

ThePhoneCloud.com Terms & Conditions for the Provision of Equipment and/or Mobile Network Services – January 2018

1. DEFINITIONS

In these Conditions, the following expressions shall have the following meanings:

"Anti-Bribery Laws" means any and all statutes, statutory instruments, bye-laws, orders, directives, treaties, decrees and laws which relate to the anti-bribery and/or anti-corruption, including the Bribery Act.

"Bribery Act" means the Bribery Act 2010.

"Bar" and **"Barring"** means the act of barring the Customer from making or receiving certain services on the Equipment.

"Business Day" means any and all days between Monday and Friday in any week but excluding English bank holidays or public holidays.

"Charges" means the charges payable by the Customer for Mobile Network Services as described and at the rates (appropriate to the chosen Tariff) as set out in the Tariff, including without limitation any call charge, access charge, connection charge, minimum charge, value added service charge and/or early termination charge.

"Company" means ThePhoneCloud.com, C/o RW 23 Ltd, Thames House, Bourne End Business Park, Cores End Road, Bourne End, Buckinghamshire, SL8 5AS. Registered in England & Wales, Company number: 09461081. **"Connection"** and **"Connected"** means the connection of the Equipment or SIM Card to the selected tariffs and Systems.

"Contract" means this agreement between the Customer and the Company for the provision of the Mobile Network Services incorporating these Conditions, the Order Form and any other document incorporated by reference into the 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.

"Director" means a director of the Company authorised to sign any Order Form;

"End User" means a user of the Mobile Network Services.

"Equipment" means the approved device and SIM Card connected to the System.

"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;

"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;

"IMEI" means the International Mobile Equipment Identity number incorporated into the Equipment.

"Migration" means the transfer of a mobile number to any alternative service provider on the same network.

"Minimum Term" has the meaning given to it in condition 3.2.

"Mobile Network Service(s)" means the provision of airtime, SMS, MMS and/or mobile data, together with any other services identified in this Contract, by means of the Systems offered by the Company.

"Normal Working Hours" means 9.00am to 5.00pm on any Business Day. **"OFCOM"** means the Office of Communications and/or any successor body;

"Order Form" means the order form to which these Conditions are attached or which is expressed to be subject to these Conditions which sets out the detail of the order, including (without limitation) the Customer's details and the Equipment and/or Mobile Network Services to be supplied under the Contract, and constitutes.

"Parent Undertaking" has the meaning given to it in section 1162 of the Companies Act 2006. **"Party"** means the Company or the Customer, and **"Parties"** shall refer to both of them. **"Payment Date"** means the date determined by the Company on which the Company's invoices fall due for payment. **"Personal Data"** has the meaning given to it in the Data

Protection Act 1998.

"Portability" means the transfer of a mobile number or Mobile Network Service to any alternative mobile service provider and/or mobile service operator.

"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;

"Service Operator" means any mobile network operator.

"SIM Card" means a module which contains Customer Information and which, when used with Equipment, enables access to the Mobile Network Services.

"Subsidiary Undertaking" has the meaning given to it in section 1162 of the Companies Act 2006.

"System(s)" means the public telecommunications systems that the Company makes available to the Customer.

"Tariff" means the Company's tariff for each of the Mobile Network Services which is provided to the Customer and/or set out at www.ThePhoneCloud.com or at such other web address as is notified to the Customer by the Company from time to time and/or used by the Company to calculate the Charges.

"Upgrade" means any supply of a new handset or mobile device.

2. CONTRACT FORMATION

. 2.1. The Order Form constitutes the Customer's offer to the Company to purchase the relevant Mobile Network Services on and subject to the terms of the Order Form and these Conditions. Once such offer is accepted by an authorised representative of the Company signing the Order Form, a Contract shall come into effect. The details recorded on the Order Form together with these Conditions (together with other document incorporated by reference into the Contract by these Conditions) shall be the exclusive terms and conditions of the Contract between the Parties (to the fullest extent permitted by law) and any such Contract shall be conditional upon the credit status of the Customer being to the satisfaction of the Company (in its sole and absolute discretion).

