

Mobile Terms & Conditions - Billed by YCG

1. DEFINITIONS AND INTERPRETATION

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

TERM / EXPRESSION MEANING

“Accessory” means an item of equipment sold separately for use with Mobile Equipment but which is not on its own Mobile Equipment and which cannot be used without Mobile Equipment in connection with Mobile Services;

“Affiliate” means any undertaking which is a subsidiary undertaking or parent undertaking (including the ultimate parent undertaking) of the relevant party and any company which is a subsidiary undertaking of such parent undertaking (the terms subsidiary undertaking and parent undertaking company having the meanings set out in Section 1162 of the Companies Act 2006);

“Agreement” means this agreement between the Customer and YCM recorded in the documents described in clause 28 of these General Conditions;

“YCM” means Your Company Mobiles Ltd whose company registration number is 07048339 and registered address is 84 Uxbridge Road, Suite B Second Floor London W13 8RA

“Charges” means the monies payable by the Customer to YCM under this Agreement, including Rental Charges;

“Airtime” means mobile airtime and Network capacity;

“Airtime Account” means a notional account set up by YCM to accrue credits owing to the Customer from which Network capacity (e.g. calls) can be purchased from YCM by the Customer;

“AIT” means artificially inflated traffic which occurs when the flow of calls to any particular revenue share service is, as a result of any activity by or on or behalf of the entity operating that revenue share service, disproportionate to the low of calls which would be expected from good faith usage of the Network;

“Commencement Date” means the date upon which this Agreement has been signed by the Customer;

“Commercial Schedule” means the document or documents entitled Commercial Schedule, which set out the Charges associated with a particular Service, all of which shall form part of this Agreement;

“Confidential Information” means proprietary information and/or any information obtained from the other party in connection with this Agreement (including for the avoidance of doubt details of the Customer’s employees) which is:

- (i) reasonably identified by either party as commercially sensitive or confidential;
- (ii) obviously confidential in nature; or
- (iii) given in circumstances giving rise to an obligation of confidence;

“Customer” has the meaning set out in front of this Agreement in the section entitled “Your Agreement”;

“Customer Employee” means any employee, consultant,

agent or sub-contractor (or an employee or consultant thereof) engaged or employed by the Customer or any Third Party to provide a Service or services similar to a Service or any part of a Service;

“Customer Request Form” means a document which can be submitted electronically or manually by a Customer to YCM containing the detailed information necessary to fulfil a Customer’s order for Services, in the form notified by YCM to the Customer from time to time;

“Customer Service Charter” means YCM’s standard customer service charter as amended by YCM from time to time and which is non-binding;

“Data Connection” means any connection and or communication between Devices by which data is either transmitted and/or received;

“Device” means Equipment or other mobile device, capable of incorporating a SIM Card;

“Employee Liability Information” shall have the meaning ascribed to it in the TUPE Regulations, as amended from time to time;

“End User Licensed Software” means any software, the licence terms of which are governed by a separate agreement with the licensor of such software, typically by means of a “click wrap” or “shrink wrap” licence agreement;

“Equipment” means equipment purchased by the Customer from YCM under this Agreement which may be used in the provision of the Services, as detailed in the Commercial Schedule, quotation, order form or other document agreed between the parties from time to time;

“Gateway” means any equipment containing one or more SIM Cards for one or more mobile networks, which enables the routing of calls and/or SMS and/or any other form of communication from fixed apparatus to mobile equipment by establishing a mobile to mobile call, SMS Text message or Data Connection;

“General Conditions” means this document entitled “General Conditions for Business Customers”;

“Incident” means any reported event which is not part of the standard operation of a Service and which causes disruption to or a reduction in the quality of such Service;

“Internet” means the global data network comprising interconnected networks using the TCP/IP protocol suite;

“Minimum Holding” means the minimum number of instances of a Service (e.g. lines) which must remain connected to a particular Service;

