination authorisation code which is a unique code used to signify the incumbent service provider’s consent to a Customer being entitled to switch to an alternative service provider without the Customer porting their mobile number;

“Subcontractor” means any subcontractor of a Contractor;

“Subsidiary Undertaking” has the meaning given to it in section 1162 of the Companies Act 2006;

“Subsidy” an amount equal to the total aggregate value of the following:

- a) any cashback given to the Customer by the Company;
- b) an amount equal to any Equipment fund provided to the Customer by the Company; and
- c) an amount equal to the difference between the cost of any subsidised Equipment provided to the Customer by the Company and the actual cost incurred by the Company in the supply of such Equipment to the Customer;

“Suspension Lifting Fee” means the Company’s charges for lifting any suspended Services from time to time as set out in the Tariff.

“Tariff” means the Company’s tariff for calculating Charges for each of the Services and Equipment which is set out at [www.Yappl.com](http://www.Yappl.com) or at such other URL as is notified to the Customer by the Company from time to time, provided that in the event a tariff is no longer included in the Company’s current tariff list, the charges in respect of that tariff will be the charges that were specified in the tariff list immediately before the tariff was removed;

“Term” means the term of the Contract as set out in the Order Form;

“User Instructions” has the meaning given to it in condition 6.5.2; and

“VAT” means value added tax.

- 1.2** In these Conditions, 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 a party includes its personal representatives, successors or permitted assigns;
  - 1.2.3** a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
  - 1.2.4** any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
  - 1.2.5** unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular; and
  - 1.2.6** a reference to writing or written includes e-mails.

## **2. CONTRACT FORMATION**

The Order Form constitutes the Customer's offer to the Company to purchase the relevant Equipment and/or Services. A Contract shall come into force and bind both parties once:

- 2.1.1** the Customer's offer is accepted by an authorised representative of the Company signing the Order Form or if the Order Form is not signed, when the Company supplies the Equipment and/or Services to the Customer;
  - 2.1.2** the credit status of the Customer being to the satisfaction of the Company (in the Company's sole and absolute discretion); and
  - 2.1.3** in respect of a Contract which provides for the supply of Fixed Network Services, the Company carrying out a survey and or testing which reveals to the Company's satisfaction that it is possible for the Company to supply the Fixed Network Services; and that the Company determines that any details or information used by the Company to determine the Charges applicable or any other terms of the Contract, whether supplied by the Customer or otherwise, are accurate and not misleading. The Charges may change depending on the results of such survey (including, without limit, where there are excess construction charges associated with a Site).
- 2.2** All quotations, estimates and tenders are given and contracts are made by the Company subject to and only upon the terms of the Contract which cannot be varied unless agreed in writing by the Company in accordance with condition 17. These Conditions supersede all other terms, conditions and warranties which are implied by law or 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.
- 2.3** In the event of a conflict or inconsistency between any of the documents which constitute the Contract, the following descending order of precedence shall apply:
- 2.3.1** the Order Form;
  - 2.3.2** any applicable Service Specific Conditions;
  - 2.3.3** any applicable Promotional Terms;
  - 2.3.4** the Conditions;
  - 2.3.5** any other documents referred to on the Order Form or in these Conditions.
- 2.4** For the avoidance of any doubt, the fact that the Promotional Terms are silent on a particular matter whereas any of these Conditions, the Order Form and/or the Service Specific Conditions make provision for the same, shall not be deemed to give rise to a conflict or inconsistency.
- 2.5** Any illustrations, samples or descriptive material provided by the Company, including drawings, specifications of weight, capacity or dimensions and particulars of shade shall not form part of the Contract but shall be treated as approximate only unless specifically stated otherwise. Any savings quoted are estimates and illustrative only. All documents containing such illustrative or descriptive material (as well as the copyright therein) shall remain the exclusive property of the Company and must not be copied or loaned or transferred by the Customer. The Customer acknowledges and agrees that in entering into the Contract, it has not relied on any such illustrations, samples or descriptive material.
- 2.6** Each order for Equipment and/or Services (except in the case of Installation Services which will form part of the contract for the supply of Equipment) shall (for the purposes of this condition 2.5) be deemed (subject to condition 2.1) a separate Contract (whether or not included on the same Order Form) to the effect that any delay or failure to supply Equipment and/or Services shall not entitle the Customer (to the extent that any such entitlement exists) to terminate the Contract for other Equipment and/or Services or any other contract entered into under these Conditions.
- 2.7** Any undertaking by the Customer not to do any act or thing shall be deemed to include an undertaking that the

Customer shall procure that any user of the Services and/or Equipment including (without limitation) any of the Customer's employees, agents or contractor, shall not do such act or thing.

- 2.8** The Customer warrants and undertakes to the Company that it is entering into the Contract for the purposes of its trade, business and/or profession, and is not acting as a consumer.
- 2.9** Any quotation given by the Company shall not constitute an offer and is only valid for the period stated on it.
- 2.10** All of these Conditions shall apply to the supply of both Equipment and Services except where application to one or the other is specified.

### **3. CUSTOMER'S ORDER, SPECIFICATIONS AND OBLIGATIONS**

- 3.1** The Customer shall be responsible for providing the Company with all information relevant to the supply of the Equipment and the provision of Services (as the case may be) within sufficient time to enable the Company to duly perform the Contract.
- 3.2** Without limitation to the generality of condition 3.1, the Customer shall ensure that the details set out on the Order Form and any drawings, sketches, specifications, descriptions or other instructions supplied by the Customer or any agent or representative of the Customer in connection with the supply of any Equipment or Services (as the case may be) by the Company are accurate and fully describe the Customer's requirements and the Customer shall be liable for each liability, loss, injury, damage, demand, claim, cost, charge or expense which may be incurred or sustained by the Company by reason of or arising directly or indirectly out of or in respect of any inaccuracy in respect of any such drawings, sketches, specifications, descriptions or other instructions in relation thereto, or where the compliance with, or use of any such any details, drawings, sketches, specifications, descriptions or other instructions by the Company constitutes the infringement of the Intellectual Property Rights or other rights of a third party.
- 3.3** The Customer shall:
  - 3.3.1** co-operate with the Company in all matters relating to the Services;
  - 3.3.2** provide the Company with such information and materials as the Company may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
  - 3.3.3** procure the compatibility of its equipment and any Customer Equipment, processes and systems with the Services;
  - 3.3.4** keep confidential and not disclose to any third party any Customer account password, identification code, number, or name issued by the Company permitting access to the Services or Equipment;
  - 3.3.5** obtain and maintain all necessary licences, permissions and consents which may be required for receiving the Services before the date on which the Services are to start;
  - 3.3.6** not knowingly distribute malicious software or permit the hacking or unauthorised modification of any Equipment or Software or the Network;
  - 3.3.7** comply with any applicable fair use policy that the Company may issue from time to time;
  - 3.3.8** comply with all applicable regulatory provisions, laws, codes of conduct and guidelines;
  - 3.3.9** comply with the Roaming Policies (where relevant);
  - 3.3.10** not use the Equipment or Services in a manner which would or could impair the Network; and
  - 3.3.11** not use the Equipment or Services in any way which would or would likely cause any detriment to the Company's reputation or commercial standing.
- 3.4** Any Services provided to the Customer by the Company but that are not contained in the Order Form shall, unless otherwise agreed by the Customer and the Company, be governed by this Contract

### **4. SUPPLY OF EQUIPMENT AND INSTALLATION SERVICES**

In the event that the section related to Equipment is completed on the relevant Order Form, this condition 4 shall apply to the Contract.

#### **4.1 DELIVERY**

- 4.1.1** In consideration of the Customer's payment of the Price pursuant to condition 9.1 the Company will take reasonable steps to deliver the Equipment and, where applicable supply the Installation Services using reasonable skill and care, within an estimated period of time. Such period shall commence from the date of receipt by the Company of all instructions and information required for the execution of the Contract. The Company does not guarantee that Delivery or installation will take place within such period, and time is not (and may not be made) of the essence of the Contract.

- 4.1.2** Without prejudice to the generality of condition 3, the Customer shall be responsible for providing the Company with any necessary instructions for delivery of the Equipment within a reasonable period prior to the estimated delivery date advised by the Company to the Customer.
- 4.1.3** If the Customer fails to take delivery of the Equipment or if by reason of instructions or lack of instructions from the Customer the delivery of any Equipment in accordance with the Contract is delayed for more than twenty-eight days after the Company has given notice in writing to the Customer that the Equipment is ready for delivery the Equipment shall be deemed to have been Delivered. The Customer shall pay to the Company (in addition to the Price) the reasonable costs of storing, protecting and preserving such Equipment after the expiry of such period of twenty-eight days.
- 4.1.4** If the Contract provides for Delivery by instalments, any delay in the Delivery of any instalment shall not entitle the Customer to treat the Contract as at an end or to reject any other instalment.
- 4.1.5** If by reason of refusal or delay of delivery or installation the Equipment shall be deemed to have been Delivered in accordance with condition 4.1.3 then payment shall be made by the Customer to the Company of the balance of the Price within seven days of such deemed delivery date.
- 4.1.6** The Company reserves the right to make further charges in respect of Installation Services if, as a result of the Customer's acts or omissions, installation cannot be completed on the agreed date.
- 4.1.7** On completion of the installation of the Installed Equipment, the Company or its authorised sub-contractors will carry out acceptance testing to confirm that the relevant Service is operational. Upon the completion of such acceptance testing to the reasonable satisfaction of the Company, the Company shall provide a written sign-off confirming completion of the installation. Unless the Customer notifies the Company within 3 Business Days of receipt of the written sign-off that the installation has not been carried out properly the Customer shall be deemed to have accepted that the installation has been accepted.
- 4.1.8** If the Customer notifies the Company within 3 Business Days of receipt of the written sign-off (issued under condition 4.1.7 above) that it reasonably believes the installation has not been carried out properly the Company shall have due regard to the Customer's representations and take any steps the Company believes are reasonably necessary. Once the Company has taken such steps that it believes are reasonably necessary (if any) it shall provide a written sign-off confirming completion of the installation. On receipt of the sign-off the Customer shall be deemed to have accepted that the installation has been accepted.
- 4.1.9** Following acceptance pursuant to conditions 4.1.7 and 4.1.8 above, the Company will not be responsible for providing further installation and implementation services to the Customer and if any such services are required, the Company may charge the Customer reasonable fees to be agreed with the Customer.
- 4.1.10** The Customer agrees that it shall maintain at its own expense, policies of insurance against public liability and other third party liability in connection with any injury (including death), loss or damage to any persons or property belonging to any third party arising out of or in connection with the Customer's use of the Services, including the storage of the Installed Equipment at the Site.
- 4.1.11** If the Company or its authorised sub-contractors cause any damage to the Site during the installation of the Installed Equipment due to the negligence of the Company or its authorised sub-contractors, the Company will cover the reasonable costs of any work that is needed to restore the Site to the condition it was in immediately before the damage occurred. In all other cases, restoration is the Customer's responsibility.

## **4.2 CONNECTION**

- 4.2.1** The responsibility for the cost of connection to the public switch telecommunications network and/or the provision of additional lines to the public telephone system lies with the Customer.
- 4.2.2** The Customer shall ensure that a suitable earthed mains electricity supply of 230 volts ac conforming to the Institution of Engineering and Technology's IEE Wiring Regulations in force at the date of Delivery is available for each piece of Equipment within 3 metres of such pieces of Equipment.
- 4.2.3** The Customer shall prepare the Site(s) (at its own cost) in accordance with the Company's instructions so that any necessary Equipment can be installed and provide a suitable and safe working environment.
- 4.2.4** The Customer shall adhere to the Equipment manufacturer's power and environmental specifications (as published from time to time) and confirm to all local electrical code requirements.
- 4.2.5** The Customer shall provide power to Equipment via an adequate number of circuits provisioned according to the Equipment manufacturer's specification.
- 4.2.6** The Customer shall be responsible for the cost to supply and install any and all infrastructure required to accommodate the power and environmental specifications as specified by the Equipment manufacturer (as published and as amended from time to time).
- 4.2.7** The Customer shall (at its cost) install an uninterruptable power supply at the Site providing not less than 60 minutes of standby power at the Site for the Equipment.



**4.2.8** The Customer shall notify the Company of any health and safety and security policies in relation to the Site and ensure all necessary and appropriate authorities, licences and consents have been obtained and complied with in order to allow the Company to install the Equipment.

**4.2.9** The Customer shall grant the Company (and any persons authorised by the Company) a licence to install, store, operate, maintain and support any Installed Equipment at the Site to enable provision of the Services.

#### **4.3 PROPERTY AND RISK**

**4.3.1** The risk of loss or damage to the Equipment and where applicable, SIM Cards shall vest with the Customer from the moment of Delivery or deemed Delivery (as described in condition 4.1.3) irrespective of whether title to the Equipment has passed or payment or part payment made has been made therefor. From the moment of Delivery or deemed Delivery (as described in condition 4.1.3) the Customer shall be responsible for insuring the Equipment.

**4.3.2** Notwithstanding Delivery and the passing of risk, the legal and beneficial interest in the Equipment and, where relevant, SIM Cards supplied under the Contract shall not pass to the Customer until the Company has received in cleared funds payment in full of all sums due for the Equipment and Installation Services (where applicable). If any Equipment is provided free of charge, title shall pass to the Customer on delivery. Notwithstanding the foregoing, SIM Cards shall remain the property of the Company or relevant third party owner at all times.

**4.3.3** Until such time as the legal and beneficial interest in the Equipment has passed to the Customer, the Customer shall hold such Equipment as the Company's fiduciary agent and bailee, and keep such Equipment properly stored, protected and kept free from any loss, damage, and/or deterioration and insured against all risks for its full reinstatement value and identified as being the Company's property until title passes.

**4.3.4** Until such time as the legal and beneficial interest in the Equipment passes to the Customer, the Company shall be entitled at any time to require the Customer (at the Customer's cost) to deliver up the Equipment to the Company at its nominated location and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Equipment is stored and remove and repossess such Equipment.

**4.3.5** The Customer shall not, without the prior written consent of the Company, pledge or in any way charge by way of security for any indebtedness, or alter or modify, any Equipment which remains the property of the Company, but if the Customer does so all monies owing by the Customer to the Company shall (without prejudice to any right or remedy of the Company) forthwith become due and payable.

#### **4.4 LIABILITY FOR REPLACEMENT OR REPAIR**

**4.4.1** Subject to the following sub-conditions of this condition 4.4, at the Company's option, for a period of twelve months from the date of Delivery or Installation (where applicable) whichever is the later event, without cost to the Customer, the Company will (as applicable) either repair or replace any defective Equipment to make good any defect which shall be proved to the satisfaction of the Company to be the result of faulty design, materials or manufacture or re-perform any Installation Services (only where the Company has supplied Installation Services in respect under the Contract) which are, in the reasonable opinion of the Company, defective provided that the Company shall have no liability for any such defects unless the Customer notifies the Company, within three Business Days from Delivery or the completion of the Installation Services (where applicable) whichever is the later event, of any defect arising prior to and/or on Delivery or Installation (as the case may be) and (subject to condition 4.4.2) within twenty four hours of any latent defect arising within such twelve month period.

**4.4.2** If the Customer enters into an agreement for maintenance of the Equipment with a third party, the Company's liability for defects in the Equipment shall cease, save for the Company's liability for defects arising on or before Delivery of the Equipment in accordance with condition 4.4.1.