. 2.2. All quotations, estimates and tenders are given and contracts are made by the Company subject to and only upon these Conditions which cannot be varied unless agreed in writing by the Company and these Conditions supersede and override all other terms and conditions appearing elsewhere including (without limitation) any terms and conditions of the Customer referred to on any website or which the Customer may purport to apply under any purchase order or acknowledgement of delivery or similar document, and/or established between the Company and the Customer by course of dealing. 2.3. In the event of a conflict between these Conditions and the Order Form, the Order Form will prevail in respect of the relevant Mobile Network Service. 2.4. 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 provided by the Company 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. 2.5. The Customer shall be responsible for ensuring 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 and/or the supply of any Mobile Network Services (as the case may be) by the Company are accurate and fully describe the Customer's requirements and the Customer shall be liable in respect of any 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 any such drawings, sketches, specifications, descriptions or other instructions by the Company constitutes the infringement of the intellectual property or other rights of another person. 2.6. 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. 2.7. Each

order for Mobile Network Services shall (for the purposes of this condition 2.7) 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 Mobile Network Services shall not entitle the Customer (to the extent that any such entitlement exists) to terminate the Contract for other Mobile Network Services or any other contract entered into under these Conditions. 2.8. 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 (including without limitation any of the Customer's End Users, employees, agents or contractors) of the Mobile Network Services and/or Equipment shall not do such act or thing. 2.9. 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. 2.10. In connection with Customer's application for Mobile Network Services, 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 credit worthiness of the Customer and/or its owners, directors, officers and assigns and the Customer undertakes to 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.

2.11. Any Contract including the provision of any handset or mobile device is, until the delivery of the applicable handset or device, conditional upon the availability of the relevant handset or device and the Company providing confirmation by email to the Customer that the terms stated on the Order Form of the applicable Contract for Equipment do not contain any errors or omissions.

3. TERM

3.1. This Contract will commence from the date that any Mobile Network Services requested on the Order Form overleaf are implemented and are available for use by the Customer ("**Commencement Date**"), and shall endure for as long as any Mobile Network Services are provided to the Customer pursuant to the Contract.

3.2. Subject to condition 11 below and unless otherwise stated on the Order Form, the Mobile Network Services shall continue for the minimum term stated on the Order Form for each individual Connection or Upgrade or Tariff change in respect of the Mobile Network Services ("**Minimum Term**"). This Contract shall continue indefinitely thereafter until terminated by either Party giving not less than thirty (30) days' prior written notice, such notice not to terminate the Contract prior to the expiry of the Minimum Term.

3.3. The provisions of conditions 3.1 and 3.2 are applicable to all mobile numbers and/or handsets and/or mobile devices connected to Mobile Network Services provided by the Company and to any subsequent Connections or Upgrades from the applicable date of the subsequent connection or upgrade.

3.4. Any changes to a Customer's existing subscription to another Tariff will be subject to availability of mobile numbers and/or handsets and/or devices and a minimum spend by the Customer. Such changes remain subject to the approval of the Company, and nothing in this condition 3.4 shall be construed as an obligation for the Company to change the Customer's existing Tariff to another Tariff.

4. CREDIT ACCOUNT

4.1. A Customer account will be opened and a credit limit (inclusive of VAT) will be notified to the Customer and this credit limit should not be exceeded by the Customer. The Company reserves the right to suspend the Customer's account and any use of the Mobile Network Services in the event that this credit limit is exceeded at any time. Any increase in the credit limit must be requested in writing and will be subject to approval by the Company, which may entail further credit checks in accordance with condition 2.10. The Company does not accept responsibility for the Customer exceeding the credit limit due to any reason, including but not limited to billing cycles or delays in the availability of call data. Customers who anticipate exceeding their credit limit should contact the Company to avoid their Mobile Network Services being suspended.

4.2. Credit limits are subject to periodic review at the Company's discretion. The Company may require that a deposit be placed with the Company in cases where the Customer incurs monthly charges in excess of the credit limit and the Customer authorises the Company to debit their credit card, where details have been provided, at the Company's discretion for this excess amount overdue, or for any amount over the credit limit set.

5. CONNECTION TO THE SYSTEM AND PROVISION OF THE MOBILE NETWORK SERVICE

5.1. Subject to these Terms and Conditions, the Company will connect and maintain the connection of the Equipment to the System and, subject to the geographical coverage of the System from time to time and any other limiting factors not under the Company's control, the Company will use its reasonable endeavours to make the Mobile Network Services available to the Customer throughout the term of this Contract.

. 5.2. The Company shall be entitled, at its absolute discretion to transfer the Customer to another Service Operator, provided that the transfer does not result in the Customer incurring any additional costs. Wherever practicable, fourteen (14) days written notice shall be given by the Company of such changes prior to their being made.