“Minimum Holding Charge” means, in relation to a particular Service, the Charges payable for that Service for a failure to reach and maintain the Minimum Holding(s);



“Minimum Holding Period” means, in relation to a particular Service, the number of months from the Service Commencement Date within which the Customer is required to connect the Minimum Holding(s);

“Minimum Period” means the minimum number of months a particular Service or instance of a Service must be in operation for which, unless specified otherwise in any Terms, shall be 12 months from the Service Commencement Date;

“Minimum Spend” means the minimum total expenditure which must be incurred by the Customer prior to the expiry of the Minimum Term, in relation to all or a particular Service or Services and excludes any Equipment Charges or other line items;

“Minimum Term” means the initial period of this Agreement and if not specified shall be the period from the Commencement Date until the expiry of the last Minimum Period;

“Mobile Equipment” means any phones and related items (including, but not limited to USB modems and phone chargers packaged along with a phone) or other equipment provided by O2 to the Customer under this Agreement for use in connection with the Mobile Services and which, for the avoidance of doubt, is included in the definition of Equipment in this Agreement;

“Network” means the network of any Third Party used by YCM to supply the Services, as applicable;

“New Connection” (including New SIM Only Connections and New Connections With Device) means a new SIM Card which connects to the Network under this Agreement which was not immediately prior to this Agreement connected to the Network except where the SIM Cards were formerly provided to the Customer by means of a Reseller;

“New Connection With Device” means a New Connection in conjunction with which YCM is providing a Device at the New Connection rate for Mobile Equipment;

“New SIM Only Connection” means a New Connection in conjunction with which YCM is not providing a Device at the New Connection rate for Mobile Equipment;

“RPI Rate” means the “RPI Percentage change over 12 months: monthly rate” announced by the Office for National Statistics in the February preceding an RPI Change;

“Rental Charge(s)” means the monthly non-usage dependent part of the Charges for the Services;

“Replacement Services” means all or part of the Services or services substantially similar to all or part of the Services which are provided by an entity other than YCM following the termination of this Agreement (or the relevant part of this Agreement) or the termination of any or all of the Services;

“Reseller” means any Third Party acting as an agent or distributor on behalf of YCM;

“Re-Sign Connection” (including Re-Sign SIM Only Connections or Re-Sign Connections With Device) means the transfer of a SIM Card which was, immediately prior to this Agreement, connected under an agreement between YCM (directly, and not via a third party);

“Re-Sign Connection With Device” means the transfer of a SIM Card which was, immediately prior to this Agreement, connected under an agreement between YCM (directly, and not via a third party) and the YCM Terms and Conditions for Business Customers Customer and in conjunction with which YCM is providing Mobile Equipment;

“Re-Sign SIM Only Connection” means the transfer

of a SIM Card which was, immediately prior to this Agreement, connected under an agreement between YCM (directly, and not via a Third Party) and the Customer, and in conjunction with which YCM is not providing Mobile Equipment at the New Connection rate for Mobile Equipment;

“SIM Card” means a subscriber identity module card supplied to the Customer by YCM and which, for the avoidance of doubt, is included in the definition of Equipment in this Agreement;

“SMS” and / or **“MMS”** means the short message service and multimedia message service which allows text messages and/or pictures to be sent and received from mobile equipment;

“Service(s)” means the service(s) identified in the Commercial Schedule(s) and provided by YCM as such service(s) are described in the Terms, Service Schedules and or Commercial Schedule as applicable and any other services agreed by the parties from time to time;

“Service Commencement Date” in respect of a Service or a particular instance of a Service means the date on which that particular Service or particular instance of a Service is first provided to the Customer, or as otherwise explicitly set out in this Agreement;

“Services Provider” means a provider of telecommunications services or other services similar to the Services, including YCM or an YCM Affiliate or any direct or indirect supplier of YCM or an YCM Affiliate;

“Service Schedule” means the document entitled “Service Schedule” containing additional terms relating to a particular Service which schedule shall form part of this Agreement;