**4.4.3** Where the Company is to supply Maintenance Services in respect of the relevant Equipment under the Contract, condition 6 shall apply and in the event of any conflict between this condition 4.4 and condition 6, the provisions in condition 6 shall prevail.

**4.4.4** The liability of the Company shall apply only to defects that appear under proper use and under conditions of operation not more onerous than those declared to the Company by the Customer prior to entering into the Contract, and in particular shall not apply to defects which arise from neglect, misuse, or faulty maintenance of the Equipment by the Customer or any of its other contractors, or from alterations carried out without the prior written consent of the Company or from repairs carried out improperly by the Customer or its servants or agents or arising from normal wear and tear.

**4.4.5** Any repaired or new parts provided by the Company under this condition 4 will be delivered by the Company to the Customer free of charge. Any Equipment (or part) which has been returned to the Company and replaced by the Company shall become the property of the Company.

**4.4.6** The Company reserves the right to charge on a quantum meruit basis for the costs of repairs and/ or call-outs if the Company considers that the damage has resulted from misuse or unauthorised repair or alteration of the Equipment by the Customer or any third party, or from normal wear and tear.

**4.4.7** Neither acknowledgement of receipt, nor investigation, by the Company of any claim or consent given hereunder shall constitute or imply admission by the Company of any liability in respect of such claim.

**4.4.8** Save where the Customer has purchased Maintenance Services in respect of the relevant Equipment (in which case condition 6 shall apply) and subject to condition 11.5, the rights and remedies provided to the Customer under this condition 4.4, in connection with any defect in the Equipment resulting from faulty design, materials or manufacture or Installation or defect in the Installation shall be the Customer's exclusive remedies in respect of the same.

#### **4.5 TRADE MARKS AND BRANDING**

**4.5.1** The Company shall be entitled to fix legends bearing the Company's and/or its third party supplier's name and/or trade-marks or other marks to any Equipment. The Customer shall ensure that no such marks are removed or defaced at any time.

#### **4.6 GENERAL TERMS RELATING TO THE SUPPLY AND USE OF EQUIPMENT**

**4.6.1** The Customer must satisfy itself that all Equipment is suitable for its intended purpose and requirements. Mobile Equipment may be subject to additional terms and conditions (such as those contained in user manuals and in box documentation) which the Customer accepts by retaining and using such Mobile Equipment. If the Customer does not consent to such additional terms it must send the relevant Mobile Equipment to the Company at its own cost within 7 days of delivery.

**4.6.2** The Company shall use reasonable endeavours to procure that the Customer shall have the benefit of any warranties that the Company has from the relevant manufacturer of the Mobile Equipment during the period which such warranties subsist.

**4.6.3** If during the manufacturer's warranty period the Mobile Equipment has a fault or becomes faulty as a result of a defect the Customer shall notify the Company immediately and follow the repair or replacement process in force for the manufacturer of the defective equipment from time to time as notified to the Customer by the Company. If the defect is not covered by the manufacturer's warranty or arises as a result of damage, misuse or other cause then the Customer must notify the Company as soon as reasonably practicable and send the affected Mobile Equipment to the Company at its own cost. The Company shall then provide a quote for repairing or replacing the affected Equipment. In the event that the Customer does not accept the quote or if the affected Mobile Equipment is in the view of the Company beyond economical repair, the Customer must pay the Company an administration fee of £30 exclusive of VAT and the cost incurred by the Company in returning the affected Mobile Equipment to the Customer.

**4.6.4** In the event that the Mobile Equipment or SIM Cards are not in accordance with the Order Form, the Customer must notify the Company in writing within 10 Business Days following receipt of the Mobile Equipment or SIM Cards, and the Company shall promptly replace the Mobile Equipment and/or SIM Cards.

**4.6.5** The Customer must notify the Company immediately if it becomes aware of the loss, theft or damage of any Mobile Equipment, and shall remain liable for all Charges incurred by the use of any lost or stolen Mobile Equipment until reported to the Company. Data on any lost or stolen Mobile Equipment is at the Customer's risk and the sending of any command for remote wiping of data (such as a device management solution) is the responsibility of the Customer. The Customer must send any remote wipe command prior to reporting the Mobile Equipment lost or stolen and the Company will use reasonable endeavours to notify the relevant Network Operator to carry such command across the Network. The Customer acknowledges that once the loss or theft of the Equipment is notified to Company, the Company will terminate the ability of the Mobile Equipment to communicate with the Network.

**4.6.6** The Company may recall, update or have access to the Mobile Equipment as reasonably required to enhance or maintain the quality of Services or to update Software, but will endeavour to minimise any disruption caused to the Customer.

**4.6.7** The Customer acknowledges that Customer Equipment not authorised for use by the Company may not be compatible with the Network or result in reduced or impaired functionality.

**4.6.8** The Customer shall not tamper with or attempt to repair or service the Mobile Equipment and acknowledges that any attempt to do so is likely to result in any manufacturer warranty referred to in condition 4.6.3 above becoming invalid.

**4.6.9** The Customer is permitted to use the Mobile Equipment (and associated Services) to access internet based services but the Company shall have no responsibility in respect of the same and shall not be liable for any loss, damage or expense suffered by the Customer in connection with such use of internet based services.

**4.6.10** The Customer shall not modify, tamper, move or interfere with any Installed Equipment in any way other than to assist with any installation and implementation, without the prior written consent of the Company, nor to use the Installed Equipment for any purpose other than for the Services;

**4.6.11** Unless otherwise agreed by the Company in writing, the Customer shall not use the Equipment or Services for making any automated communications (whether by way of GSM Gateway, or by way of any device used to forward or divert calls with the intention of reducing Charges (except where any such device is supplied as part of a Service by the Company to the Customer in accordance with these Conditions, or other method)), whether by way of calls, texts or other messaging or data sending method or e-mail.

**4.6.12** The Customer shall procure the Services and Equipment are used for its own use as authorised by and in accordance with these Conditions and it will not re-sell, re-supply or otherwise distribute the Services and Equipment and shall procure anyone authorised to use such Services and Equipment under these Conditions shall not do so.

- 4.6.13** The Customer shall comply with any manuals, guidance and any reasonable instructions issued by the Company and any relevant third party manufacturers and suppliers concerning the use of the Equipment, Services and Network and co-operate with the Company's reasonable security and other checks (which may include the Company making calls or sending communications to the end users).
- 4.6.14** The Customer shall only use Equipment or Customer Equipment which is authorised by the Company (such authorisation not to be unreasonably withheld) and compatible for use on the Network.
- 4.6.15** The Customer shall inform the Company upon becoming aware of any suspected or actual unauthorised use of the Services or Equipment and take all steps necessary, including any steps requested by the Company, to prevent such use.
- 4.6.16** The Customer shall not use the Equipment or Services for any purposes which: (i) may be illegal, fraudulent, abusive or in a manner which may constitute a nuisance; (ii) in any way which causes annoyance, inconvenience or needless anxiety as set out in the Communications Act 2003, nor use the Network or the Services to send spam or unsolicited communications without the receiver's consent; (iii) to send, store, communicate or knowingly receive content which is abusive, indecent, defamatory, obscene, menacing, unlawful or a nuisance; or (iv) in any way that breaches the provisions of condition 14 (Software Licence) or condition 20 (Intellectual Property) or contravenes the Intellectual Property Rights of the Company or any third party.

#### **4.7 SERVICE AND EQUIPMENT SUSPENSION/WITHDRAWAL**

- 4.7.1** Without limiting its other rights or remedies, the Company may suspend all or part of the Services and/or withdraw the Equipment and/or suspend all further deliveries of Equipment under the Contract or any other contract with the Customer for any of the following reasons:
- a)** to comply with any regulations or laws;
  - b)** to comply with recommendations, directions or regulations from any regulatory body or authority responsible for oversight of the Company;
  - c)** for Network maintenance, modification or technical failure or any reason relating the security or safeguarding of the Network;
  - d)** upon instruction by emergency services or any government, regulatory or appropriate authority;
  - e)** to reduce fraud;
  - f)** as a result of suspension of any services provided by the Network Operator;
  - g)** if the Company or its suppliers no longer provide the Service or either of them have decided that the Service or Equipment is no longer suitable for business operations (provided that the Customer has been given at least 20 days' notice of such withdrawal);
  - h)** where an end user has caused the Customer to be in breach of any of its obligations under condition 4.6 above;
  - i)** if the Customer exceeds any agreed credit limit; or
  - j)** if:
    - i.** the Customer is in breach of its obligations to the Company under the Contract (including but not limited to non-payment or threatened non-payment of Charges);
    - ii.** the Customer becomes subject to an insolvency event or the Company reasonably believes that the Customer is about to become subject to one; or
    - iii.** if the Company's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (together Customer Default).
- 4.7.2** In relation to any suspension of Services pursuant to condition 4.7.1:
- a)** the Company shall use reasonable endeavours to ensure that any such suspension is kept to a minimum except where such suspension results from a Customer Default or is as a result of condition 4.7.1(g);
  - b)** the Company shall give notice to the Customer of the service suspension as soon as reasonably practicable;
  - c)** with regard to any Customer Default, the Company shall, without limiting its other rights or remedies, have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Company's performance of any of its obligations;
  - d)** the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this condition 4.7; and
  - e)** the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer Default.
- 4.7.3** The Customer shall remain liable for all Charges during any period of suspension, and where the suspension has been implemented under conditions 4.7.1(h) or 4.7.1(j)(i) the Customer shall also pay all reasonable costs and expenses incurred by the Company in the implementation of the suspension and a Suspension Lifting Fee per suspended SIM Card. The Company shall restore the Services as soon as the circumstances which gave rise to the suspension are remedied.

#### **5. FIXED NETWORK SERVICES**

In the event that the section(s) relating to Fixed Network Services is/are completed on the relevant Order Form, this condition 5

shall apply to the Contract.

## 5.1 DURATION

Subject to earlier termination under condition 13 or as otherwise stated in this condition 5:

- 5.1.1** Unless either (a) the Customer terminates the Contract in accordance with condition 5.1.2 or (b) the Customer is a Small Business Customer (in which case condition 5.1.3 shall apply) then, upon the expiry of either the Minimum Term the Contract will renew automatically for a further period of twelve months (a "Rollover Period").
- 5.1.2** Unless the Customer is a Small Business Customer (in which case condition 5.1.3 shall apply), the Customer may terminate the Contract by giving ninety days' notice in writing to the Company, such notice to become effective no earlier than the expiry of the Minimum Term or (if the Contract has automatically renewed under condition 5.1.1) upon the expiry of the relevant Rollover Period. If the Customer does not give notice to terminate the Contract during a Rollover Period, the Contract will automatically renew for a further Rollover Period.
- 5.1.3** Where the Customer is a Small Business Customer, the Customer may terminate the Contract by giving ninety days' notice in writing to the Company, such notice to become effective no earlier than the expiry of the Minimum Term.

## 5.2 SUPPLY OF FIXED NETWORK SERVICES

- 5.2.1** The Company will use reasonable endeavours to provide the Fixed Network Services from the Connection Date subject to these Conditions. Any Fixed Network Services so provided shall be provided with reasonable skill and care. The Fixed Network Services may not be fault free and use of the Fixed Network Services may not be uninterrupted.
- 5.2.2** Subject to the continuing supply of the service by the relevant Carrier, in the event of a fault occurring in the Fixed Network Services the Company will use reasonable endeavours to rectify the fault as soon as practicable however the Company shall have no liability to the Customer for any fault occurring, or any interruption to the Fixed Network Services whether in contract, tort (including without limitation negligence or breach of statutory duty) or otherwise, howsoever caused (including but not limited to atmospheric conditions; any congestion, fault, interruption or interference with the network; any fault, interruption or interference with the power supply to the network, any act or omission by the relevant carrier, or any known or unknown viruses which cause interruption or interference with the network).
- 5.2.3** Except where stated on the Order Form, the broadband element (if any) of any Fixed Network Services does not include the provision of any modems or other equipment.
- 5.2.4** The Customer acknowledges that the speed of any broadband element (if any) of the Fixed Network Services depends on a number of factors including, but not limited to, distance from the exchange, local availability and line capability. The Company shall have no liability to the Customer whether in contract, tort (including without limitation negligence or breach of statutory duty) or otherwise if the Customer's line(s) does/do not produce a top speed of the maximum speed advertised.
- 5.2.5** The Customer warrants, represents and undertakes that it is the owner of, or that it is authorised by the owner of, (and has the right to use) any trade mark or name that the Customer wishes to use as or in its registered domain name (or any of them) ("Domain Names") and/or as part of the Customer's uniform resource locator ("URL").
- 5.2.6** If the Company undertakes Domain Names and/or URL registration on behalf of the Customer, the Customer will reimburse the Company for any registration fees paid by the Company to the relevant internet registration authorities. The Company does not guarantee that any Domain Names or URL requested by the Customer will be available.
- 5.2.7** The Company may require the Customer to select replacement Domain Names or URL and may either refuse to provide or may suspend the Services if the Company reasonably believes that the Domain Names or URL is, or is likely to be, offensive, abusive, defamatory or obscene or infringe the rights of a third party.

## 5.3 SUPPLY OF TELEPHONE NUMBERS

- 5.3.1** OFCOM and/or the relevant Carrier each have the power to withdraw an allocation of telephone numbers and therefore any telephone numbers offered to the Customer under the Contract, cannot be guaranteed as being available. The Company shall not be liable for any costs incurred by the Customer in relation to any such telephone number (including, without limitation, in the advertising of such telephone number) which is withdrawn by OFCOM and/or the relevant Carrier (save where and to the extent that such withdrawal is due to the negligence of the Company).
- 5.3.2** Without prejudice to any rights the Customer may have to port a number allocated to it, the Customer acknowledges it does not own or have any right to sell any number provided to it by the Company. Where the Customer has a number from a national numbering plan, the charges for porting such number shall be as set out in the Tariff.

## 5.4 USE OF THE FIXED NETWORK SERVICES

- 5.4.1** The Customer shall be responsible for the safe custody and safe use by it of the Fixed Network Services and without prejudice to the generality of the foregoing the Customer agrees and undertakes:
- a)** to use the Fixed Network Services in accordance with such additional conditions as may be notified to it in accordance with condition 17 from time to time;

- b) not to cause any attachments, other than those that meet the appropriate essential requirements of regulation 4 of the Radio Equipment and Telecommunications Terminal Equipment Regulations 2000 (as from time to time amended) and any other requirements under the General Conditions and all other Relevant Laws, to be connected to the Fixed Network Services and the Company shall not be under any obligation to connect or keep connected any Customer apparatus if it does not so conform or if in the reasonable opinion of the Company it is liable to cause death, personal injury or damage or to impair the quality of the Fixed Network Service;
- c) not to contravene the General Conditions or any other relevant regulations or licences granted thereunder and otherwise not to contravene, and not by any act or omission, cause the Company to contravene, any Relevant Laws or General Conditions;
- d) not to use (and procure that no end user shall use) the Fixed Network Service as a means of communication for a purpose other than that for which the Fixed Network Service is provided and as may be set out in any relevant literature supplied by the Company from time to time;
- e) not to use (and procure that no end user shall use) the Fixed Network Service to make, provide, communicate, publish, deliver, knowingly receive, upload, download, use or reuse 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, nuisance inconvenience or worry to any person or which in the Company's opinion brings the Company's name into disrepute or which in any way causes damage to or disruption to the Fixed Network Services;
- f) not to use the Fixed Network Service in a manner which constitutes a violation or infringement of the rights (including, without limitation, any Intellectual Property Rights) of any other person;
- g) to maintain its telecommunications apparatus at all times during the period of the Contract in good working order and in conformity with any relevant regulatory standards or approvals and Relevant Laws for the item as from time to time applicable;
- h) to provide the Company with all such information as it reasonably requests relating to the Customer's telecommunications apparatus;
- i) to implement adequate control and security over the use of the Fixed Network Services provided to the Customer including but not limited to the prevention of viruses, worms, Trojan horses and/ or any calls generated by rogue diallers or hackers;
- j) not to use the Fixed Network Services in a way that breaches any Relevant Laws, the Code or any guidelines, regulations or instructions of PhonepayPlus) or any licence applicable to the Customer or that is in any way unlawful or fraudulent;
- k) not to send or procure the sending of any unsolicited advertising or promotional material; and
- l) to respect the basic fraud prevention rules which shall in a given day limit calling to premium rate, international, directory inquiries and such like numbers to 300 minutes. Should an increase in this restriction be required then please email [service@Yappl.com](mailto:service@Yappl.com) and your account shall be reviewed.