. 5.3. The Customer recognises and acknowledges that the Mobile Network Services depend on the availability of the Systems, which may from time to time, by their very nature, be adversely affected by physical features, atmospheric conditions and other causes of interference and that accordingly the Systems may fail or require maintenance without notice.

. 5.4. The Mobile Network Services are provided without a Bar on premium rate and international calls made whilst in the UK and overseas unless the Customer has specifically requested that the Company disables these calls or the Company elects to disable such calls for its own commercial purposes. If enabled, the Customer should be aware that they will be charged for calls received whilst abroad (including voicemail) and that calls made and received whilst overseas may be charged in 30 or 60 second increments at rates set by the overseas network(s) together with any additional handling and network charges. Premium rate calls can be charged at rates as may be set out in the Tariff for premium rate calls from time to time. Any such calls, text or data are not included in any bundle of inclusive calls, text or data which may form part of the Tariff for the Mobile Network Services. Billing delays of up to six months may occur for such charges and may be subject to payment by the Customer of an advance deposit as requested from time to time.

. 5.5. The Company bears no liability to the Customer whatsoever in connection with any services provided by an overseas network, third party provider or premium rate provider.

. 5.6. In the event of the Equipment being defective, the Company shall, for a period of twelve months from the date of delivery of any Equipment, at its option and without cost to the Customer return the applicable Equipment to the manufacturer of the Equipment who shall 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, provided that the Company shall have no liability for any such defects unless the Customer notifies the Company, within three Business Days from the date of delivery, of any defect arising prior to and/or on the date of delivery and within twenty four hours of any latent defect arising within such twelve month

period. If the Company repairs or arranges for the repair of any Equipment outside such twelve-month period, the Customer shall pay the Company for any such service at the Company's then prevailing rates.

6. CHARGES AND PAYMENT

. 6.1. The Tariff chosen by the Supplier in respect of the Mobile Network Services on commencement of this Contract will remain the minimum Tariff selected for the Minimum Term and the terms and conditions relating to the selected Tariff shall apply.

. 6.2. The Company may on not less than 14 days' notice to the Customer, change the rates in any Tariff or price list, such change not to become effective during the Minimum Term of the relevant Mobile Network Service unless the change arises due to: 6.2.1. a change in the costs to the Company due to a requirement or direction of OFCOM; and/or 6.2.2. a change in the costs charged to the Company by its suppliers.

. 6.3. The Customer will pay any agreed initial Charges, the monthly access Charge and any other fixed monthly Charges (each as defined in the applicable Order Form), on or before the Payment Date.

. 6.4. The Customer shall be invoiced monthly in arrears for any usage based Charges and monthly in advance for any monthly access or other fixed Charges and shall pay the Charges by Direct Debit within 7 days of the date of the invoice (unless otherwise expressly agreed with the Company and set out on the Order Form). The acceptance by the Company of payment by any method other than Direct Debit may incur a monthly administration fee of £3.00 per Connection. All payments must be received within thirty days of the Company's invoice date.

. 6.5. The Tariff and/or Equipment subsidies that the Company makes available to the Customer are subject to the length of contract chosen by the Customer on the Order Form and the terms applicable to such Tariff and/or Equipment, and are based upon the predicted or anticipated revenue over the Customer's contract term for Mobile Network Services (including any notice period). In the event that the Customer fails to make payment for the Mobile Network Services for (or otherwise breach the Contract during) the Minimum Term, and fails to make