“Service Transfer” means the transfer of a Service (or any part of a Service) that had been provided pursuant to this Agreement (as a result of termination of this Agreement or otherwise);

“Site” means (where applicable) a physical location at which any Equipment shall be located and/or at or to which a Service shall be provided;

“Software” means any software, excluding End User Licensed Software, supplied to the Customer by YCM under this Agreement and includes all other software identified in this Agreement as “Software”;

“Solution Build Document” and **“SBD”** means a design document produced by YCM and agreed between the parties, which describes particular Services in a greater level of detail, as further described in the relevant Service Schedule;

“Successor Supplier” means any entity (including the Customer where relevant) which provides the Replacement Services;

“Target Delivery Date” in respect of a Service means the date for the commencement of the provision of the relevant Service as specified by YCM;

“Termination Fee” in respect of a Service, means the termination fee set out in the Commercial Schedule, and if not otherwise specified, means: the monthly Rental Charge for each instance of a Service multiplied by the remaining number of part or whole months in the Minimum Period



for each instance of that Service; and the Minimum Holding Charge; and any shortfall between the actual Charges paid by the Customer and the Minimum Spend and any subsidies provided to the Customer at the outset of the Agreement and any reasonable sum for providing PAC codes per line;

“Term” means the term of this Agreement as set out in clause 2.1 of these General Conditions;

“Terms” means documents entitled “Terms” containing additional terms relating to particular Services or Equipment which shall form part of this Agreement;

“Third Party” means a person, company or entity other than YCM or the Customer;

“TUPE Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended, re-enacted or extended from time to time);

“User” means Customer Employees, subcontractors, agents or anyone else who is permitted by the Customer to use the Service;

“Working Day” means Monday to Friday (excluding UK bank and public holidays).

“YCM” means Your Company Mobiles Limited as set out in front of this Agreement in the section entitled “Your Agreement”;

“YCM Employee” means any employee or other staff of YCM or an YCM Affiliate or any employee or other staff of any direct or indirect sub-contractor or supplier of YCM or an YCM Affiliate who provides the Services on behalf of YCM;

“YCM Representative” means a representative of YCM and which includes a representative of YCM’s suppliers;

“YCM Website” means www.yourcommsgroup.com;

- 1.2 The headings in this Agreement are for ease of reference only and shall not affect its construction.
- 1.3 References in this Agreement to any statute or statutory instrument shall include any re-enactment, modifications or amendments thereto for the time being in force.
- 1.4 References to clauses, sub-clauses, paragraphs, Terms and Service Schedules refer, unless otherwise stated, to clauses and sub-clauses of, and schedules to, this Agreement, and paragraphs to the Service Schedules.
- 1.5 Unless the context otherwise requires, the singular shall include the plural and vice versa.
- 1.6 Any obligation (including an obligation to “procure” or “ensure”) assumed by an obligor under this Agreement takes effect as a primary obligation.
- 1.7 References in this Agreement to a Service shall include any instance of such Service as applicable (for example, reference to a landline Service shall include both all landline Services provided to the Customer and/or each individual landline, as the context requires).
- 1.8 Where a term or acronym appears in capital letters and is not specifically defined in this Agreement it shall have its industry standard meaning as would be reasonably understood by a customer or supplier of telecommunications or information technology services.

2. COMMENCEMENT AND TERM

This Agreement shall commence on the Commencement Date and shall continue for the Minimum Term and thereafter move to a 30 day rolling contract.

3. SUPPLY OF SERVICES AND/OR EQUIPMENT

- 3.1 In consideration of the Customer paying the Charges and fulfilling all of its commitments as set out in this Agreement, YCM shall supply the Services and Equipment as applicable in accordance with the terms of the Agreement.
- 3.2 YCM shall commence supplying a Service on the relevant Service Commencement Date and shall supply those Services for the relevant Minimum Period and thereafter until terminated by either party in accordance with the provisions of this Agreement.