- 5.4.2** Any equipment installed or provided by or on behalf of the Company for the purposes of providing the Fixed Network Services (excluding for the avoidance of doubt any Equipment purchased under a Contract by the Customer to which condition 4 applies) shall at all times remain the property of the Company and shall be returned to the Company forthwith upon request. Condition 4.3 shall apply to such equipment and for the purposes of this condition 5.4.2 only such equipment shall be deemed Equipment under those conditions. The Customer shall be liable to the Company for all losses, costs and expenses incurred by the Company for the recovery, replacement or repair of such equipment (save to the extent that the same is caused by the negligence of the Company).
- 5.4.3** Unless stated otherwise on the Order Form, if the Customer takes a line rental from the Company, the Customer is also committed to using the Company for calls over that line. Should the Customer (during the applicable Minimum Term) use an alternative carrier for calls once the Contract for the provision of the telephone line has commenced, or prevent the Company from carrying calls in any monthly period so that the Company considers that the call charges are significantly reduced in comparison to the Customer's previous average invoicing profile, the Customer agrees that the Company may charge the Customer the difference between the average monthly spend on calls prior to such commencement or prevention and the subsequent monthly spend on calls (if any).
- 5.4.4** The Fixed Network Services are provided solely for the Customer's use and the Customer may not resell or attempt to resell the Fixed Network Services (or any part of them) to any third party. In addition, if the Customer has a mail server, the Customer must not allow relay emails from outside its domain from the Customer's mail server.
- 5.4.5** The Company does not warrant or guarantee the accuracy or completeness of any of the information, sound, video, software and/or any other materials (in whatever form) which may be accessible by the Customer from any other person once it has the Fixed Network Services (the "Content") or any further information or results which may be derived from it. The Customer acknowledges that, the Content is outside the control of the Company and the Customer will not rely on any Content in making any business or other decision and that the Customer's use of the Content is at the Customer's sole risk.
- 5.4.6** The Customer acknowledges that the Content may be protected by copyright, trademark and other intellectual property rights, as applicable. The Customer will not and will not permit anyone else to copy, store, modify, distribute externally, broadcast or publish any part of the Content, and the Content may only be used for the Customer's own purposes.
- 5.4.7** The Customer is entirely responsible for evaluating any goods or services offered by third parties via the Fixed Network Services or on the internet. The Company will not be a party to or in any way be held responsible to the Customer for any transaction between the Customer and third parties.
- 5.4.8** The Customer warrants, represents and undertakes that any information the Customer makes available on its website,

including the Customer's information and that of a third party ("Third Party Content") is and will remain wholly accurate and will not include any information or material, any part of which, or the accessing of which or use of which, would be a criminal offence or is otherwise unlawful.

- 5.4.9** The Customer also warrants, represents and undertakes that it will comply with all consumer and other legislation, instructions or guidelines issued by regulatory authorities and relevant licences which relate to the provision of the information on the Customer's website including those notified by the Company to the Customer.
- 5.4.10** Both parties agree to fully co-operate with the Police and any other relevant authorities (including but not limited to the Inland Revenue, Trading Standards, the Information Commissioner and/or OFCOM and their successors from time to time) in connection with any misuse or suspected misuse of the Fixed Network Services, and the Customer consents to the Company co-operating with any such authority and with any other telecommunications operators in connection with any misuse or suspected misuse or suspected fraudulent activity related to or connected with the Fixed Network Services and agrees, without prejudice to the generality of the foregoing, that the Company will be entitled to divulge any information which the Company holds which may be relevant to any investigation, including the name, address and a count information relating to the Customer to such third parties.
- 5.4.11** The Customer acknowledges that the broadband element (if any) of the Fixed Network Services is provided from infrastructure which is shared by other users and the Company owes a duty to these users as a whole to preserve its network integrity and avoid network degradation. If, in the Company's reasonable opinion, the Company believes that the Customer's use of the Services has or may adversely affect such network integrity or may cause network degradation the Company may change the Customer's chosen access rate or manage the Customer's Services as the Company sees fit in the circumstances.
- 5.4.12** To prevent spam from entering and affecting the operation of the Company's systems and the Fixed Network Services, the Company may take any reasonable measures or actions necessary to block access to, or delivery of, any e-mail which appears to be of an unsolicited nature and / or part of a bulk e-mail transmission. The Company may also, but is not obliged to, use virus screening technology that may result in the deletion or alteration of e-mail and or e-mail attachments. The Company shall have no liability whether in contract, tort (including without limitation negligence and breach of statutory duty) or otherwise if the virus screening technology is not completely effective in any way, including (without limitation) against unsolicited emails or against any viruses, worms, Trojan horses or other programmes or devices that are apparently intended to access and modify, delete or damage data file(s) or computer programme(s).
- 5.4.13** The Customer shall comply with the Broadband Acceptable Use Policy. The Company may change the Broadband Acceptable Use Policy at any time by publishing the changes on its website ([www.Yappl.com](http://www.Yappl.com) or at such other URL as is notified to the Customer by the Company from time to time) thirty days before the change is to take effect.
- 5.4.14** The Customer acknowledges that, in order to use the broadband element (if any) of the Fixed Network Services, the Customer needs an existing telephone line (if not provided under the Contract) and a personal computer ("PC") of a minimum specification suitable for the application. The Customer is responsible for ensuring that compatible cables and extension leads are used to and from their telephone socket, modem and PC in order to use the Service.
- 5.4.15** In circumstances where the Customer receives only the broadband element of the Fixed Network Services from the Company, the Customer remains responsible for making payment to the Customer's fixed line telephony services provider for all rental charges relating to the Customer's relevant telephone line (together with any repair and maintenance charges) and all call charges from the Customer's fixed line telephony service provider.
- 5.4.16** The Customer agrees that PhonepayPlus may monitor any End User Service at any time.
- 5.4.17** In respect of each End User Service which requires the approval of PhonepayPlus pursuant to any regulation or code of practice, the Customer shall, before such End User Service (or any change thereto) is made available to callers, submit to the Company written evidence of such approval.
- 5.4.18** The Customer shall use all reasonable endeavours to ensure that the number of telephone calls made to the Number(s) do not significantly exceed the Customer's capacity to answer such calls or cause congestion (the existence of congestion to be reasonably determined by the Company taking into account normal levels of traffic on the network). Where the Company notifies the Customer of the occurrence of any such congestion or misuse, then the Customer shall immediately take all reasonable steps (which shall include, but not be limited to, arranging additional network capacity, adjusting the Customer's promotional activities or using call bureau, for the relevant period) to prevent such congestion and/or misuse continuing.

## **5.5 TRANSFER FROM THIRD PARTY SUPPLIERS**

- 5.5.1** Where the transfer of lines and services from third party suppliers is selected by the Customer on the Order Form, then the provision of any and all relevant existing services supplied to the Customer by such third party supplier will be automatically transferred to the Company and charged for in the Company's invoices in accordance with the Tariff.
- 5.5.2** The Customer and not the Company shall be liable for any charges (including without limitation any early termination charges) made by third party suppliers for any transfer of lines and services or otherwise, unless it is clearly identified and agreed in writing on the Order Form at the time of the Company formally accepting such Order Form that the Company will pay for specified charges.

## **5.6 SUSPENSION OF FIXED NETWORK SERVICES**

**5.6.1** Without prejudice to any other right of the Company to suspend or terminate the Services under these Conditions, the Company may at its sole discretion elect to suspend forthwith provision of the Fixed Network Services until further notice without liability to the Customer having given the Customer reasonable notice either orally (confirming such notification in writing) or in writing in the event that:

- a)** the Customer is in breach of a material term of these Conditions (including but not limited to condition 5.4.18 and 9.2.3(b)) and/or the Contract and/or any other contract between the parties from time to time including but not limited to the Customer's failure to pay the Price and/or the Charges (or any of them) to the Company on the due date or to comply with the Broadband Acceptable Use Policy;
- b)** the Company is obliged to comply with an order, instruction or request of the Government, an emergency services organisation or other competent administrative or regulatory authority (including without limit, OFCOM or PhonepayPlus);
- c)** the Company has reasonable grounds to believe that the Fixed Network Services are being used fraudulently, unlawfully or by an unauthorised third party;
- d)** any licence under which the Customer has the right to run its telecommunications system and/or connect to the Fixed Network Services is revoked, amended or otherwise ceases to be valid;
- e)** the Company or any member of its Group is entitled to suspend and/or terminate provision of any other telecommunications service under the terms of any other agreement with the Customer; or
- f)** any maintenance or repair is necessary or required to the relevant network or related systems or equipment (for the avoidance of doubt, in the event of emergency maintenance or repair, the Company shall not be required to give any advance notice)

**5.6.2** The Customer shall reimburse to the Company all reasonable costs and expenses incurred by the implementation of a suspension pursuant to condition 5.6.1 and the recommencement of the provision of the Fixed Network Service as appropriate, save in the case of a suspension pursuant to condition 5.6.1(b).

**5.6.3** Without prejudice to any other right of termination under these Conditions, the Company may terminate (in whole or in part) the Contract for Fixed Network Services forthwith in the event that its right, or the right of the relevant Carrier, to provide any of the Fixed Network Services is withdrawn by any supplier to it or OFCOM.

**5.6.4** On termination of the Contract for any reason the Customer shall have no further entitlement to receive any further Call Commissions and shall permit the disconnection of any Number from the Fixed Network Services.

## **5.7 VOICE OVER INTERNET PROTOCOL ("VOIP") FIXED NETWORK SERVICES**

**5.7.1** Whilst the Company will use its reasonable endeavours to provide any VOIP Fixed Network Services set out on an Order Form signed by the Company, the Company shall have no liability for the standard of quality or performance of the VOIP Fixed Network Services and the Company draws the following features of the VOIP Fixed Network Services to the Customer's attention:

- a)** the VOIP service may not offer all the features, quality or resilience the Customer may expect from a conventional phone line;
- b)** the VOIP service may sometimes be limited, unavailable or disrupted due to events beyond the Company's control e.g. power disruptions, failures or the quality of any connection;
- c)** wherever possible, alternative arrangements should be made by the Customer and a traditional tel phone line maintained;
- d)** the quality of a call made via VOIP is more akin to that experienced when making a call from a mobile network service to another mobile network service and this means that it is typically less than the quality experienced on a traditional land line;
- e)** if the Customer uses the VOIP service to make Emergency Calls, the location information received by the emergency services will be limited to the installation address of the Site, which may not be the location from which the call originated, and as such the Customer may be required to provide information about the Customer's location to the emergency services to allow them to respond;
- f)** Emergency Calls made using the VOIP service may fail if there is a power failure or connection failure;
- g)** the ability for the Customer to make Emergency Calls cannot be guaranteed;
- h)** a VoIP originated Emergency Call will not receive the same network priority at all points on the network as that which an Emergency Call made on a mobile network or on a circuit switched fixed line will receive.

**5.7.2** The Customer shall not use the bandwidth allocated to the VOIP service for any other purpose other than making and receiving VOIP calls. Should this prohibition not be complied with it is likely that the quality and availability of the VOIP services shall be materially reduced.

## **5.8 PUBLISHING OF CUSTOMER DETAILS**

**5.8.1** Unless the Customer requests it of the Company, the Company will not publish the Customer's name address and the telephone number for the Fixed Network Service in the relevant phone book serving the Customer's area and the Company will not make the said telephone number available from a directory enquiries service.

**5.8.2** If the Customer requests a Special Entry to be placed in the relevant phone book issued by the Carrier it must inform the Company at the earliest available opportunity. The Company agrees to use its reasonable endeavours to register a Special Entry upon receipt of such request and upon receipt of: (i) any additional charge which may be levied by the Company for such registration and (ii) signature by the Company of any separate contract which may be required in respect of that registration.

## 5.9 DISPUTE RESOLUTION

- 5.9.1** The Customer shall refer any dispute it has with the Company to the Company's complaints procedure at [www.Yappl.com](http://www.Yappl.com) (or at such other URL as is notified to the Customer by the Company from time to time).
- 5.9.2** Nothing in this condition 5.9 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 Contract.

## 6. MAINTENANCE SERVICES

In the event that the section relating to Maintenance Services is completed on the relevant Order Form, this condition 6 shall apply to the Maintenance Contract.

### 6.1 DURATION OF MAINTENANCE SERVICES

- 6.1.1** In consideration of (and subject to) the payment of the Annual Support Charge each year by the Customer, the Company will supply to the Customer the Maintenance Services in accordance with the Maintenance Contract.
- 6.1.2** Subject to earlier termination in accordance with its terms, the Maintenance Contract shall run for the Minimum Term. Upon the expiry of the Minimum Term, the Maintenance Contract shall renew automatically for a further period of twelve months (a "Rollover Period") (except in the case of a Small Business Customer, where the Maintenance Contract shall not automatically renew).
- 6.1.3** The Customer may terminate the Maintenance Contract by giving ninety days' notice in writing to the Company, such notice to become effective no earlier than the expiry of the Minimum Term or (where the Customer is not a Small Business Customer and the Maintenance Contract has automatically renewed under condition 6.1.2) upon the anniversary of such date thereafter. If the Customer does not give notice to terminate the Maintenance Contract during the Rollover Period, the Maintenance Contract will automatically renew for a further Rollover Period (except in the case of a Small Business Customer, where the Maintenance Contract shall not automatically renew).