payment of any early termination charges (including without limitation, those Charges set out in condition 9.5), the Company reserves the right to invoice the Customer for such predicted or anticipated revenue at full retail price without discount, over the full applicable contract term including notice period and to recover any benefits received and losses incurred. 6.6. The Customer shall pay all Charges (namely usage in excess of any allowances or bundles that may be comprised in the monthly Charge but without rebate for any unused element of such allowances or bundles) including without limitation any of the following: any charges incurred from other networks, virtual networks, premium rate and overseas cellular and network operators (without discount) and any handling charges set out in the Tariff. UK calls are billed per second and rounded up to the nearest penny. In addition, the Service Operators may apply a fixed or minimum call charge, details of which can be found in the tariff terms and conditions on the relevant Service Operator websites. 6.7. The Customer may be required to pay a fee of £20.00 per incident for any cancelled, dishonoured or failed Direct Debits or cheques. 6.8. 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. 6.9. Value Added Tax (VAT) and other taxes from time to time in force where appropriate shall be payable on all Charges payable pursuant to these Conditions. 6.10. The Customer will promptly advise the Company in writing of any change to its address or bank details. 6.11. The Customer authorises the Company to charge the Customer's debit/credit card, where details have been provided by the Customer, with an amount equal to the outstanding balance on the Customer's credit account, where the Customer has failed to pay the Company by the Payment Date. 6.12. The Customer authorises the Company to levy a service Charge of three percent (3%) where the Company is debiting the Customer's credit card account with any outstanding balance. 6.13. 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, 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. 6.14. 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. 6.15. Any invoices issued by the Company in respect of the Charges shall, save in the case of manifest error, be final, conclusive and binding on the Customer. 6.16. If the Customer intends to dispute any charge on an invoice, the Customer must do so in writing to the Company within 90 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:

6.16.1. less than five per cent of the total charges listed on the invoice, the Customer will pay the full amount of the invoice; or 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. The Customer must inform the Company seven working days before a Direct Debit payment is due if they intend to withhold monies in dispute. This will give the Company time to verify the claim and adjust the amount taken from the Customer's account. If the Customer fails to notify the Company in time to adjust the Direct Debit payment the withheld amount will be deducted from the following Direct Debit payment. If the Customer cancels the Direct Debit payment without prior agreement with the Company they will be liable for the charge stipulated in 6.7.

7. SOFTWARE

7.1. Where the Company provides software to the Customer to enable the Customer to use the Mobile Network Services ("**Software**"), the Company will grant the Customer a non-exclusive, non-transferable licence to use the Software solely for the term and purposes of the Contract (and to extent necessary to use the relevant Mobile Network Services). 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.

7.2. Except as permitted by applicable law or as expressly permitted under the Contract the Customer shall not de-compile reverse-engineer or modify the Software, or copy the relevant manuals or documentation.

7.3. The Company will do everything possible to optimise the reliability and performance of the Software however, the Software is provided on a 'best- efforts' basis and the Company bears no liability to the Customer for the failure or unavailability of the Software. Where the Software is being used by the Customer to place orders, bar SIM use, cease SIMs, add bolt-ons or restrict over-use, it is the responsibility of the Customer to check that the required action has been executed. The Company bears no responsibility for actions not executed by the Software and the date of execution is that given by the Company. This may not necessarily be the same date that the request is submitted by the Customer.

7.4. Usage reports are provided on a 'best-efforts' basis and the timeliness and availability of usage data is not guaranteed. It is the responsibility of the Customer to measure usage themselves and establish alerts outside of the Software to limit their exposure to over-usage, should they so wish. The Customer and their End Users may have the ability, using the Software, to establish alerts and automatic barring when usage reaches pre-set limits. Usage data from The Company's suppliers can often be delayed by hours and even days and cannot be relied on entirely to mitigate out-of-bundle charges. Usage is the responsibility of the Customer and their End Users and out-of-bundle charges are payable in full regardless of the quality and timing of data supplied by the Company. The Customer must make this clear to their End Users.

8. OBLIGATIONS OF THE CUSTOMER

8.1. The Customer acknowledges that the System is operated under license and by agreement with the Service Operators and that the provisions of the said licenses and agreements apply to the use of the Mobile Network Service by the Customer. The Customer hereby undertakes:

8.1.1. not to use or permit the use of the System for (a) any unlawful, immoral or improper purpose including without limitation the use of unlawful or unauthorised SIM gateways, (b) any purpose not recommended by the Equipment manufacturer, or (c) any other purpose as notified by the Service Operators or the Company from time to time;

. 8.1.2. to comply with any reasonable instructions, including Fair Use Policies, issued by the Company, or Service Operators, relating to the System, the Equipment or the Mobile Network Service and to use only Equipment approved by the Service Operators and the British Approvals Board of Telecommunications;

. 8.1.3. not to reverse, or permit anyone else to reverse, the charges on any telephone call;

. 8.1.4. not to act, or omit to act, in any way which may injure or damage any persons, property or the System or cause the quality of the Mobile Network Service to be impaired;

. 8.1.5. not to directly or indirectly be involved, or knowingly, recklessly or negligently permit any other person to be involved, in any fraud, illegal or immoral activity in connection with the Customer's use of the Mobile Network Services and shall notify the Company immediately upon becoming aware of any such activity.