4. YCM OBLIGATIONS

- 4.1 YCM will supply the Services with the reasonable skill and care of a competent telecommunications service provider.
- 4.2 YCM does not guarantee that the Services will be continuously available and/or fault-free. The Customer acknowledges that faults may occur from time to time, provided that any specific availability or service levels agreed between the parties or as set out in a Service Schedule will take precedence.
- 4.3 Whilst every effort will be made by us to transfer over to your new network provider any call numbers you are currently using, have pre-notified us about and in respect of which have supplied to us each specified call numbers unique PAC transfer code, this is a non essential term of the contract between us, and should we not be able to fulfil your call number transfer request (for all or any of your call numbers) within [30] days for reasons beyond our control we shall be entitled in compliance with our contractual obligation to you to instead supply you with a new and different call number for each existing specified number not so transferred’
- 4.4 YCM will use reasonable endeavours to provide the Services subject to technical and commercial feasibility.
- 4.5 YCM shall be entitled to change the way it provides a Service, provided that any change to the way it provides such Service does not materially impact the ability of YCM to provide the Service to the Customer.
- 4.6 YCM shall use reasonable endeavours to provide the Services and Equipment within any time periods and or by any date indicated to the Customer, but all time periods and dates (including the Target Delivery Date) are estimates and except where explicitly stated YCM shall have no liability for any failure to meet any date or perform any of its obligations within the time period indicated.

5. THE CHARGES

- 5.1 The Charges for Services and Equipment detailed in the Commercial Schedule(s) are available subject to the Customer fulfilling all of its commitments as set out in



this Agreement, including but not limited to:

- a) paying the Charges in accordance with this Agreement; and
- b) achieving any applicable Minimum Spend, Minimum Holding and/or Minimum Period.

5.2 The Customer shall pay the Charges for:

- a) each Service provided by YCM (whether or not the Service is used by the Customer);
- b) where applicable, the Equipment; and
- c) any other products or services agreed between the parties from time to time, in accordance with this clause 5.

5.3 Most Charges are set out in the Commercial Schedule(s). Where a Charge is not set out in the Commercial Schedule, the Charge shall be:

- a) as set out on the YCM Website at the time the Equipment, Service or other agreed product or service was supplied; or
- b) as notified to the Customer by YCM (including in a Service Schedule or SBD).

5.4 Usage based Charges shall be based upon data recorded by or on behalf of YCM.

5.5 The Charges are exclusive of value added tax which will be charged at the prevailing rate.

5.6 YCM will increase or decrease Rental Charges each year by the RPI Rate (an "RPI Change"). YCM will publish the relevant RPI Rate on the YCM Website as soon as it becomes available

6. INVOICING AND PAYMENT

6.1 Unless otherwise agreed with the Customer, YCM may issue to the Customer on a monthly basis in relation to Services and on delivery in relation to Equipment one or more invoice(s) which shall set out the Charges due in accordance with this Agreement.

6.2 Unless otherwise stated in the Commercial Schedule, the Customer shall pay:

- a) monthly, quarterly or annually (as applicable) in advance for Rental Charges and other recurring Charges (including inclusive usage Charges); and
- b) monthly, quarterly or annually (as applicable) in arrears for usage (excluding inclusive usage Charges), connection and other non-recurring Charges.

6.3 If the parties agree that payments of the Charges to YCM are to be made by credit card and if payments of such Charges are not made on the due date, YCM is authorised to debit the Customer's nominated credit card company with all Charges due and payable to YCM.

6.4 The Customer shall pay each invoice issued by YCM under this Agreement (including any invoice relating to Termination Fees) within 30 days of the date of invoice. The invoice shall be deemed paid once YCM receives such payment as cleared funds in its nominated bank account.

6.5 The Customer shall pay the Charges (including any Termination Fees) in full without any deduction or set off.

6.6 YCM may, without prejudice to any other rights it may have, set off any liability of the Customer to YCM against any liability of YCM to the Customer.