### 6.2 PROVISION OF MAINTENANCE SERVICES

- 6.2.1** The Maintenance Services shall apply only in respect of the Equipment expressly stated on the Order Form to be subject to the Maintenance Services (or other equipment similarly stated on the Order Form which shall be deemed to be 'Equipment' for the purposes of this condition 6).
- 6.2.2** Unless it is otherwise stated on the Order Form that a different level of Service (in terms of response times and hours of attendance) will apply, the Company will use its reasonable endeavours to, within two Business Days of receipt of notification from the Customer of a request for the provision of Maintenance Services and the Equipment being made available, commence, during Normal Working Hours, the Maintenance Services. Any time period stated in respect of the Company's obligations under a Contract is not guaranteed nor deemed to be of the essence of the Contract.
- 6.2.3** Where the Company replaces defective Equipment or part thereof, it shall be entitled to supply serviceable reconditioned items in substitution thereof. These Conditions shall continue to apply to the Equipment embodying such substituted items.
- 6.2.4** The Company does not warrant that the provision of Maintenance Services (or any additional services supplied pursuant to conditions 6.3.1 and 6.3.2) will ensure that the Equipment operates without interruption or error.
- 6.2.5** Subject to spare part availability, the Company shall provide all necessary spare parts (in the reasonable opinion of the Company) required to keep the Equipment in satisfactory operation. All replaced parts shall become the property of the Company.
- 6.2.6** Subject to condition 6.3.1, Maintenance Services shall not include the following (the "Excepted Services"):
- a)** the repair of damage to the Equipment resulting from accident, neglect or causes other than ordinary use (including, but not limited to, failure to observe any instructions supplied by the Company or the original Equipment manufacturer) regarding the operation of the Equipment);
  - b)** labour or materials required to repair Equipment as a result of theft, vandalism, fire, lightning, water damage, fluctuations in electrical power supply, unsatisfactory environmental conditions, telephone line conditions, the connection or installation of unapproved accessories, attachments, software or other devices or as a result of a breach by the Customer of condition 6.5;
  - c)** the alteration, modification or maintenance of the Equipment by any person other than the Company without the Company's prior written consent;
  - d)** the transportation or relocation of the Equipment save where the same has been performed at the request of the Company;
  - e)** the maintenance or repair of any extension wiring (after the initial twelve-month warranty period under condition 4.4.1 has passed), any Equipment not at the Site, or of anything other than the Equipment;
  - f)** any defect or error in any software used upon or in association with the Equipment;
  - g)** the supply of replacement cassettes, aerials, aerial systems, batteries or any consumables;
  - h)** the reprogramming of the Equipment to provide improved or modified service or facilities;
  - i)** Equipment faults caused by telephone area code changes or changes in Carriers;
  - j)** maintenance or replacement of ancillary items including but not limited to answer phones, analogue



- or digital phones or devices, call loggers, payphones, computers, servers, uninterruptible power supplies, batteries, fax machines, public address systems, printers, cabinets, external music on hold sources, and any cables or consumables unless otherwise agreed in writing;
- k)** maintenance arising from loss of equipment as the Maintenance Services are limited to repair or replacement of faulty equipment on a like-for-like exchange basis; and/or
- l)** a dedicated helpdesk.

### 6.3 ADDITIONAL CHARGES

- 6.3.1** The Company may, in its sole and absolute discretion, upon request by the Customer provide all or any of the Excepted Services (as referred to in condition 6.2.6 above) but shall be entitled to charge for the same by levying Additional Charges in the manner described in condition 6.3.3 below.
- 6.3.2** Without prejudice to condition 6.3.1 above the Company shall be entitled to levy (and receive from the Customer) Additional Charges in the manner described in condition 6.3.3 below if:
- a)** Maintenance Services are provided in circumstances where any person who is reasonably skilled and competent in the field of maintaining telecommunications equipment would have judged the Customer's request to have been unnecessary; and/or
  - b)** the Customer reports an apparent fault of the Equipment to the Company and upon investigation by the Company the Equipment and/or its Installation is found not to be defective. Such Additional Charges may include (without limitation) a charge for the investigation and/or for any call-out and for any Equipment changed in a postal exchange (in respect of which the Company reserves the right to make a charge up to the replacement value of the Equipment in question); and/or
  - c)** where the Company determines that a fault that has been reported to the Company is a fault of the Carrier. Such Additional Charges may include (without limitation) a charge for the call-out in accordance with the Company's then current Tariff).
- 6.3.3** Additional Charges shall be levied by the Company as follows:
- a)** following completion of the Additional Services supplied under condition 6.3.1 and 6.3.2(a); or
  - b)** following completion of the investigation and/or call out in respect of condition 6.3.2(b) and 6.3.2(c).
- 6.3.4** Such Additional Charges (calculated in accordance with the Tariff prevailing at the time) shall be payable by the Customer within ten days of the date of an invoice.

### 6.4 DISCONTINUED SERVICES

- 6.4.1** Without prejudice to condition 13 or any other right of suspension or termination of Services under these Conditions, the Company shall have the right to discontinue the Maintenance Services in respect of any Equipment (without liability to the Customer) in the event that the Company's supplier and/or the manufacturer of the Equipment has ceased to supply or manufacture such Equipment provided that the Company will notify the Customer as soon as reasonably practical after it is aware of any cessation in supply or manufacture of the Equipment and shall either (upon agreement with the Customer) (i) terminate the Contract or (ii) replace or upgrade the affected Equipment at the Customer's expense.
- 6.4.2** Without prejudice to condition 13 or any other right to terminate any Services under these Conditions, the Company shall have the right to terminate forthwith the supply of the Maintenance Services (without liability to the Customer) in the event that any necessary approvals required by the Company to maintain any of the Equipment are not granted or revoked by any government or regulatory agencies or any third party.

### 6.5 CUSTOMER OBLIGATIONS

The Customer shall:

- 6.5.1** ensure that the Equipment is used in a normal and proper manner;
- 6.5.2** take all steps, measures and meet all requirements (including the environmental conditions) contained in the customer operating instructions and manufacturer's written recommendations supplied with the Equipment ("User Instructions");
- 6.5.3** carry out minor maintenance adjustments suggested by the Company which includes minor programming changes with telephone support and replacement of handsets and cords which are relayed by courier or post;
- 6.5.4** not carry out or permit alteration to call routing apparatus or extension wiring (except by the Company, or by the Company's authorised agents), save that in relation to the connection of other apparatus to the Equipment, such connection may be performed by another person at the Customer's expense if either:
- a)** the Company so agrees in writing, or
  - b)** the Company fails to carry out the connection itself within twenty-eight days after receiving written notice from the Customer stating that the Customer wishes specified apparatus to be so connected and naming that other person by whom the Customer wishes the connection to be performed;
- 6.5.5** appoint at least one member of its staff as a "Principal Operator", who will be trained in the use of the Equipment. The Customer will ensure that such Principal Operator is available to carry out the instructions in the User Instructions and to liaise on Maintenance Services matters with the Company; and

**6.5.6** not employ or permit a third party to make any alterations to the programming or physical structure of the Equipment.

## **6.6 INSPECTION OF EQUIPMENT**

**6.6.1** If the Equipment is not (immediately prior to the Commencement Date) either already maintained by the Company or within the scope of an express warranty given by the supplier thereof, then the Company may at its discretion inspect the Equipment and undertake such repair work as may be necessary to put the Equipment in good working order. The Customer shall pay for such inspection and repair at the Company's then current charge rates applying at that time, and such payment shall be in addition to the Annual Support Charge.

## **7. FINANCE AND CREDIT**

- 7.1** The Customer hereby consents to and shall procure that its owners, directors, officers and assigns consent to, the Company carrying out searches with credit reference agencies relating to the creditworthiness of the Customer and/or its owners, directors, officers and assigns and the Customer shall, upon the Company's request, promptly supply or procure the supply of all information requested for a credit search with a credit reference agency, who will add to the Customer's records and/or those records of its directors, officers and assigns details of the searches and these will be seen by other organisations that make searches.
- 7.2** It is agreed that where the Company approaches a finance provider or lease provider to arrange finance for the purchase or leasing of Equipment then the Company acts as an agent for the Customer and not for the finance provider or lease provider.
- 7.3** The Customer undertakes to supply all information requested by the selected finance provider(s) who will register searches with one or more credit agencies, which will be seen by other organisations that make searches.
- 7.4** In the event that the Company is unable to obtain relevant finance on the terms originally proposed then the Company will return the deposit received from the Customer for the relevant Equipment and shall have no further liability to the Customer.
- 7.5** If indemnities are required by a relevant finance provider, failure to provide such indemnities shall constitute a breach of these Conditions by the Customer and shall entitle the Company to terminate this Contract and retain any deposit paid by the Customer.
- 7.6** After Delivery and Installation (where applicable) of the Equipment is completed, any failure by the Customer to complete any relevant finance agreement documentation shall render the Customer liable to pay to the Company the whole of the Price as defined in condition 8.1.1 within seven days of the date of the Company's invoice.

## **8. PRICE AND CHARGES**

### **8.1 EQUIPMENT**

- 8.1.1** Save where, and to the extent that, any Promotional Terms apply, the Price is as stated on the Order Form. Any invoices issued by the Company in respect of the Price shall, save in the case of manifest error, be final, conclusive and binding on the Customer.
- 8.1.2** Unless otherwise specified the Price is based on the assumption that the Delivery of the Equipment and (where applicable) Installation Services will be completed in one visit to the Site and accordingly the Company may at its discretion at any time increase the Price to take account of any additional costs to the Company (including but not limited to storage and delivery costs) by reason of Delivery and/or the Installation Services taking more than one visit.

### **8.2 FIXED NETWORK SERVICES**

- 8.2.1** Save where, and to the extent that, any Promotional Terms apply, the Charges will be as detailed in the Tariff or unless stated otherwise on the Order Form.
- 8.2.2** The Company shall have the right to alter the Charges from time to time by publishing changes to the Tariff at [www.Yappl.com](http://www.Yappl.com) (or at such other URL as is notified to the Customer by the Company from time to time):
- a)** at least thirty days prior to the change taking effect in the event of changes which may be of material detriment to the Customer; and
  - b)** as soon as is reasonably practical in the circumstances prior to the change taking effect, for all other changes,

and if the Customer wishes to object to any proposed change which is of material detriment to the Customer, then the Customer must notify the Company in writing (addressed to Customer Services, Yappl Limited, Contract House, Turnpike Business Park, Alfreton, Derbyshire, DE55 7AD within thirty days of publication of the proposed change, otherwise the Customer will be deemed to have accepted the proposed change. For the avoidance of doubt, the publishing by the Company of any change in accordance with condition 8.2.2(a) 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 condition constitute or be deemed to constitute evidence that the relevant change is of material detriment to the Customer. In the event that the Customer provides notice to the Company objecting the proposed change, the Customer shall be entitled to terminate the Contract, upon providing 30 days written notice to the Company.

For the avoidance of doubt, any notice provided by the Customer objecting to the change, shall not be deemed a notice to terminate the Contract.

- 8.2.3** Usage charges payable shall be calculated by reference to data recorded or logged by the Company and not by reference to any data recorded or logged by the Customer. Any invoices issued by the Company in respect of the Charges for Fixed Network Services shall, save in the case of manifest error, be final, conclusive and binding on the Customer.
- 8.2.4** Line rental is payable from the Connection Date.
- 8.2.5** If the Customer has agreed to a Monthly Minimum Call Spend and at the end of any month, the Customer has not incurred the Monthly Minimum Call Spend, or if the Customer terminates the Contract in any way other than pursuant to condition 13, the Customer will be liable to pay to the Company, the difference between the Charges incurred during that month for actual calls made and the Monthly Minimum Call Spend.
- 8.2.6** The Company reserves the right to apply a monthly minimum threshold on call spend of at least £10.00 per Customer a count (or such other sum as notified to the Customer by the Company in writing from time to time), to keep the account operating at a viable level. This charge shall only apply to the telephone services element of Fixed Network Services.
- 8.2.7** Call Commissions
- a)** Subject to paragraphs (d) and (e) below, the Company will pay Call Commissions to the Customer in respect of calls to each applicable Premium Rate Service and/or other End User Service and/or Non Geographic Service delivered to and received by a Number at the rate and in the amount set out on the Order Form or in the Tariff.
  - b)** Following the end of each calendar month, the Company will submit a statement to the Customer setting out the number and duration of all such calls delivered and received by the Customer in respect of Premium Rate Services and/or other End User Services and/or Non Geographic Services. Following receipt of the statement the Customer shall submit an invoice to the Company in the amount shown as owing on the statement, or if stated on the Order Form, the Company will implement a self-invoicing process on behalf of the Customer. The Company may set-off the Call Commission against any Charges or other amounts due to the Company. Where it is agreed the Company shall self-invoice, the Customer confirms that it shall not issue VAT invoices in respect of Call Commissions due to the fact the Company will be self-invoicing. For the avoidance of doubt, the Company shall not self-bill upon the cessation of the Customer's right to receive Call Commissions. The Customer undertakes to inform the Company promptly in writing in the event of any change, reissue or cancellation of its VAT number or a transfer of any part of the Customer's business as a going concern.
  - c)** The Company shall not pay Call Commissions in respect of any call which it reasonably believes may have originated outside the United Kingdom.
  - d)** Call Commission shall not be payable on invoice balances of £10 or less (or such other sum as notified to the Customer by the Company in writing from time to time). Invoice balances shall not roll over from one month to the next.
  - e)** The Customer's Call Commission is a function of the number and duration of inbound calls to the relevant telephone number which will vary from day to day. Any predicted amount of Call Commission by the Company shall be an estimate only and the Customer acknowledges it has placed no reliance upon such estimate.
- 8.2.8** Except as stated otherwise in the Tariff or on the Order Form, for the purpose of calculating call charges:
- a)** all call charges will be rounded up to the next whole penny;
  - b)** all call durations will be rounded up to the next whole minute;
  - c)** all calls will be charged based on the time band within which the call commences (irrespective of whether the call ends in a different time band), such that calls commenced from and including:
    - i.** 6:00am but before 6:00pm (Monday to Friday) will be charged at "Peak" call rates (as identified in the Tariff);
    - ii.** 6:00pm but before 6:00am (Monday to Friday) will be charged at "Off-Peak" call rates (as identified in the Tariff);
    - iii.** 6:00pm on a Friday but before 0:00am on a Saturday, will be charged at "Off-Peak" call rates (as identified in the Tariff);
    - iv.** 0:00am on a Monday but before 6:00am on a Monday, will be charged at "Off-Peak" call rates (as identified in the Tariff); and
    - v.** 0:00am on a Saturday but before 0:00am on a Monday will be charged at "Weekend" call rates (as identified in the Tariff).
- 8.2.9** The Company may increase the Charges for the Fixed Network Services in the April immediately following the Commencement Date by the increase (if any) in the Rate of RPI.

### 8.3 MAINTENANCE SERVICES

- 8.3.1** Any invoices issued by the Company in respect of the Charges for Maintenance Services shall, save in the case of manifest error, be final, conclusive and binding on the Customer.
- 8.3.2** The Company shall have the right to alter the Annual Support Charge from time to time by giving the Customer not less than fourteen days' notice.
- 8.3.3** Notwithstanding condition 8.3.2, the Company shall increase the Annual Support Charge in the April immediately

following the Commencement Date by the increase (if any) in the Rate of RPI.

#### 8.4 VALUE ADDED TAX

All sums referred to under these Conditions, the Order Form, any Promotional Terms and any Service Specific Conditions are (unless otherwise stated) exclusive of VAT and any taxes of a similar nature which may from time to time be introduced, which will be payable by the party paying the relevant sum at the rates in force at the date of the relevant invoice.

#### 8.5 TEMPORARY SERVICES

If the Customer orders a temporary Service, the Company may charge the Customer for any supplementary charges incurred, plus the line rental (if any) in advance for the whole period of the temporary Service. Other Charges as detailed in the Contract still apply as appropriate.

### 9. INVOICING AND PAYMENT

#### 9.1 EQUIPMENT

**9.1.1** If indicated on the Order Form, a deposit equal to at least one half of the Price is payable by the Customer at the time of the placing of the relevant order and the balance of the Price as defined in condition is payable immediately upon Delivery (subject to condition 4.1.5). Any delay by the Company in invoicing the Price shall not relieve the Customer of its liability to pay for the same.

#### 9.2 FIXED NETWORK SERVICES

**9.2.1** Subject to condition 9.2.2, the Customer shall be invoiced monthly in arrears by the Company and shall pay the Charges by Direct Debit within twenty days of the date of the invoice (unless otherwise expressly agreed with the Company and set out on the Order Form).