. 8.2. The Customer will promptly advise the Service Operator and the Company, by phone and in writing in the event of loss or theft of the Equipment.

. 8.3. The Customer acknowledges that the Company will accept, and act on behalf of, any instruction received from the Customer, and accept and rely on any additional orders placed with the Company, regardless of authority and/or position, unless levels of authorisation have been pre-advised to the Company in writing in accordance with the Customer's bespoke ordering procedures.

. 8.4. Portability and migration requests of mobile numbers made during the Minimum Term do not relieve the Customer from any contractual obligations to pay any of the Charges (including without limitation any early termination charges) due under this Contract.

. 8.5. The Customer agrees 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 or use of the Services, cause the Company to contravene, any Relevant Laws or General Conditions. **9. EQUIPMENT**

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9.1. Risk in the Equipment shall pass to the Customer when the Equipment is delivered to the Customer or the address provided to the Company by the Customer. 9.2. Notwithstanding that the Equipment has been taken over and stands at the Customer's risk, ownership of the Equipment shall not pass to the Customer until the

Company has received in full (in cash or cleared funds) all sums due to it in respect of the Equipment. 9.3. Until ownership of the Equipment has passed to the Customer, the Customer must:

9.3.1. hold the Equipment on a fiduciary basis as the Company's bailee; 9.3.2. store the Equipment (at no cost to the Company) separately from all other goods of the Customer or any third party in such a way that they

remain readily identifiable as the Company's property;

9.3.3. not destroy, deface or obscure any identifying mark or packaging on or relating to the Equipment; and

9.3.4. maintain the Equipment in satisfactory condition insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Customer shall produce the policy of insurance to the Company.

9.4. The Company's right to possession of the Equipment shall terminate immediately in the event that the Company has the right to suspend and/or terminate these Conditions.

9.5. If any Mobile Network Service is terminated during its Minimum Term, the Company shall be entitled to recover payment for this Equipment equivalent to the proportion (pro rata as to the unexpired Minimum Term) of the full replacement charge for such Equipment as set out in the Standard ThePhoneCloud Price List (available upon request) notwithstanding that ownership of any of the Equipment has not passed from the Company. The Customer shall, notwithstanding that ownership of any of the Equipment has not passed from the Company, also following delivery of the Equipment remain liable for all Charges incurred including any incurred during a period of theft, damage or loss of the Equipment until such theft, damage or loss is reported to the Service Operator and the Company, and will remain liable for the monthly access Charge until the Contract has ended.

9.6. The Customer grants the Company, its agents and employees an irrevocable licence at any reasonable time to enter any premises where the Equipment is or may be stored in order to inspect, or, where the Customer's right to possession has terminated, to recover the Equipment which is still owned by the Company.

9.7. Nothing in this Contract shall entitle the Customer to sell or enter into a contract to sell goods on behalf of any Service Operator or the Company. It is recognised by the parties that the Service Operators retain legal title in any SIM cards supplied. Accordingly, the parties do not intend that the Customer be entitled to make any claim against any Service Operator or the Company for loss of agency rights or loss of goodwill resulting from the termination of this Contract.

9.8. The Customer shall be liable for the repair of Equipment connected under this Contract which becomes faulty or damaged and is outside the manufacturer's warranty. All Customer obligations under this Contract shall remain in force during any period where Equipment is undergoing repair.

9.9. All SIM cards supplied to the Customer shall be returned to the Company upon termination of the Contract. Failure to return any SIM card may incur a Charge of £30.00 for each card.

10. LIMITATION OF LIABILITY

10.1. Unless otherwise stated in these Conditions the Company makes no warranty in respect of the supply of any Equipment and/or Mobile Network Services and all other warranties which by reason of statute or other direction, regulation or governmental authority may be implied into a contract for the supply of the Equipment and/or Mobile Network Services are hereby excluded to the fullest extent possible, save for, and to the

extent of, those warranties which cannot lawfully be excluded. If the Customer is a consumer, this shall be without prejudice to its statutory rights.