Late payment

6.7 Without prejudice to any other rights of YCM, in the event of the Customer failing to pay any sums due to

YCM on time or at all, notwithstanding notification by YCM of the overdue debt to the Customer, YCM shall be entitled to:

- a) charge interest (both before and after any judgment) on amounts overdue from the Customer under this Agreement from the due date until the payment is actually made at the rate of 4% per annum over the base rate of the Bank Of England for the time being during the relevant period; and
- b) suspend the provision of the relevant Service(s) with as much prior notice as YCM considers to be reasonably practicable, until such time as all payments due including all interest accrued has been paid and satisfied in full.

6.8 If YCM and the Customer agree in writing that YCM will issue individual invoices for certain Services for all or some of the Customer's Users, the Customer will ensure that each User pays YCM within 30 days of the invoice date either by direct debit or by continuous credit card authority. Such Users must update YCM with new credit card details should they change.

6.9 To avoid doubt, the Customer remains liable to YCM for all Charges whether or not invoiced to Users in accordance with clause 6.8. If Users do not pay their individual invoices within 30 days of the invoice date, the Customer must pay them within 7 days thereafter.

6.10 If the Customer, in breach of clause 6.7, does not ensure that all Users pay by direct debit or by continuous credit card authority, YCM may charge the Customer for the additional cost of processing non-electronic payments from Users.

Credit security

6.11 Prior to YCM's acceptance of a Customer's application for Services and/or following any credit check described in clause 30 of these General Conditions, YCM reserves the right to set a credit limit on the Charges that can be accrued under this Agreement and YCM can review any such credit limit at any time.

6.12 YCM may require from the Customer a deposit as security for payment of Charges. The Customer may request the return of any deposit paid at the expiry of each 12 month period after the deposit was taken but the decision to return any deposit prior to termination of the Agreement will be at the discretion of YCM.

7. NEW SERVICES

New services on the terms of the YCM Website

7.1 The Customer may request new services on the terms set out on the YCM Website by placing a new service order under this Agreement. YCM shall be entitled to accept or reject a new service order. Once a new service order is accepted by YCM:

- a) the new Service shall be deemed added to the Agreement (including for the avoidance of doubt, the terms of the YCM Website applicable to the



Service as well as any applicable Service Schedule(s)); and

- b) YCM shall supply to the Customer the Services requested in that new service order on the terms and conditions of this Agreement and any alternative terms appearing on or referred to in any other communication, (whether oral, in writing or by electronic means) by the Customer for the purpose of placing orders shall be ineffective.

New services on bespoke terms

7.2 The Customer may request a new service at any time on terms other than those set out on the YCM Website. In the event that YCM and the Customer agree the terms that would apply to such new services, those terms will be added to this Agreement by execution of a formal variation.

8. CUSTOMER OBLIGATIONS

- 8.1 The Customer shall and shall procure that Users (or anyone having access to the Services), shall:
 - a) comply with any reasonable instructions from YCM and with any health and safety, security, use of Network and fair usage policies as may be implemented and/or amended from time to time relating to the use of the Services and/or Equipment;
 - b) not use the Services and/or Equipment in a manner which damages the reputation of YCM or YCM's suppliers, is inconsistent with a reasonable customer's good faith use of the Services and/or Equipment (including spamming and the sending of unsolicited advertising or promotional material), and/or adversely affects the provision of the Services and/or Equipment to other customers;
 - c) not use the Services and/or Equipment fraudulently or in connection with a criminal offence;
 - d) not use the Services and/or Equipment in a way that contravenes any Third Party's rights or any licence, code of practice, instructions or guidelines issued by a relevant regulatory authority;
 - e) hold and will continue to hold any licences, consents and/or notifications required under any applicable legislation, regulation and/or administrative order to receive and use the Services and/or Equipment;
 - f) notify YCM of any methods of doing business which may affect the Customer's use of the Services and/or Equipment or the Customer's ability to comply with the terms of this Agreement; and
 - g) comply with all applicable laws and regulatory provisions.
- 8.2 Subject to clause 10 of these General Conditions, the Customer agrees that it is procuring the Services solely for its own use and that it will not re-sell or otherwise act as any form of distributor in respect of the Services.
- 8.3 The Customer shall provide YCM with any and all information and/or assistance that YCM may require in order to perform the Services. The Customer shall ensure the information is complete and accurate. YCM