**9.2.2** Line rental is payable monthly in advance, unless expressly agreed in writing by the Company and set out on the Order Form.

**9.2.3** Where the Company is notified by PhonepayPlus that:

- a)** any sums payable by the Customer to PhonepayPlus or to any compensation fund or bond established by PhonepayPlus have not been paid; and/or
- b)** the Customer or any Information Provider is in breach of the Code; the Company may withhold all sums due to the Customer until the Company has been notified by PhonepayPlus that all such sums, fines, administrative charges or other sums payable to PhonepayPlus under the Code have been paid in full or any breach has been remedied, and if requested by PhonepayPlus the Company may pay such sums to PhonepayPlus in settlement of amounts owed to PhonepayPlus. In the event that amounts are paid by the Company to PhonepayPlus to settle amounts owed by the Customer then such amounts shall be deducted from any amounts owed by the Company to the Customer.

**9.2.4** Where the Customer is a Small Business Customer, then unless otherwise stated on the Order Form, in the event of any omission or delay by the Company in invoicing the Charges for Fixed Network Services in accordance with the Contract ("Delayed Charges") the Company shall not be prohibited from invoicing the Customer (and the Customer shall continue to be liable to pay the Company) for Delayed Charges, provided that such Delayed Charges are invoiced no later than:

- a)** 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
- b)** the next invoice after the invoice on which the Customer should have been invoiced for the Delayed Charges in accordance with the Contract (where the Customer is invoiced quarterly or less frequently than quarterly for the applicable Charges).

**9.2.5** Unless the Customer is a Small Business Customer (in which case condition 9.2.4 shall apply), any omission or delay by the Company in invoicing the Charges for Fixed Network Services shall not prohibit the Company from raising an invoice at a later date in respect of the same nor shall it relieve the Customer of liability to pay the same.

#### 9.3 MAINTENANCE SERVICES

**9.3.1** Unless otherwise stated on the Order Form, the Customer will pay the Annual Support Charge to the Company by Direct Debit (to such account as the Company may designate for that purpose) in advance of the relevant period as set out on the Order Form.

**9.3.2** Where the Company has agreed to raise an annual invoice for the Annual Support Charge, the Customer will pay such charge in advance of the Commencement Date and annually thereafter upon each anniversary of that date. Any delay by the Company in invoicing the Annual Support Charge and/or Additional Charges shall not relieve the Customer of liability to pay for the same.

**9.3.3** If payment of any sum payable to the Company is not made on or before the due date, the Company shall be entitled to charge interest thereafter on such sum at either the rate of four per cent per annum above the current base rate of The Royal Bank of Scotland plc from time to time or, if higher, such rate as the Company would be entitled to claim under the Late Payment of Commercial Debts (Interest) Act 1998 (such interest being deemed to accrue from day to day and being compounded on the last day of each calendar month) from the due date until the date of payment whether before or after

judgment.

- 9.3.4** Unless e-billing is expressly not required on the Order Form, invoices will be made available for download by the Customer and the Customer will be notified at the e-mail address set out on the Order Form that the invoice is ready for downloading. Where e-billing is expressly not required on the Order Form, the invoice may be sent to the registered address of the Customer (or the address of the Customer) at an additional cost to the Customer as set out in the Tariff.
- 9.3.5** If the Company is unable, for whatever reason, to recover any sum due under the Customer's account within four days following the due date for payment, the Company reserves the right to forthwith suspend all or any of the Services.
- 9.3.6** If the Customer's account remains unpaid (in any part) the Company may require a security deposit of three times the average monthly invoice or payment in full for the next twelve months before the Company will reinstate the Service.
- 9.3.7** If the Customer's account remains unpaid (in any part) for a period of thirty days after the original due date for payment, the Services may then be terminated by the Company.
- 9.3.8** Without prejudice to the Company's other remedies, if the Customer's account remains outstanding for any reason after the original due date for payment, then:
- a)** the Customer will be charged an administration fee for each piece of correspondence in connection with the recovery of the overdue amount. The Company may also charge the Customer a fee where it suspends a Fixed Network Service for non-payment; and
  - b)** the Company reserves the right to refer the outstanding account to a debt collection agency. If the Company instructs a debt collection agency to collect payment (including interest and late payment charges) on its behalf the Customer must pay the Company's costs payable to the agency, who will add the sum to the Customer's outstanding debt.
- 9.3.9** The Customer will ensure that the name of the account holder is the same as the name on the payment details provided.
- 9.3.10** If the Customer cancels an active Direct Debit instruction following the Effective Date, an additional administration fee of £4.95 (or such other amount as may be notified to the Customer by the Company from time to time) will be added to the monthly invoice until the Direct Debit instruction is reinstated. The Company also reserves the right to charge the Customer a Direct Debit cancellation fee at the Company's then applicable rate.
- 9.3.11** The Company may, without notice, withhold any payments due to the Customer under the Contract or any other agreement between the Company or any other member of its Group and the Customer if:
- a)** the Company has reason to believe the Customer is in breach of the Contract; and/or
  - b)** the Customer is (or the Company reasonably believes that the Customer is) conducting its business or using a Service illegally or unlawfully (including without limitation in breach of the Code or any OFCOM requirements) or for an illegal or unlawful purpose; and/or
  - c)** the Company has received notice from another network operator that payment will be withheld in respect of calls and the Company has satisfied itself on reasonable grounds that such event has occurred. The Customer will not be entitled to any payment of Call Commission in respect of such calls; and/or
  - d)** the Contract is terminated for any other reason; and/or
  - e)** the Company has reason to believe the Customer is insolvent or is likely to become insolvent.
- 9.3.12** If any sum owed by the Customer to the Company under the Contract or any other contract with the Company is not paid by the due date, the Company may deduct this sum from any payment or credit due to the Customer under the Contract or any other contract with the Company.
- 9.3.13** Payment of all sums due to the Company shall be made without any set-off whatsoever.
- 9.3.14** If the Customer intends to dispute any charge on an invoice, the Customer must do so in writing to the Company within fourteen days of the date of the invoice and provide the Company with all relevant information in support of the disputed charge. Where the disputed charge(s) amount to:
- a)** less than five per cent of the total charges listed on the invoice, the Customer will pay the full amount of the invoice; or
  - b)** more than five per cent of the total charges listed on the invoice, the Customer must pay the remaining amount of the invoice that is not in dispute.

#### **9.4 MOBILE SERVICES AND MOBILE EQUIPMENT**

- 9.4.1** All amounts payable by the Customer under the Contract are exclusive of amounts in respect of VAT chargeable from time to time. Where any taxable supply for VAT purposes is made under the Contract by the Company to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Company, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Mobile Services and/or Mobile Equipment at the same time as payment is due for the supply of the Mobile Services and/or Mobile Equipment.
- 9.4.2** The Charges for Mobile Services and Mobile Equipment shall be as set out in the Order Form. If the Charges are not set out in the Order Form they will be as set out in the Company's Tariffs.
- 9.4.3** In respect of Mobile Equipment, the Company shall invoice the Customer on or at any time after completion of delivery.

**9.4.4** In respect of Mobile Services, the Company shall invoice the Customer monthly in advance in respect of Line Rental Charges and monthly in arrear in respect of Call Charges.

**9.4.5** The Customer shall pay each invoice submitted by the Company:

- a)** within 14 days of the date of the invoice; and
- b)** in full and in cleared funds to a bank account nominated in writing by the Company by way of direct debit unless the Company agrees to some other method of payment, and time for payment shall be of the essence of the Contract.

**9.4.6** If the Customer fails to make any payment due to the Company under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays bank PLC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

**9.4.7** The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. The Company may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Company to the Customer.

**9.4.8** The Customer consents to the Company carrying out credit checks and credit assessments on the Customer with credit reference agencies and other third parties.

## **9.5 CHANGES AND PORTING**

**9.5.1** The Customer can apply to Port or migrate the mobile phone number relating to a SIM Card to another Network Provider by making a mobile switching request to the Company. Mobile switching requests can be made via telephone or by emailing [service@yappl.com](mailto:service@yappl.com). Upon receipt of such request and provided that the Customer has provided all necessary information in the mobile switching request, the Company shall provide the Customer with a relevant STAC or a PAC in accordance with all applicable laws and regulations.

**9.5.2** From the date the Company provides the Customer with the relevant STAC or PAC, it shall be valid for 30 calendar days, after which the Company shall not be responsible to the Customer and shall reserve the right to charge for any reissue of a relevant STAC or PAC.

**9.5.3** In the event that the Customer provides the Company with all the required information in the mobile switching request and the Company does not deliver the relevant STAC and/or PAC in accordance with any applicable regulation, the Company shall offer the Customer reasonable reimbursement of any monthly or periodic charges paid by the Customer to access the Mobile Services.

**9.5.4** If Applicable Law changes the VAT rate or any other applicable tax is increased, the Company reserves the right to change the terms of the Contract accordingly by giving the Customer written notice of the same.

**9.5.5** Telephone numbers will be allocated to the Customer by the Company in connection with the Customer's use of the Services and the Company reserves the right to change, withdraw or relocate the Customer's mobile number from time to time. The Company will write to the Customer to let the Customer know if this is the case.

**9.5.6** Where the Customer wishes to Port or switch its existing mobile service from an alternative service provider to the Company:

- a)** the Customer must provide the Company with the relevant STAC or PAC together with accurate and full details of all such other information that is requested by the Company from time to time;
- b)** the Customer will be responsible for reaching any commercial agreement with the alternative service provider in respect of its mobile services, including the payment of any associated early termination charges; and
- c)** the Customer accepts and acknowledges that a mobile switching request of any mobile service will terminate any service plan or additional services that utilises that line.

**9.5.7** Where a mobile switching request is made, the Customer can terminate up to 24 (twenty-four) mobile numbers of its service plan on immediate notice.

**9.5.8** Where the Customer makes a mobile switching request then termination will be considered to have taken effect on the day that the Customer's mobile service transfers to the alternative service provider and:

- a)** where such termination occurs after the end of the Minimum Term, the Company shall credit the Customer any Charges the Customer has paid in advance for the remaining days left in that calendar month;
- b)** where such termination occurs before the expiry of the Minimum Term, the Customer shall pay the Company all and any Charges due and payable to the Company as notified to the Customer;
- c)** where the Contract includes a Minimum Spend Requirement, the Customer shall pay the Company all and any outstanding Minimum Spend in accordance with the terms of the Contract;
- d)** any unused Airtime to which the Customer is contractually entitled to at the date of termination shall be offset by the Company against the outstanding Charges;
- e)** the Company shall no longer provide and the Customer shall immediately cease to use the Services (except for any Company Software embedded in such Equipment to which the Customer has title: (i) which cannot reasonably be removed or deleted from that Equipment; and (ii) to the extent strictly

- f) necessary for the ongoing use of that Equipment;
- f) the parties shall comply with their confidentiality obligations under the Contract and, destroy or return on request all confidential information belonging to the other (save for any Confidential Information which the Company may retain for regulatory purposes); and
- g) all Installed Equipment or any other Equipment in which title has not passed to the Customer must be returned to the Company in full working order or destroyed as requested by the Company. Except in circumstances where the Company asks for the Equipment to be destroyed, where the Equipment is not returned, or if in the Company's reasonable opinion is not returned in good working order, the Customer must pay the price requested by the Company for that Equipment.

**9.5.9** Notwithstanding the provisions of this condition 9, where all or part of the Contract has been terminated:

- a) by the Customer pursuant to condition 13.4 (material breach), condition 13.5 (insolvency) or condition 17.9 (variation) of these Conditions; or
- b) by the Company under condition 20.14 (force majeure) of these Conditions, the Customer shall only be obliged to pay the Charges due up until the date of termination. Any unused Airtime to which the Customer is contractually entitled as at the date of termination (calculated on a pro-rata basis in accordance with the proportion of the Minimum Term elapsed) shall be offset by the Company against the Charges with any remainder Airtime forfeited.

## 10. SITES

**10.1** To enable the Company to fulfil its obligations under any Contract:

- 10.1.1** the Customer shall permit or procure permission for the Company, its agents, employees, representatives and any other person(s) authorised by the Company to have reasonable access to the Site, Equipment and any other relevant telephone system and other equipment and shall provide such reasonable assistance as the Company requests. If the Company is refused access or prevented from accessing the Site, for whatever reason, it will be relieved from all of its performance obligations under this Contract and shall have no liability to the Customer and the Customer shall hold the Company harmless in this regard; and
- 10.1.2** the Company will normally carry out work by appointment and during Normal Working Hours but may request the Customer to (and the Customer shall) provide access at other times. In the event that the Customer cancels, reschedules or misses any prearranged appointment, it shall be liable to the Company for any costs and expenses which the Company incurs as a result of such cancellation, rescheduling and/or missed appointment.
- 10.2** At the Customer's request, the Company may agree (at its sole discretion) to work outside Normal Working Hours and the Customer shall pay the Company's reasonable charges for complying with such a request.
- 10.3** The Customer warrants, represents and undertakes that there are adequate health and safety provisions in place at the Site, and that the Customer holds third party public liability insurance with a level of cover of at least the minimum required by law.
- 10.4** The Customer shall procure all consents, licences and permissions necessary from landlords or other third parties for the carrying out of preparation work, installation of Equipment and for the provision, use and operation of the Equipment and or Services at the Sites (save to the extent the Company has agreed in writing to do it). The Customer shall provide copies of such consents, licences and permissions to the Company upon request.
- 10.5** In the event that the Customer is not able to procure the necessary consent to provide the Services within ninety days from the Connection Date the Company will be able to terminate the Contract forthwith by giving the Customer written notice without any liability. If the Customer has not managed to procure the necessary consents and the Company has commenced work the Company may ask the Customer shall, on request by the Company, refund to the Company the cost of all such work (including, without limitation, staff costs and equipment costs) at its then current rates.
- 10.6** The Customer shall provide the Company with the site and building plans (to include full details of all internal cabling runs) of the Sites and provide the Company with full details of all other services in the vicinity of the proposed works.
- 10.7** The Customer is responsible for making the Site good after any work undertaken by the Company at a Site, including without limitation replacing and re-siting items and for redecorating.
- 10.8** If the Customer is moving a Site, the Company must be informed as soon as is reasonably practicable so that suitable arrangements can be made to transfer the Customer's Services and Equipment. Unless otherwise requested, the Company, in addition to moving the Service and Equipment, will also endeavour (but cannot guarantee that it will be able, for example where the Customer moves to a different exchange) to retain the Customer's relevant existing telephone number(s). If the Company can transfer the Customer's existing number to the new Site the relevant existing Contract will continue under the same terms and conditions. If the Company cannot transfer the Customer's existing relevant number to the new Site, installation of a new line will be required at the new Site, or if the Customer requires any additional new lines, this will attract new line connection charges and a new Contract.
- 10.9** If the new installation or moving Site involves the visit of an engineer to facilitate the new installation, the Customer will be responsible for the costs incurred by the Company for the appointment of the engineer together with an administration fee in respect of any additional works required to be undertaken by the Company to complete the transfer of the Services and Equipment.