10.2. Subject to conditions 10.3 and 10.5, in no circumstances shall the Company's liability, arising under or in connection with this Contract and whether in contract, tort (including without limitation negligence), misrepresentation, breach of

statutory duty or otherwise, to the Customer in respect of one incident or series of connected incidents in any one year, exceed the lower of

10.2.1. 100% of the Charges paid for the Equipment and/or Mobile Network Services (as the case may be) for the relevant Equipment and/or Mobile Network Services to which the claim or claims relate in the twelve months prior to the date on which the claim or claims arose, or

10.2.2. £5,000 (five thousand pounds). 10.3. Subject to condition 10.5, 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: 10.3.1. loss of revenue; 10.3.2. loss of business;

10.3.3. loss of contracts; 10.3.4. loss of, damage to or corruption of data; 10.3.5. loss of anticipated savings; 10.3.6. loss of profits; or 10.3.7. indirect, consequential or special losses; whether or not the Company knew or ought to have known that such losses or damages might be incurred.

10.4. 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 the Mobile Network Services supplied by the Company, the failure of any Service Operator to provide network services (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 of 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.

10.5. Nothing in these Conditions excludes or restricts either Party's liability for:

10.5.1. death or personal injury resulting from that Party's negligence or its employee's negligence (while acting in the course of their employment);

10.5.2. any fraud, fraudulent misrepresentation or fraudulent misstatement;

10.5.3. any indemnity given under the Contract; and/or

10.5.4. anything for which the Parties cannot at law limit or exclude their liability.

10.6. 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. TERMINATION AND SUSPENSION OF THE MOBILE NETWORK SERVICES

11.1. Subject to conditions 11.3, 11.4 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:

11.1.1. at all in respect of Equipment; or 11.1.2. except for termination in accordance with the conditions relating to the serving of notice to terminate the relevant Mobile Network Services (which shall take effect

in accordance with the applicable conditions), unless otherwise agreed in writing with the Company.

11.2. 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 Contract Term before the end of the relevant notice period.

11.3. 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 any and/or all Contracts for Mobile Network Services 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 11.3, the Customer's liability to pay the Charges for Mobile Network 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.

11.4. A Contract may be terminated forthwith by either Party by notice in writing if the other Party materially breaches its obligations under these Conditions (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. Without prejudice to the generality of the foregoing, the Company shall be permitted to terminate the Contract forthwith on notice to the Customer in the event that the Customer is in material breach of any other contract under these Conditions (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.

11.5. 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 Party 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).

11.6. 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.

11.7. Any implied right to terminate for convenience that the Customer may have under applicable law is hereby expressly excluded.

11.8. Notwithstanding anything to the contrary in this condition 10, the Company shall be entitled to suspend the Mobile Network Service immediately and without liability or notice upon the occurrence of any of the following events:

11.8.1. if the Customer fails to make payment of the Charges on the Payment Date;

11.8.2. If the Company is entitled to (but at its sole discretion elects not to) terminate the Contract pursuant to condition 11.1, 11.4 or 11.5;

11.8.3. if any information given to the Company by the Customer is false or misleading;

11.8.4. if the Customer does, or allows to be done, anything which in the Service Operator's or the Company's reasonable opinion may have the effect of jeopardising the operation of the Mobile Network Service;

11.8.5. if the Customer permits the use of the Mobile Network Service or uses the Mobile Network Service for illegal purposes including, but not exclusively, the use of illegal or unauthorised Gateways (or the Service Operator or the Company believes the same);

11.8.6. if, in the Company's or the Service Operator's absolute discretion, the Charges incurred in any given period show unreasonable, low or excessive usage of Mobile Network Services or unusual calling patterns such as, without limitation, a disproportionate percentage of incoming calls or zero usage per number of 10 minutes or less of outbound voice calls or charges including data of less than £1.00 per month, or which cause network congestion;

11.8.7. if the Company is unable, for whatever reason, to provide the Mobile Network Service or if the Company is required to suspend or terminate this Contract by a competent administrative or regulatory authority (including without limit OFCOM) and/or supplier and/or Service Operator;

11.8.8. if the Customer exceeds the credit limits set in the applicable Order Form and/or the Tariff.