shall not be responsible for any failure and/or delay to provide the Services if such failure and/or delay is a result of the Customer's failure to provide YCM with the required information and/or assistance. The Customer shall reimburse YCM for any administrative charges that it incurs as a result of information that it receives in accordance with this clause 8.3 that is incomplete or inaccurate.

- 8.4 The Customer shall notify YCM immediately (and confirm in writing) on becoming aware that any person is making improper or illegal use of the Services.
- 8.5 The Customer agrees and acknowledges that YCM and/or a supplier of YCM may monitor and record calls or other communications including in relation to YCM's customer services.
- 8.6 The Customer acknowledges that some of the Services enable access to the Internet and that use of the Internet is solely at the Customer's risk and subject to all applicable laws. YCM has no responsibility for any information, software, services, goods or other materials obtained by the Customer using the Internet.
- 8.7 The Customer warrants to YCM that it will take all reasonable steps (including testing with up-to-date commercially available virus detection software) to ensure that any software used with or in connection with the Services that is not provided by YCM under this Agreement is not infected by viruses and/or logic bombs, worms, trojan horses and any other types of disruptive, destructive or nuisance programs.

9. ANTI-BRIBERY AND CORRUPTION

- 9.1 In addition to and without prejudice to clause 8.1g) of these General Conditions, YCM and the Customer each agree and undertake to the other that in connection with this Agreement and the transactions contemplated by this Agreement, they will each respectively comply with all applicable laws, rules, regulations of the United Kingdom relating to anti bribery and anti-money laundering.
- 9.2 In the event that YCM or the Customer (as applicable) (the "Enquirer") has any basis for a good faith belief that the other party may not be in compliance with the undertakings and/or requirements set out in clause 9.1 of these General Conditions, the Enquirer shall advise the other party in writing and the other party shall co-operate fully with any and all enquiries undertaken by or on behalf of the Enquirer in connection therewith, including by making available the other party's relevant personnel and supporting documents if reasonably deemed necessary by the Enquirer.
- 9.3 Any breach by a party of this clause 9 of these General Conditions shall be deemed to be a material breach of this Agreement not capable of remedy for the purposes of clause 13.6a) of these General Conditions.



10. CUSTOMER AFFILIATES

- 10.1 YCM acknowledges that the Customer may permit a Customer Affiliate to use the Services and Equipment supplied by YCM to the Customer under this Agreement. The Customer will procure that its Affiliates and all Users are aware of and comply with the terms of this Agreement. The Customer shall be liable to YCM for any and all:
- a) claims, losses and expenses suffered or incurred by YCM as a result of a breach of a term of this Agreement resulting from a User's use of the Services and/or Equipment; and
 - b) losses, costs and expenses resulting from any claims against YCM made by any of the Customer's Affiliates or Users (or any other Third Party whom the Customer has permitted to use a Service and/or Equipment) to the extent that such claims exceed the financial caps and other limitations on liability as set out in this Agreement.
- 10.2 The foregoing liabilities shall remain in full force and effect notwithstanding any termination of this Agreement.