- 10.10** If the Customer moves Sites and leaves the Equipment for the new owner/tenant, the Customer is required to inform them that the relevant Service will be discontinued if the Company is not contacted by the new owner/tenant within seventy two hours for the purpose of entering into a new contract with the Company for such services and subject in any event to the agreement of such a contract.
- 10.11** If the Customer receives services from an alternative supplier at a new Site the Customer remains responsible for any contractual agreement the Customer has with such alternative supplier and for any liabilities the Customer may incur for terminating such agreement.
- 10.12** The Customer must identify any hazardous areas at the Site prior to implementation and commencement of the works. In the event that the Company discovers hazardous areas at the Site then it will cease work until the hazardous substance is removed or the area is made safe for the works to resume. The Company shall have no liability for any delay which is as a result of any hazardous contamination and the Customer shall hold the Company harmless in this regard. The Customer shall be responsible for the removal of all hazardous contamination at the Site including the co-ordination of and all costs incurred in connection with the engagement by the Customer of a company which specialises in the installation of cables in the contaminated hazardous areas.

## **11. LIMITATION OF LIABILITY**

- 11.1** Unless otherwise stated in this Contract the Company makes no warranty in respect of the supply of Equipment and/or Services and all other terms, conditions and warranties which may otherwise be implied into this Contract by Law or course of dealings between the parties are hereby excluded to the fullest extent legally possible.
- 11.2** Subject to condition 11.5, in no circumstances shall the Company's liability to the Customer arising under or in connection with this Contract (whether in contract, tort (including without limitation negligence) misrepresentation, breach of statutory duty or otherwise) in any Contract Year exceed 110% of the Price and/or Charges paid in the twelve months prior to the date on which a claim arose in respect of the Equipment, Mobile Equipment, Services, Fixed Network Services, Maintenance Services, Mobile Services or Installation Services to which the claim relates.
- 11.3** Subject to condition 11.5, under no circumstances shall the Company be liable in any event under or in connection with the Contract and whether in contract, tort (including negligence) misrepresentation, breach of statutory duty or otherwise for any:
- 11.3.1** loss of revenue;
- 11.3.2** loss of business;
- 11.3.3** loss of contracts;
- 11.3.4** loss of, damage to, or corruption of data;
- 11.3.5** loss of anticipated savings;
- 11.3.6** loss of profits; or
- 11.3.7** indirect, consequential or special losses; whether or not the Company knew or ought to have known that such losses or damages might be incurred.
- 11.4** Neither party shall be liable to the other party for any breach of any provision of the Contract (whether in breach of contract, tort (including but not limited to negligence) misrepresentation, breach of statutory duty or otherwise) caused by any reason outside the reasonable control or responsibility of that party including, without limitation, in respect of Fixed Network Services supplied by the Company, the failure of any Carrier to provide network capacity and/or connectivity (or any element thereof) to the Company on which it was reliant for the purposes of the Contract, any act of God, terrorist attacks, inclement weather, accidental damage, vandalism, failure or shortage or power supplies, flood, drought, lightning or fire, strike, lock-out, trade dispute or labour disturbance, any act or omission of Government, highways authorities, or other competent authorities.
- 11.5** Nothing in these Conditions excludes or restricts either party's liability for:
- 11.5.1** death or personal injury resulting from that party's negligence or its employees' negligence (while acting in the course of their employment);
- 11.5.2** any fraud, fraudulent misrepresentation or fraudulent misstatement;
- 11.5.3** any indemnity given under the Contract; and/or
- 11.5.4** anything for which the parties cannot at law limit or exclude their liability.
- 11.6** Subject to condition 11.5, the Customer agrees that any cause of action that it may have against the Company and/or any of its Group members (including, its (or their) affiliates, directors, officers, agents, consultants and employees) must commence within two (2) years after the cause of action arose, otherwise, the Customer's cause of action is permanently barred.



**11.7** This condition 11 shall survive termination of the Contract.

## **12. CUSTOMER'S INDEMNITY**

**12.1** Without prejudice to any other rights of the Company, the Customer shall indemnify, keep indemnified and hold harmless the Company against all costs (including without limitation legal costs and the cost of enforcement (on a full indemnity basis)) liabilities, claims, damages, direct, indirect or consequential losses (including without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss whether such losses are direct, indirect or consequential losses), expenses and/or judgments whatsoever, which it may suffer or incur, and arising from any:

- a)** breach by the Customer of any warranties, undertakings and/or representations given under the Contract and/or any failure to comply with any obligations, responsibilities and/or liabilities of the Customer set out in the Contract; and/or
- b)** injury and/or damage suffered or incurred by or to any of the Company's (or any of the Company's contractor's) employees and/or equipment whilst on the Site; and/or
- c)** infringement by the Customer (including, its affiliates, directors, officers, agents, consultants and employees) of any third party's Intellectual Property Rights.

## **13. TERMINATION AND CONSEQUENCES**

**13.1** Subject to conditions 13.3, 13.4 and 13.5 below and without prejudice to any specific termination rights set out elsewhere in these Conditions, the Customer shall not be entitled (once an order has been accepted by the Company) to change or cancel an order. The Contract shall commence on the Commencement Date and shall continue for the term specified in the Order Form.

**13.2** Subject to condition 13.6, in the event of any termination by the Customer of the Contract (in whole or in part), the Customer shall indemnify the Company in full against all loss (including, but not limited to, all losses incurred by the Company as a result of the Customer terminating the Contract before the end of the Minimum Term or where the Contract has continued beyond the Minimum Term before the end of the relevant notice period, which will include a minimum payment to the Company of the amount of the outstanding line rental charges, any Monthly Minimum Call Spend, Annual Support Charges, contracted call bundles, subscriptions or otherwise that would have been paid by the Customer had the Contract continued for the Minimum Term and/or the relevant notice period (as the case may be)), costs, damages, charges (including, but not limited to, any liability for Fixed Network Services transferred from third parties) and administration charges (of a minimum of £300 in respect of the termination of the supply of any or all of the Equipment which is the subject of a Contract) and expenses incurred by the Company as a result of such changes or cancellation.

**13.3** Without prejudice to any other rights of the Company under these Conditions or otherwise, the Company shall be entitled at any time and for any reason whatsoever to terminate this Contract on the giving of not less than thirty days' written notice to the Customer, without further liability to the Customer. For the avoidance of doubt, in the event that the Company terminates a Contract under this condition 13.3, the Customer's liability to pay the Charges for Services shall end on the date of termination of the relevant Contract and the Customer shall not be liable to pay for the Charges applicable for the remainder of any Minimum Term applicable in respect of that Contract. Following the expiry of the Minimum Term, the Customer may terminate the Contract on 30 days' notice to the Company.

**13.4** A Contract may be terminated forthwith by either party by notice in writing if the other party materially breaches its obligations under this Contract (including without limitation non-payment of charges due) and in the case of breaches which are capable of remedy such party fails to remedy such breach within fourteen days of written notice by the other party of what the breach is and requesting that the breach is remedied. The Company shall also be permitted to terminate this Contract forthwith on notice to the Customer in the event that the Customer is in material breach of any other contract to which these conditions apply (as in force from time to time) and which breach, if capable of remedy, has not been remedied within fourteen days of written notice by the Company of what the breach is and requesting that the breach is remedied.

**13.5** Notwithstanding anything to the contrary expressed or implied in these Conditions, either party (without prejudice to its own rights) may terminate all Contracts forthwith in the event that a liquidator (other than for the purpose of solvent amalgamation or reconstruction) trustee in bankruptcy, administrator or receiver is appointed in respect of the whole or part of the assets and/or undertaking of the other party or the other part enters into an arrangement or composition with its creditors, or other circumstances arise which entitle a court or creditor to appoint a receiver or administrator or to make a winding up order (save as in respect of a solvent reconstruction of such relevant party's group of companies). The Company may also terminate the Contract (without prejudice to its own rights) immediately on notice, where the Customer being an individual, is the subject of a bankruptcy petition or order; the Customer's financial position deteriorates to such an extent that in the Company's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or the Customer dies or, by reason of illness or incapacity (whether mental or physical) is incapable of managing its own affairs or becomes a patient under any mental health legislation.

**13.6** Where the Customer is a Small Business Customer, the Customer may cancel the provision of Fixed Network Services at any time prior to the commencement of the provision of those Fixed Network Services, without any form of charge or compensation being required to be paid to the Company.

**13.7** The Company shall be entitled to terminate the Contract forthwith in circumstances where it also has a right to suspend the provision of the Services pursuant to condition 5.6.

- 13.8** The termination or expiry of the Contract shall be without prejudice to any rights or liabilities which have accrued prior to such expiry or termination. Any provision of this Contract which expressly or by implication is intended to survive, shall survive the termination or expiry of the Contract.
- 13.9** Any implied right to terminate for convenience that the Customer may have under applicable law is hereby expressly excluded.
- 13.10** For the avoidance of doubt, in the event of termination of the Contract for any reason (except in the case of termination as a result of the Company's breach) , the Customer shall not be entitled to a refund of any pre-paid sums (including, without limit, subscription, rental and/or maintenance charges) whether such sums are attributable to the period before, including or after the date the Contract terminates.
- 13.11** Save where the Contract or a Service is validly terminated in accordance with condition 17.9, if the Contract or a Service relates to the provision of Mobile Services or Mobile Equipment, and that Contract or Mobile Service is terminated before the expiry of a Minimum Term or a Minimum Term expires before the Customer has achieved the Minimum Spend Requirement, the Customer shall immediately upon such termination or expiry (as the case may be), pay to the Company:
- 13.11.1** in the case of termination only, all Line Rental Charges which would have been payable by the Customer to the Company from and including the date of termination up to and including the last day of the Minimum Term which remain to be paid to the Company (if any) in respect of the period from and including the day following termination to and including the final day of the Minimum Term;
- 13.11.2** an amount equal to the difference between the RRP Line Rental Charges and the actual Line Rental Charges which would have been payable by the Customer to the Company during the Minimum Term;
- 13.11.3** an amount equal to the Minimum Spend Re-claim;
- 13.11.4** an amount equal to the Subsidy; and
- 13.11.5** in the case of termination only, an early disconnection charge of £17.02 plus VAT for each SIM Card that is operational at the date of termination.
- 13.12** If the Contract is terminated before the end of the Minimum Term and the Customer has not paid all of the Charges and the payments referred to in condition 13.10, the Customer shall return to the Company all Equipment, SIM cards and all other equipment provided to the Customer by the Company. If the Customer fails to do so, then the Company may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.
- 13.13** On termination of the Contract for any reason:
- 13.13.1** the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Company shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 13.13.2** the Customer will stop using the Services and any associated Software except to the extent such Software is contained within Equipment which is owned by the Customer; and
- 13.13.3** the Customer shall not be entitled to any unused Subsidy after termination or expiry of the Term.

## **14. SOFTWARE LICENCE**

- 14.1** Where the Company provides Software to the Customer the Company will subject to the terms of any Software Licence provided with the Services or Equipment and the terms of the Contract, either grant the Customer, or procure that the relevant licensor will grant to the Customer, a revocable licence to use the Software during the Term for the purposes of properly accessing the Services in accordance with these Conditions provided that the Customer shall not be permitted to transfer or sub-licence the licence which shall be granted on a non-exclusive basis. If required by the Company, the Customer shall sign such end user licence agreement as may be reasonably required by the owner of the copyright in the Software to protect the owner's interest in that Software and for the Customer to be able to use the Software.
- 14.2** Except as permitted by applicable law or as expressly permitted under the Contract the Customer shall not de-compile, reverse-engineer, disassemble, adapt, or modify the Software (in whole or in part), or copy the relevant manuals or documentation.
- 14.3** The Customer shall, and shall procure that all end users shall, comply with all Software Licence terms and conditions which are embedded in the Software in a click through form or otherwise.
- 14.4** The Customer shall not use the Software with anything other than the Equipment, unless otherwise expressly specified or approved by the Company.
- 14.5** The Customer acknowledges that:
- 14.5.1** some Equipment and/or Services provided by the Company to the Customer will include Software subject to a Software Licence which the Customer will not be able to use without accepting the terms of the Software Licence;

- 14.5.2** the Company shall not be liable to the Customer in respect of any inability of or failure by the Company to provide the Services as a result of the Customer not accepting the terms of any Software Licence; and
- 14.5.3** the terms of any Software Licence shall comprise the entire agreement in respect of the relevant Software and the Customer shall not have any rights or remedies against the Company in respect thereof.
- 14.6** If the Customer does not accept the licence terms relating to the Software, it shall not use the relevant feature of the Service to which the Software relates and the Company shall not be required to deliver the relevant Service. The Customer shall indemnify and keep indemnified the Company in full and on demand for any claim or for any losses incurred or suffered by the Company (including any legal costs) arising from any failure of the Customer to comply with the terms of the Software and relevant Software licences.
- 14.7** The licence granted under this Contract to use Software may be terminated if the Customer disputes the ownership of any Intellectual Property Rights under these Conditions, fails to comply with any term of these Conditions or if the continued use or possession of the Software infringes the rights of any third party.
- 14.8** Software delivered to the Customer by electronic means cannot be reissued and the Customer shall ensure that correct email addresses are provided for these purposes and that any firewall or other protection will not prevent such delivery.

## **15. CALL MONITORING**

The Company may monitor and record calls made to or by the Company by or to the Customer (and/or any of their employees or personnel), for training purposes, to improve the quality of its customer services and to assist with complaint handling. The Customer undertakes to make its employees and personnel aware of the rights reserved by the Company under this condition.

## **16. CONFIDENTIALITY AND USE OF CUSTOMER'S INFORMATION AND DATA PROTECTION**

- 16.1** The Company and the Customer will keep in confidence any information of the other; whether written or oral, of a confidential nature obtained under or in connection with the Contract except to the extent any disclosure is required by law. The Customer and the Company will not, without the consent of the other, disclose such information to any person other than:
- 16.1.1** their employees, contractors or professional advisers who shall require the information in order for the Customer or the Company to fulfil its obligations under the Contract; or
  - 16.1.2** in the case of the Customer, its users to the extent that they are required to use or access the Service.
- 16.2** Information shall not be treated as confidential if it is:
- 16.2.1** lawfully in the public domain; or
  - 16.2.2** lawfully in the possession of the Customer or the Company before disclosure from the other has taken place; or
  - 16.2.3** obtained from a third person who is entitled to disclose it; or
  - 16.2.4** replicated independently by someone without access or knowledge of the information.
- 16.3** If the Customer receives a request under the Freedom of Information Act 2000 which encompasses any information provided to the Customer by the Company in connection with the Contract the Customer will notify the Company immediately of the request and give the Company at least ten Business Days to make representations before releasing the requested information (save to extent otherwise required by law).
- 16.4** The Customer acknowledges and agrees that the Company may use Personal Data and/or confidential information obtained from the Customer during or following the completion of the Order Form or as a result of the Customer's use of the Equipment or Services and/or arising from or out of the provision of the Equipment or Services, for the following purposes:
- 16.4.1** administering the Customer's account (including, without limitation, arranging finance with lessors of the Equipment, liaising with any Carriers who are relevant to the provision of the Fixed Network Services, and sharing the data with members of the Company's Group);
  - 16.4.2** notifying the Customer of changes to the Service, including (without limitation and unless stated otherwise on the Order Form) contacting the Customer regarding potential and/or actual enhancements to or offers in relation to the Service;
  - 16.4.3** enabling the Company to supply the Services and Equipment to the Customer; and
  - 16.4.4** for invoicing purposes.
- 16.5** The Company will not pass Personal Data obtained from the Customer to any third parties for marketing purposes but may, with the Customer's consent, send the Customer information about the Company's (or any member of its Group's) own products and services which it considers may be of interest to the Customer.