11.9. Termination, suspension, disconnection or Barring under this condition 11 shall be without prejudice to the Company's rights accrued up to and beyond the date of termination, suspension, disconnection or Barring. 11.10. In the event of termination of the Mobile Network Service and/or this Contract by the Company

in accordance with the provisions of Clauses 11.1 and 11.2, the Customer shall, within fourteen (14) days of receipt of the notice of termination, pay to the Company all outstanding Charges including, where termination is for any of the reasons specified in conditions 11.4, 11.5, the amount which would have been payable for the remainder of the term of the Contract. 11.11. Upon termination of this Contract if the Customer made a deposit, the Company will only return any surplus to the Customer after deduction of all unpaid Charges. Any request for repayment must be made in writing. 11.12. After disconnection, suspension or Barring of the Equipment from the System and/or consequent upon the termination of this Contract, the Customer shall pay on demand all Charges outstanding at the time of disconnection, suspension or Barring including any reasonable disconnection or Barring fee that the Company may wish to charge in its sole discretion. Should the Company elect to disconnect and/or reconnect the Equipment from or to the System, then the Company having regard to the circumstances at the time of disconnection or reconnection may elect to charge a fee of up to £30.00 for such disconnection or reconnection. Should the Company elect to bar and/or unbar the Equipment from the System, the Company may, in its absolute discretion, charge an unbarring fee of up to £25.00 per SIM Card for such barring or unbarring. 11.13. Should termination take place part way through a month, no credit will be given for the post termination part of the month's access Charge(s). 11.14. The Customer will remain liable for all Charges incurred prior to termination regardless of when they are invoiced. 11.15. Termination, porting, or migration of mobile numbers is subject to a charge of £30.00 per number. 11.16. Subject to condition 10, if the Customer is unable to use all of the Mobile Network Services for a continuous period of more than three days due to any technical failure (including power cuts, improvement, modification or maintenance of the Mobile Network Service or the Systems) and if the Service Operator offers this to the Company, on application the Customer may receive a credit against their account for their line rental which will represent that part of the line rental for the period of non-availability. **12. CALL MONITORING** 12.1. The Customer agrees that 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. **13. CONFIDENTIALITY AND USE OF CUSTOMER'S INFORMATION AND**

DATA FAIR PROCESSING NOTICE

13.1. 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:

13.1.1. 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

13.1.2. in the case of the Customer, its users to the extent that they are required to use or access the Mobile Network Service. 13.2. Information shall not be treated as confidential if it is: 13.2.1. lawfully in the public domain; or 13.2.2. lawfully in the possession of the Customer or the Company before disclosure from the other has taken place; or 13.2.3. obtained from a third person who is entitled to disclose it; or 13.2.4. replicated independently by someone without access or knowledge of the information.

13.3. 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 ten Business Days to make representations before releasing the requested information (save to extent otherwise required by law).

13.4. 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 Mobile Network Services and/or arising from or out of the provision of the Equipment or Mobile Network Services, for the following purposes:

13.4.1. administering the Customer's account (including, without limitation, liaising with any Service Operators who are relevant to the provision of the Mobile Network Services, and sharing the data with members of the Company's Group);

13.4.2. notifying the Customer of changes to the Mobile Network 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 Mobile Network Service;

13.4.3. enabling the Company to supply the Mobile Network Service and Equipment to the Customer; and 13.4.4. for invoicing purposes.

13.5. The Company will not pass Personal Data obtained from the Customer to any third Parties for marketing purposes but may send the Customer information about the Company's (or any member of its Group) own products and services

which it considers may be of interest to the Customer, unless the Customer specifically requests in writing that the Company does not do so.

13.6. 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 ThePhoneCloud Ltd, C/o RW 23 Ltd, Thames House, Bourne End Business Park, Cores End Road, Bourne End, Buckinghamshire, SL8 5AS, stating the Customer's full name, address, account number and phone number. The Company may charge a reasonable administration fee for providing such information.

13.7. 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 13.

14. CHANGES TO THE CONDITIONS AND CONTRACT

14.1. The Company may change the Conditions at any time and will publish any change in line with condition 14.2.

14.2. The Company will publish any changes to the Conditions online at ThePhoneCloud.com (or at such other web address as is notified to the Customer by the Company from time to time):

14.2.1. at least thirty days before the change is to take effect for changes that may be of material detriment to the Customer; and 14.2.2. at least one day before the change is to take effect for all other changes.

14.3. 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, ThePhoneCloud, C/o RW 23 Ltd, Thames House, Bourne End Business Park, Cores End Road, Bourne End, Buckinghamshire, SL8 5AS, 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 14.2.1 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 14.3 constitute or be deemed to constitute evidence that the relevant change is of material detriment to the Customer.

14.4. The Company may, if requested by the Customer, provide additional services to be included within the Mobile Network Services under such additional terms and conditions as may be notified by the Company from time to time.