11. VARIATIONS TO THE AGREEMENT

- 11.1 YCM reserves the right from time to time to vary the Agreement as explicitly stated in this Agreement, including as follows:
- a) Subject to clause 5.3a) of these General Conditions, YCM shall be entitled to vary the Customer Service Charter and/or the YCM Website. For variations to the Charges set out on the YCM Website, such variations shall be published at least 28 days before such changes come into effect or, where the variation arises due to changes imposed by Third Party manufacturers, Third Party suppliers or a regulatory body, as much notice as is reasonably practicable; and
 - b) YCM shall be entitled to vary the provisions of this Agreement (including for the avoidance of doubt, the Charges subject to clause 13.3 of these General Conditions). YCM will provide to the Customer 28 days' notice in writing of any such variation or, where the variation arises due to changes imposed by Third Party manufacturers, Third Party suppliers or a regulatory body, as much notice as is reasonably practicable.

12. SUSPENSION

Planned Outages

- 12.1 YCM may, from time to time, upon reasonable notice where practicable, suspend the Services during any modification or maintenance of the Network and, unless specifically agreed with the Customer, shall have no liability in relation to such suspension.

Unplanned Outages

- 12.2 YCM may, from time to time and without notice or liability to the Customer, suspend the Services during any technical failure of the Network because of an emergency or upon instruction by emergency services or any government or appropriate authority or for the Customer's or Users' own security.
- 12.3 YCM shall use reasonable endeavours to restore the Services suspended in accordance with clause 12.1

or 12.2 of these General Conditions as soon as reasonably practicable.

- 12.4 The Customer shall remain liable for all Charges levied in accordance with this Agreement during any period of suspension arising from the circumstances described in clause 12.1 or 12.2 of these General Conditions.

Actions of the Customer

- 12.5 YCM may, without prejudice to its other rights hereunder, suspend or disconnect the Services without notice in any of the following circumstances:
- a) if the Customer fails to comply with the terms of this Agreement after being given written notice of its failure (including but not limited to failure to pay any Charges due hereunder); or
 - b) if the Customer allows anything to be done which in YCM's reasonable opinion may have the effect of jeopardising the operation of the Services or Network if applicable, or if the Services are being used in a manner prejudicial to the interests of YCM and/or a supplier of YCM.
- 12.6 If YCM has suspended the Services in accordance with clause 12.5 of these General Conditions, YCM shall restore the Services when the circumstance described in clause 12.5 of these General Conditions is remedied.
- 12.7 The Customer shall remain liable for:
- a) all Charges levied in accordance with this Agreement during any period of suspension; and
 - b) all reasonable costs and expenses incurred by YCM in the implementation of such suspension or disconnection, where such suspension or disconnection arises from the circumstances described in clause 12.5 of these General Conditions.

Actions of YCM's suppliers

- 12.8 YCM may, without prejudice to its other rights hereunder, suspend or terminate a Service if a YCM supplier suspends, terminates or lets expire the provision of services to YCM which YCM requires to provide such Service and for which YCM is unable to find a replacement supplier, having used its reasonable endeavours. YCM will provide as much notice as is reasonably possible.

Actions by regulators

- 12.9 YCM may, where requested by or on behalf of a regulatory body (including because of fraud or misuse) or required to do so by law, suspend any Services provided under this Agreement.

13. TERMINATION

Termination for convenience

- 13.1 The Customer may terminate this Agreement (in whole or in relation to a particular Service) by:
- a) providing to YCM 30 Working Days' notice in writing; and
 - b) paying YCM the applicable Termination Fees in respect of the Service or Services being terminated. For the avoidance of doubt,



Termination Fees may be payable if the Customer terminates an order for Services prior to the Service Commencement Date, prior to the expiry of any applicable Minimum Period; during the Minimum Term; and/or before any applicable Minimum Holding or Minimum Spend has been achieved.

13.2 Unless specified otherwise in a Service Schedule or the Commercial Schedule and without prejudice to any other YCM's rights to terminate this Agreement, YCM may terminate this Agreement (in whole or in relation to a particular Service) by providing to the Customer 30 days' notice and, in this event, the Customer shall not be liable for any Termination Fees.