- 16.6** If the Customer wishes to have details of the credit reference or the fraud prevention agencies the Company uses to obtain information about the Customer, or receive a copy of the information the Company holds about them, it may do so by submitting a request in writing for a copy of the information to the Company's Data Controller at Yappl Limited, Contract House, Turnpike Business Park, Alfreton, Derby, DE55 7AD, stating the Customer's full name, address, account number and phone number. The Company may charge a reasonable administration fee for providing such information.
- 16.7** The Customer warrants, undertakes and agrees that it will grant or procure from its employees and other personnel such consents to the use of Personal Data (referred to above) as may be necessary to enable the Company to use such data for the purposes described in this condition 16.
- 16.8** Subject to condition 16.9, where a party who has disclosed confidential information so requests and following termination of the Contract for whatever reason, each party who has received any confidential information of the other party shall without delay:
- 16.8.1** return to the other party, in a form capable of delivery, anything containing or recording the confidential information, whether in the form of documents, computer records, audio tapes, video tapes, CD Roms or any other media; and
- 16.8.2** certify in writing that any such confidential information not returned has been destroyed or made permanently unusable;
- 16.9** The Company shall not be required to return confidential information pursuant to condition 16.8 where continuing use or disclosure of such confidential information is necessary in order for the Company or any member of the Company's Group to exercise its rights or perform Services under the Contract or where the Company is required to maintain such confidential information pursuant to any Relevant Laws.
- 16.10** Both parties will comply with all applicable requirements of the Data Protection Legislation. This condition 16 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 16.11** To the extent that the Company is a data processor and the Customer is a data controller (where data controller and data processor have the meanings as defined in the Data Protection Legislation"), the Company shall, in relation to any Personal Data Processed in connection with the performance by the Company of its obligations under the Contract:
- 16.11.1** process that Personal Data only on the written instructions of the Customer unless the Company is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Company to process Personal Data (Applicable Laws). Where the Company is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Company shall notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Company from so notifying the Customer;
- 16.11.2** ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
- 16.11.3** ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- 16.11.4** not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
- a)** the Customer or the Company has provided appropriate safeguards in relation to the transfer;
  - b)** the data subject has enforceable rights and effective legal remedies;
  - c)** the Company complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - d)** the company complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of Personal data;
- 16.11.5** assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 16.11.6** notify the Customer without undue delay on becoming aware of a personal data breach; and
- 16.11.7** at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Contract unless required by Applicable Law to store the Personal Data.
- 16.12** Where the Company is acting as a data processor, the Customer acknowledges that the Company is reliant on the Customer for direction as to the extent to which the Company is entitled to use and process the Personal Data. Consequently, the Company will not be liable for any claim brought by a data subject or any action of any regulator (including, for the avoidance of doubt any fine) arising from any action or omission by the Company to the extent that such action or omission resulted directly from the Customer's instructions.

## **17. CHANGES TO THE CONDITIONS, SERVICE SPECIFIC CONDITIONS AND CONTRACT**

- 17.1** The Company may change the Conditions and/or Service Specific Conditions (including but not limited to the scope of the Services and the Charges) at any time and will publish any change in line with condition 17.2. Circumstances under which the Company may make the changes, include, but are not limited to:
- 17.1.1** enabling the Company to comply with applicable law, regulations, regulatory requirement or licence;
  - 17.1.2** as a result of any changes imposed on the Company by a third-party supplier or manufacturer;
  - 17.1.3** a change to the Company's operations provided such change is also implemented in relation to the majority of the Company's customers; or
  - 17.1.4** as a result of any change in the rate of taxation or VAT.
- 17.2** The Company will publish any changes to the Conditions and/or Service Specific Conditions online at [www.Yappl.com](http://www.Yappl.com) (or at such other URL as is notified to the Customer by the Company from time to time):
- 17.2.1** at least thirty days before the change is to take effect for changes that may be of material detriment to the Customer; and
  - 17.2.2** as soon as is reasonably practical in the circumstances prior to the changes taking effect, for all other changes.
- 17.3** The Company may also vary the Charges for the Services by providing at least 20 Business Days' notice to the Customer of the changes where such changes are not brought about as a result of any of the matters listed in condition 17.1.1 to condition 17.1.4 above.
- 17.4** If the Customer wishes to object to any proposed change which is of material detriment to the Customer, the Customer must notify the Company in writing (addressed to Customer Services, Yappl Limited, Contract House, Turnpike Business Park, Alfreton, Derbyshire, DE55 7AD within thirty days of publication of the proposed change, otherwise the Customer will be deemed to have accepted the proposed change. For the avoidance of doubt, the service by the Company of any notice in accordance with condition 17.2 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 condition 17.4 constitute or be deemed to constitute evidence that the relevant change is of material detriment to the Customer.
- 17.5** Without liability to the Customer, in order to reduce the risk of fraud or for any commercial purpose, the Customer acknowledges that on capped price call tariffs (if any) the Company may at its sole discretion on not less than seven days' notice:
- 17.5.1** limit call price caps to the first four hours of calls per day; and/or
  - 17.5.2** remove the relevant call price caps from the Customer's pricing and tariff should the Customer's call profile deviate significantly from the Company's standard call profiles and notify the Customer of the new pricing to apply in respect of the relevant Fixed Network Services.
- 17.6** In order to reduce the risk of fraud or for any commercial purpose, the Customer acknowledges that on bundled minute call packages (if any) the Company may at its sole discretion on not less than seven days' notice remove the relevant bundled minute call package from the Customer's pricing and tariff should the Customer's call profile deviate significantly from the Company's standard call profile and over seventy five per cent of the Customer's bundled minutes be used in any month.
- 17.7** The Company may, if requested by the Customer, provide additional services to be included within the Services under such additional terms and conditions as may be notified by the Company from time to time.
- 17.8** No variation of the terms of the Contract however notified (save with regard to the manuscript details on the Order Form including, where initialled by both parties, manuscript amendments to the type face, as such details may be inputted by authorised staff of the Company) will be accepted by the Company unless authorised by notice in writing by a Director of the Company.
- 17.9** Where the Contract relates to the provision of Mobile Equipment and/or Mobile Services the Customer may terminate the affected part of the Contract where a change under condition 17.1.2 or condition 17.1.3 results in the Customer being liable to pay to the Company increased monthly charges which would result in the Customer having to pay an increase in such monthly charges (as a percentage) which are more than any increase in the retail prices index (also calculated as a percentage) or any other statistical measure of inflation published by any governmental body authorised to publish measures of inflation from time to time, in the 12 month period before any increase. To do so the Customer must provide the Company with written notice of its intention to terminate within 1 month of receipt of notice of the increased charges, and upon receipt of such notice by the Company r, such notice having been served in accordance with this condition, the affected part of the Contract shall terminate with immediate effect.

## 18. FRAUD AND SECURITY

- 18.1** The Customer shall ensure that user names and passwords used by it and/or its personnel and/or users in connection with the Services are kept secure and confidential at all times and are only used by authorised users. The Customer shall inform the Company immediately if the Customer knows or suspects that a user name or password has been disclosed to an unauthorised user, or is being used in an unauthorised way, or if there is any illegal, fraudulent or unauthorised use of the

Services or Equipment. The Customer will not change or attempt to change a user name without the Company's written consent.

- 18.2** The Company reserves the right (at the Company's sole discretion):
- 18.2.1** to suspend access to the Services by one or more user names if at any time the Company thinks that there has been or is likely to be a breach of security (including a breach of the Customer's obligations under this condition 18); and
- 18.2.2** to ask the Customer to (in which case, the Customer shall) change any or all of the passwords the Customer's uses in connection with the Services.
- 18.3** The Customer will inform the Company immediately of any subsequent changes to the information the Customer supplies to the Company in connection with the Contract.
- 18.4** The Customer accepts and acknowledges that the Services are not guaranteed to be secure and the Company does not guarantee the prevention or detection of any unauthorised attempts to access the Services.
- 18.5** The Customer acknowledges that the Company has no control of a Customer's PABX/switch configuration, voice mail security or other feature services enabled.
- 18.6** The Company shall not be responsible for call charges or other charges resulting from fraudulent and/or unauthorised use of the Equipment and/or Services or any use of the Equipment and/or Services by any unauthorised third parties (who are not employees of the Company) and the Customer agrees to pay all additional charges related to such fraudulent and or use by unauthorised third parties. The Customer is therefore urged to verify with their equipment provider that all necessary steps to combat fraudulent and/or unauthorised use have been taken.
- 18.7** Any assistance given by the Company in relation to fraudulent and/or authorised use by the Customer or third parties (or the prevention of such use) will be on a reasonable endeavours basis only and no liability can be accepted by the Company for any loss sustained by the Customer via fraudulent and/or unauthorised means that are beyond the Company's reasonable control (save for any fraud and/or authorised use by an employee of the Company acting in that capacity).
- 18.8** The Customer shall, at all times, be responsible for:
- 18.8.1** preventing unauthorised use of the Equipment and/or Services;
- 18.8.2** maintaining the security of all systems, Services, network elements and Equipment within its (or its employees', agents' or contractors') control; and
- 18.8.3** maintaining (and ensuring that each of its authorised users maintains) at all times, the integrity and secrecy of all passwords, log-in details and access codes used for the purposes of accessing of using the Services or any systems, network elements or Equipment.
- 18.9** Without limitation, the Customer shall put in place and comply at all times with the following security measures:
- 18.9.1** the Customer shall ensure that the password used in connection with the Equipment and/or Services is strong and is made up of not less than eight characters which shall include at least one number, one letter and one alphanumerical symbol;
- 18.9.2** the Customer shall regularly and at least every 6 (six) weeks change the password set out at condition 18.9.1 above;
- 18.9.3** the Customer shall restrict access to passwords to key individuals;
- 18.9.4** the Customer shall ensure that it has up to date anti-virus protections and that it has firewalls in place which are maintained by the Customer in accordance with best industry practices; and
- 18.9.5** the Customer shall, without delay, follow any security directions given to it by the Company from time to time.

## **19. INTELLECTUAL PROPERTY RIGHTS**

- 19.1** Any Intellectual Property Rights supplied by the Company or any member of the Company Group to the Customer, or specifically produced by the Company for the Customer, in connection with this Contract, shall be the exclusive property of the Company and/or the relevant member of the Company Group and/or relevant licensor and to the extent that any such rights vest in the Customer shall be deemed to be and shall be assigned to the Company or the relevant member of the Company Group by the Customer. The Customer shall not disclose to any third party or use any such Intellectual Property Rights except to the extent that it is or becomes public knowledge through no fault of the Customer, or as required for the performance of the Customer's obligations under this Contract. Any Intellectual Property Rights belonging to, licensed to or supplied by the Company or any member of the Company Group to the Customer shall be used by the Customer as expressly permitted under the terms of this Contract and in accordance with the instructions of the Company or any member of the Company's Group.
- 19.2** Any licence provided by the Company to the Customer in relation to the Intellectual Property Rights shall be personal to the Customer, non-exclusive, revocable and limited to the United Kingdom and in the absence of earlier revocation shall terminate upon termination of this Contract.

- 19.3** Where Intellectual Property Rights are created during or as a result of the supply of the Services and Equipment to the Customer, these Intellectual Property Rights shall be owned by the Company or the third party rights owner as applicable. This condition shall not transfer the ownership of any Intellectual Property Rights created or owned by the Customer as a result of the receipt and ordinary use of the Services and such Intellectual Property Rights shall be owned by the Customer.
- 19.4** In so far as the Company is lawfully able to do so, the Company grants the Customer a non-exclusive, non-transferrable licence to use the Services, Software and Equipment for the Term for the use permitted by these Conditions.
- 19.5** The Customer shall not:
- a)** do or omit to do anything which may jeopardise any Intellectual Property Rights of the Company or its licensor;
  - b)** (b) dispute or challenge the rights of the relevant third party rights owner;
  - c)** (c) apply for, or obtain, registration in any country of any trade or service mark or any other Intellectual Property Rights which consist of, or comprises of, or are confusingly similar to, the trade marks or Intellectual Property Rights of the Company or its licensors.
- 19.6** The Customer shall, if required by the Company, sign any agreement containing terms required by the owner of any Intellectual Property Rights to protect the owner's rights.

## **20. GENERAL**

- 20.1** Subject to any deemed acceptance by the Customer under condition 8.2.2 and/or condition 17.4, no forbearance or indulgence shown or granted by the Company to the Customer whether in respect of these Conditions and/or any Service Specific Conditions or otherwise shall in any way affect or prejudice the rights of the Company against the Customer or be regarded as a waiver of any of these Conditions and/or any Service Specific Conditions.
- 20.2** The Contract (and any non-contractual matters arising out of or in connection with it) shall be governed by and construed in all respects in accordance with English law and the Customer hereby submits for all purposes of and in connection with the Contract to the exclusive jurisdiction of the English Courts (including in relation to non-contractual disputes).
- 20.3** The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else and no third party shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 20.4** Any notice, invoice or other document which may be given by either party under the Contract shall be in writing (except as provided otherwise) sent for the attention of the relevant person, and to the address given on the Order Form (or such other address, or person as the relevant party may notify to the other party) and shall be delivered personally, sent by pre paid, first-class post or recorded delivery. A notice is deemed to have been received, if delivered personally, at the time of delivery, in the case of pre-paid first class post or recorded delivery, 48 hours from the date of posting or if earlier upon receipt and, if deemed receipt under this condition 21.4 is not within Normal Working Hours, at 9.00 am on the first Business Day following delivery. To prove service, it is sufficient to prove that the envelope containing the notice was properly addressed and posted. E-mail shall not be a valid method of serving notices under this Contract.
- 20.5** Any director or representative of the Customer who signs on behalf of the Customer will be deemed an authorised signatory and thereby the Company shall be entitled to rely on such signatory as binding the Customer to the obligations in this Contract in all respects.
- 20.6** The Customer shall not, without the prior written consent of the Company, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 20.7** The Company may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract without the consent of the Customer however, the Customer shall, if the Company requires, execute such deeds and/or documents as may be necessary or required by the Company to give effect to any such dealing in such rights and/or obligations.
- 20.8** Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 20.9** The Customer shall not, without the prior written consent of the Company, at any time from the date of the Contract to the expiry of six months after the termination or expiry of the Contract, actively solicit or entice away from the Company, or actively employ or attempt to employ (save where the relevant person has responded to a general advertisement by the Customer for the relevant job vacancy), any person who is, or has been, engaged as an employee or sub-contractor of the Company in the provision of the Services to the Customer. Any consent given by the Company in accordance with this condition 21.9 shall be subject to the Customer paying to the Company a sum equivalent to twenty per cent of the then current annual remuneration of the Company's employee or sub-contractor or, if higher, twenty per cent of the annual remuneration to be paid by the Customer to that employee or sub-contractor.
- 20.10** The Company and the Customer agree that the Employment Regulations will not apply to transfer the employment or engagement of any Employee to the Company in connection with the Contract or the termination or expiry of all or part of any contract between the Customer and a Contractor or any other provision of the Services.