15. ANTI-BRIBERY

15.1. The Customer shall, and shall procure that its officers, employees, agents and any other persons who perform the services for and on behalf of it in connection with a Contract shall;

. 15.1.1. comply with all applicable Anti-Bribery Laws and not cause the Company to breach any Anti-Bribery Laws;

. 15.1.2. not offer, promise, give, request, agree to receive, receive or accept a bribe or financial or other advantage or commit any corrupt act; 15.1.3. comply with the Company's Ethics and Anti-bribery Policy or at such other web address as is notified to the Customer by the Company from time to time) as the Company may update them from time to time. **16. FRAUD AND SECURITY**

. 16.1. The Customer must ensure that user names, passwords and/or PINs used by it and/or its personnel and/or users in connection with the Equipment and/or Mobile Network Services are kept confidential and are only used by authorised users. The Customer will inform the Company immediately if the Customer knows or suspects (or ought reasonably to know or suspect) that a user name, password or PIN has been disclosed to an unauthorised user or is being used in an unauthorised way. The Customer will not change or attempt to change a user name without the Company's written consent.

. 16.2. The Company reserves the right (at the Company's sole discretion):

. 16.2.1. to suspend user names and password access to the Mobile Network Services if at any time the Company thinks that there has been or is likely to be a breach of security; and

. 16.2.2. 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 Mobile Network Services.

. 16.3. 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.

. 16.4. The Customer accepts and acknowledges that the Mobile Network Services are not guaranteed to be secure and the Company does not guarantee the prevention or detection of any unauthorised attempts to access the Mobile Network Services.

. 16.5. The Customer acknowledges that the Company has no control of a Customer's equipment configuration, voice mail security or other feature services enabled.

. 16.6. The Company shall not be responsible for Charges or other charges resulting from fraudulent and/or unauthorised use of the Equipment or Mobile Network Services by the Customer, its End Users or any third parties (who are not employees of the Company) and the Customer agrees to pay all additional charges related to such fraudulent and/or unauthorised use. 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.

. 16.7. 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 an 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). **17. GENERAL**

. 17.1. Subject to any deemed acceptance by the Customer under condition 14.3, no forbearance or indulgence shown or granted by the Company to the Customer whether in respect of these 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.

. 17.2. The Contract (including in relation to non-contractual matters) 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).

. 17.3. The Contract is made for the benefit of the Parties to it and (where applicable) their successors and permitted assignees 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.

. 17.4. 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 postal address, email address or fax number, given on the Order Form (or such other address, fax number or person as the relevant Party may notify to the other Party) and shall be delivered personally, sent by fax or 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 fax, at the time of transmission, 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 17.4 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 notice was transmitted by fax, to the fax number of the Party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

. 17.5. Any director or representative of the Customer who signs, whether electronically or otherwise, 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 set out in these Conditions and any relevant Service Specific Conditions in all respects.

. 17.6. 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.

. 17.7. 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.

. 17.8. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

. 17.9. 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 (or in the case of multiple Contracts the last Contract to be terminated or expire), 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 Mobile Network Services to the Customer. Any consent given by the Company in accordance with this condition 17.9 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. 17.10. The Customer acknowledges and agrees that details of the Customer's name, address and payment record may be submitted to a credit reference agency, and Personal Data will be processed by and on behalf of the Company in connection with the Mobile Network Services. 17.11. The Customer consents to the disclosure to any radio or telecommunications operating company of its name, address and details of the Mobile Network Service and Equipment provided to it pursuant to this Contract. 17.12. 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. 17.13. 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. 17.14. Save where the context otherwise requires, in these Conditions a reference to a "person" shall include a company, body corporate, unincorporated association, state, governmental or statutory body or authority, and/or a partnership, as well as a natural person (as appropriate). 17.15. Except with the prior written consent of the other Party, neither Party shall: 17.15.1. make any public statement about the Equipment and/or Mobile Network Services or otherwise publicise the Contract or any information relating to it; or 17.15.2. use any trademarks or identifying logos owned or licensed to any member of the other Party in any manner. 17.16. 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. 17.17. 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. 17.18. This Contract constitutes the entire agreement and understanding of the Parties with respect to its subject matter. Each of the Parties acknowledge that in entering into this Contract it has not relied on any oral or written representation, warranty or other assurance (except as provided for and referred to in this Contract) and, subject at all times to condition 10.5.2, waives all rights and remedies which might otherwise be available to it in respect thereof. 17.19. 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.