- 20.11** The Customer agrees to indemnify and keep indemnified the Company against all liabilities, losses, actions, proceedings, damages, costs (including legal and employment costs), claims, demands and expenses brought or made against or suffered or incurred by the Company arising out of or connected with:
- a)** the transfer or alleged transfer of the employment or engagement of any Employee to the Company pursuant to the Employment Regulations or otherwise; and
  - b)** the employment or engagement or termination of employment or engagement by the Customer or a Contractor and/ or any Subcontractor of any Employee.
- 20.12** If any provision (or part of a provision) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force.
- 20.13** If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted or modified, that provision will apply with whatever minimum modification is necessary to make it valid, enforceable and legal whilst still giving effect to the commercial intention of the parties.
- 20.14** For the purposes of this Contract, 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. The Company shall not be liable to the Customer as a result of any delay or failure to perform its obligations under the Contract as a result of a Force Majeure Event. If the Force Majeure Event prevents the Company from providing any of the Services and/or Equipment for more than 2 weeks, the Company shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.
- 20.15** Except with the prior written consent of the other party, neither party shall:
- 20.15.1** make any public statement about the Equipment and/or Services or otherwise publicise the Contract or any information relating to it; or
  - 20.15.2** use any trademarks or identifying logos owned or licensed to any member of the other party in any manner.
- 20.16** Nothing in the Contract is to be construed as establishing or implying any partnership or joint venture between the parties, or as appointing any party as the agent or employee of any other party. No party shall hold out any other party as its partner or joint venturer. Except, and to the extent, that the Contract expressly states otherwise, no party may incur any expenses or negotiate on behalf of any other party or commit any other party in any way to any person without that other party's prior written consent.
- 20.17** Each party shall do and execute, or arrange and procure for the doing and executing of, any act and/or document reasonably requested of it by any other party to implement and give full effect to the terms of the Contract.
- 20.18** The Contract constitutes the entire agreement between the parties and supersedes any prior agreement or arrangement in respect of its subject matter. Neither party has entered into the Contract in reliance upon and nor shall they have any remedy in respect of, any representation or statement (whether made by the other party or any other person) which is not expressly set out in the Contract.
- 20.19** The Contract may be entered into in any number of counterparts and by the parties on separate counterparts, all of which taken together shall constitute one and the same instrument.

## Yapl Fixed IP SIM Addendum

v.20160324-1450 – first release

### 1. DELIVERY OF THE SIM CARDS

- 1.1** Any forecasted time or period for delivery of any SIM Cards given by the Company shall be given in good faith but shall be an estimate only and the Company shall not be liable for any delay in delivery or any consequential loss or other loss arising therefrom.
- 1.2** SIM Cards will be delivered to the Customer (either by post or by other carrier) to the shipment/delivery address stated in the Order Form unless expressly agreed otherwise ("Delivery Address"). The risk of loss of or damage to the SIM Cards shall pass to the Customer at the time the SIM Cards are posted by or on behalf of the Company to the Customer.
- 1.3** The Charges payable under the Contract relate to the provision of the Services and do not relate to the sale of the SIM Cards.
- 1.4** The Customer shall pay the cost of delivering the SIM Cards to the Delivery Address and costs of packaging the same. Such costs are set out in the sales Order Form and/or may be notified to the Customer from time to time by or on behalf of the Company.
- 1.5** If there is a failure to accept delivery of the SIM Cards at the Delivery Address by the Customer, the Company shall be entitled without prejudice to any other rights it may have to store the SIM Cards at the cost and risk of the Customer.



Any costs arising in respect of such storage or re-supply of the SIM cards shall be paid in full by the Customer.

- 1.6** The Company shall take reasonable care to ensure that the SIM Cards are delivered to or collected by the postal authorities or other carriers in a condition suitable for delivery to the Delivery Address but subject thereto it accepts no liability for damage to or loss or shortage of any SIM Cards occurring during the course of delivery or for any loss or damage arising directly or indirectly therefrom.
- 1.7** Any claim in respect of any loss or theft of or damage to the SIM Cards in the course of their delivery shall be made by the Customer within seven days of the scheduled receipt of the SIM Cards at the Delivery Address. Any shortages of SIM Cards delivered to the Delivery Address must be notified to the Company in writing within two days of delivery to the Delivery Address.
- 1.8** Notwithstanding the delivery and the passing of risk in the SIM Cards, all SIM Cards supplied to the Customer, pursuant to the Contract shall at all times remain the property of the Company, its supplier or the relevant Network Provider that supplied such SIM Cards to the Company, and shall be returned to the Company upon termination of the Contract at the Customer's cost and risk. Failure to return a SIM card shall incur a charge for each SIM Card not returned.

## **2. COMPANYS WARRANTIES AND FAULTS**

- 2.1** The Company warrants that:
  - 2.1.1** the SIM Cards shall be free of material defects for a period of twelve (12) months from the Commencement Date;
  - 2.1.2** the Services will be performed with reasonable skill and care; and
  - 2.1.3** so far as it is able, the Company will transfer to the Customer the benefits of all warranties or guarantees in relation to the SIM Cards which the Company receives from the relevant Network Provider(s).
- 2.2** The Company I warrant ("Warranty") that SIM Cards will not fail within the period starting on the date of delivery of the relevant SIM Card(s) to the Customer and ending 12 months thereafter ("SIM Warranty Period"). Where SIM Card(s) supplied by the Company to the Customer fail within the SIM Warranty Period the Customer shall notify and return (where practical) such SIM Card(s) to the Company within that SIM Warranty Period. The Warranty shall not apply when such fault is connected with the Customer's acts, omissions or misuse of the SIM Card(s), including where the Customer has not kept the SIM card(s) in good condition and not following any reasonable instructions from the Company as to the storage of the SIM Card(s). The Company shall, within fifteen (15) business days of receipt of a failed SIM Card which qualifies under the Warranty, repair or (at the Company I's option) replace the failed SIM Card by sending a new SIM Card to the Customer's address under the Contract. In the event that a SIM Card becomes faulty after the SIM Warranty Period and the Customer requests that the Company repair or replace such faulty SIM Card then the Company shall charge the appropriate replacement charges for repair or replacement. The return of faulty SIM Card(s) outside of the SIM Warranty Period or due to misuse by the Customer shall be at the Customer's sole expense. To the maximum extent permitted by law, these are the Customer's exclusive remedies for any failure to meet the Warranty.
- 2.3** Save as expressly provided in the Contract, all other warranties, terms and conditions (whether implied by common law, statute, and custom or otherwise) are hereby excluded to the fullest extent as permitted by law.
- 2.4** The Company shall not be liable for services, systems and equipment provided by the Customer or any Third Party which constitute:
  - 2.4.1** a component of the Services; or
  - 2.4.2** a component of other systems, equipment or services provided by the Customer and/or any Third Party to the Customer and/or the Customer's customers and/or End Users.
- 2.5** The Customer acknowledges and accepts that it is technically impracticable for the Company to provide fault-free Services and the Company does not guarantee that the Services will be free of faults or interruptions, that the Services will be free of errors, omissions or other issues or that the Services will be timely or secure. The Customer acknowledges and agrees that matters may affect the Services that the Company cannot reasonably control, including (without limitation) lack of network capacity, physical obstructions, atmospheric conditions and delays caused by the Company's suppliers or manufacturers.
- 2.6** The Customer warrants and undertakes to the Company that all information provided by or on its behalf in connection with provision of the Services is true, accurate and complete and can be relied upon in full by the Company and its agents, contractors and employees. The Parties agree that the Company shall have no liability under or in connection with the Contract to the extent that such liability arises, directly or indirectly, from:
  - 2.6.1** the supply of untrue, inaccurate or incomplete information provided by the Customer or on its behalf and/ or any breach by the Customer of the warranty and undertaking in this clause;
  - 2.6.2** matters beyond the Company's reasonable control, including lack of network capacity, physical obstructions, atmospheric conditions and delays caused by the Company's suppliers;
  - 2.6.3** any defect, fault, breakdown, compatibility issues or other failure of any equipment, systems, services and/or software provided by the Customer or its agents, subcontractors or other Third Parties (including, any Systems Integrator or other

Third Party Supplier) to the Customer's customers or End Users and used with the Services; or

- 2.6.4** any acts or omissions of the Customer or its agents, subcontractors or other Third Parties in respect of the Services (including, any Systems Integrator or other Third Party Supplier).
- 2.7** The Customer acknowledges that in relation to international roaming Charges:
- 2.7.1** the Network Providers vary their roaming fees dependent on:
- 2.7.2** the location of the SIM Card(s) concerned; and
- 2.7.3** whether roaming is on preferred or non-preferred networks;
- 2.7.4** it is the Customer's responsibility to ensure that the Customer, its customers and End Users each familiarise themselves with the billing increments and the data usage Charges for roaming SIM Cards. The Network Providers structure roaming prices as follows:
- 2.7.4.1** Vodafone UK SIM Card(s) - Vodafone SIM Card(s) are billed in 200KB increments on public or internet APNs. If a private network is selected (as per the Company's) then billing increments are billed in 1KB increments on Vodafone and partner networks and 10KB increments on non-Vodafone or non-partner networks;
- 2.7.4.2** Vodafone Global SIM Card(s) - full details of the billing increments are available from the Company on request;
- 2.7.4.3** O2 SIM Card(s) - O2 SIM Card(s) are billed in 10KB increments on non-preferred networks and 1KB on preferred networks. When roaming, there is a minimum charge for data usage of 200kb per day (24 hours ending midnight UK GMT), per APN and per foreign network operator;
- 2.7.4.4** T-Mobile & O2 Ireland SIM Card(s) - T-Mobile & O2 Ireland SIM Card(s) are billed in increments of 1KB;
- 2.7.4.5** Telenor SIM Card(s) – full details of the charges payable across different territories are available from the Company on request; and
- 2.7.5** the applicable charges shall be the prevailing Network Providers rate plus twenty per cent (20%).
- 2.8** The Company and each Network Provider reserves the right to update a SIM Card over the air (such updates may be required for functionality, or for intellectual property issues, or national regulations). The Company shall provide the Customer with reasonable advance notice of any such planned update (except in cases where regulations or urgency would not allow it). Under some national laws, updates require the consent of the owner of the equipment containing/user of a SIM Card. The Customer hereby expressly consents to any updates and the Customer shall make and procure to make such consent binding on any owner of such equipment/SIM Card user through a relevant licensing agreement or by other equivalent means. Where such consent is not obtained, the Company and/or any relevant Network Provider shall have the right to suspend transmission to and from the relevant SIM Card(s).
- 2.9** Both the Company and each relevant Network Provider retain the right at all times to suspend or deactivate any non-upgraded SIM Card(s), and neither the Company nor any Network Provider accepts any liability for any consequences of such suspension.
- 2.10** The Company shall either grant the Customer, or procure that the relevant licensor will grant to the Customer, a licence for the use of the SIM Cards and any associated Software necessary to the Customer for the sole purposes of the Customer's use of the Services in accordance with the Conditions and this addendum during the Term.

### **3. OBLIGATIONS OF THE CUSTOMER**

- 3.1** The Customer shall, throughout the Term:
- 3.1.1** comply and ensure that its customers and End Users comply with any conditions notified by Network Providers and/or the Company regarding the use of the SIM Card(s);
- 3.1.2** tell the Company immediately if the Customer's name, address, bank account or credit card details change; and
- 3.1.3** tell the Company immediately if any of the Customer's SIM Card(s) are lost or stolen or used without the consent of the Customer by calling Customer Services and thereafter write to confirm the details. The Customer shall be liable for any unauthorised use of any SIM Cards as a result thereof, including but not limited to, Charges, losses, damages and expenses incurred.
- 3.2** The Customer shall not, and shall ensure that its customers and End Users shall not throughout the Term and after termination of the Contract:
- 3.2.1** use the SIM card (or allow it to be used) for any illegal purpose (in such circumstances the Company may report the incidents to the police or any other relevant official organisation); or
- 3.2.2** use any equipment that has not been approved for use in connection with the Services by the Company and the relevant Network Provider(s) and if the Customer is not sure whether the Customer's equipment is so approved, to notify the

Company immediately. The Company reserves the right, at its sole and absolute discretion, to require the Customer to satisfy the Company that any equipment to be used in connection with the Services is fit for purpose and suitable and the Customer undertakes to the Company to comply with the Company's testing and other requirements in respect of the same.

- 3.3** The Company shall be entitled to rely on the Customer's non-compliance with any of the Customer's obligations in this clause 3 as relieving the Company's performance under the Agreement if such noncompliance restricts or precludes performance of the Services by the Company.
- 3.4** If the Customer acts as a Systems Integrator or other Third Party Supplier the Customer shall keep detailed up-to-date records of all acts and things done by the Customer in relation to the provision of the Services to the Customer's customers and End Users during the Term and for a period of six (6) years thereafter, and at the Company's request, shall make such records available for inspection and/or provide copies to the Company.
- 3.5** The Customer acknowledges that if it requests a bar to be applied to any SIM Card, for any reason, that such bar will become effective within twenty-four (24) hours of the Company notifying the relevant Network Provider. The Company shall notify the relevant Network Provider as outlined in the Company Fixed IP SIM SLA available at [www.yappl.com](http://www.yappl.com). The Customer acknowledges that they will be responsible for all Charges incurred up to a bar taking effect in accordance with the timeframe set out in this clause.
- 3.6** For SIM Cards with an Aggregated Tariff the Customer agrees to comply with the Aggregated Allowance. The Customer shall be liable to pay the Company for all data usage charges in excess of the Aggregated Allowance; such charges to be calculated by reference to the Company's standard charges from time to time without taking into account any discount or other saving that would have applied by reference to the aggregated Tariff applicable to the relevant SIM Card(s).

#### **4. FAULTY SIM CARDS - HELPDESK**

- 4.1** The Company shall provide first line support to the Customer via phone (03333 448 290) or email ([support@Yappl.com](mailto:support@Yappl.com)).
- 4.2** The Helpdesk shall be staffed by appropriately qualified personnel between the hours of 09:00 and 17:00 GMT/BST Monday to Friday, excluding bank holidays.
- 4.3** Upon receipt of a Customer report that a SIM Card has developed a Fault, customer services shall, so far as they are able, take such steps to resolve the relevant Fault, including, remotely resetting the SIM Card.
- 4.4** Should the Helpdesk action undertaken in accordance with clause 4.3 fail to remedy the Fault, and the Fault occurs during the SIM Warranty Period set out in clause 2.2 the Company shall replace the faulty SIM Card free of charge.
- 4.5** Should the Helpdesk action undertaken in accordance with clause 4.3 fail to remedy the Fault, and the Fault occurs after the expiry of the SIM Warranty Period set out in clause 2.1.1 the Company reserves the right to charge a replacement fee in relation to the provision of the replacement SIM Card.

#### **5. SUSPENSION**

- 5.1** The Company may suspend the Services, or any SIM Card, if any one or more of the following occur:
- 5.1.1** the telecommunications network and other infrastructure in place supporting the Services fails or if modification or maintenance work is being carried out in respect of the same, or such telecommunications network is unavailable for any reason;
- 5.1.2** the Company does not receive full payment of any Charges due pursuant to the Contract in accordance with the payment terms set out in the terms of the Contract; in which case the Charges set out in the Contract shall apply;
- 5.1.3** the Company believes or has reasonable grounds to suspect that the Customer's equipment or SIM Card(s) are being used fraudulently or illegally or if they have been lost or stolen (in which case the Charges remain payable until we are notified of such fraudulent or illegal use pursuant to clause 3.1.3);
- 5.1.4** the Customer is otherwise in material breach of the terms of the Contract; or
- 5.1.5** at its discretion in relation to SIM Card(s) if it suspects that they have been tampered with, in any way which could render billing information inaccurate.
- 5.2** If the Services are suspended pursuant to clause 5.1.1 for more than three (3) consecutive days, the Company shall suspend the Charges for the period of unavailability.