Termination resulting from changes to the Agreement

13.3 Subject to clause 13.4 of these General Conditions, the Customer shall be entitled to terminate any individual Service by providing 30 days' notice in writing if:

- a) YCM increases the prices set out on the YCM Website and/or the Charges in respect of that specific Service pursuant to clause 11 of these General Conditions and that increase is to the material disadvantage of the Customer; or
- b) YCM substantially varies the terms of this Agreement that relate to that specific Service pursuant to clause 11 of these General Conditions and that variation is to the Customer's material disadvantage, provided that such notice is provided to YCM within 30 days of the date that the change is notified to the Customer. For the avoidance of doubt, any price or Charges increases that would not have increased the Customer's immediately previous monthly total bill for that specific Service (if the increase(s) had applied for the whole of that month) by more than the greater of:
 - (i) the Retail Price Index (RPI); or
 - (ii) the Consumer Price Index (CPI) annual inflation rate at the date YCM notifies the Customer of the applicable price increase; or
 - (iii) 10%, shall not constitute a material disadvantage to the Customer under this clause 13.3.

13.4 The right to terminate a Service in clause 13.3 above shall not apply where the increases in prices or Charges or the variation of the terms of the Agreement have been agreed by the Customer (including an RPI Change) and or arise as a consequence of a change in prices, terms or otherwise made by Third Party manufacturers, Third Party suppliers or a regulatory body.

13.5 Termination of a Service in accordance with clause 13.3 of these General Conditions will not affect the Customer's requirement to pay the Charges relating to that Service incurred prior to the date of termination, but, in this event, the Customer shall not be liable for any Termination Fees.

Termination for cause

13.6 The Customer may terminate this Agreement by providing to YCM 30 days' notice in writing in the event that YCM:

- a) has committed a material breach of this Agreement that is incapable of remedy; or

- b) as committed a material breach of this Agreement that is capable of remedy and YCM has failed to remedy that breach within 30 days of the Customer supplying written notice specifying the breach and requiring its remedy.

13.7 YCM may terminate this Agreement (in whole or in relation to a particular Service) by providing 30 days' notice in writing:

- a) in the event that the Customer has committed a material breach of this Agreement that is incapable of remedy;
- b) in the event that the Customer has committed a material breach of this Agreement that is capable of remedy and the Customer has failed to remedy that breach within 30 days of YCM supplying written notice specifying the breach and requiring its remedy; or
- c) if any of the events described in clauses 8.1(c), 8.1(d), 8.1(g) and/or 12.5(b) of these General Conditions occurs.

Insolvency

13.8 A party to this Agreement may terminate this Agreement by providing 30 days' notice in writing in the event that bankruptcy or insolvency proceedings are brought against the other party, or if an arrangement with creditors is made, or a receiver or administrator is appointed over any of the other party's assets, or the other party goes into liquidation.

Consequences of termination

13.9 If this Agreement is terminated and the Customer wishes to transfer to another service provider, YCM will provide reasonable assistance to the Customer in respect of the transfer of the Customer's service in accordance with standard telecommunications industry practice.

13.10 Termination or expiry of this Agreement for whatever reason shall not affect:

- a) the rights and obligations of the parties which have accrued prior to such termination or expiry; or
- b) any provisions of this Agreement which are of a continuing nature and any other provisions of this Agreement necessary for their interpretation or enforcement.

13.11 On termination or expiry of this Agreement (in whole or in relation to a particular Service):

- a) any sums properly due from one party to the other will become immediately due and payable (including Charges for the Service(s) up to the date of termination, Termination Fees relating to the Service(s) and/or Charges for any costs incurred by YCM in relation to Equipment or Services ordered by the Customer but yet to be supplied by YCM);
- b) the Customer shall cease using the Service(s); and
- c) each party will, on request, promptly return to the other all Confidential Information and other property belonging to the other relating to the



Service(s) which is in its custody or control or will destroy such Confidential Information and certify such destruction to the other party.

14. EQUIPMENT

- 14.1 The Customer shall comply with any instructions provided by YCM or a YCM Representative from time to time in respect of the Equipment.
- 14.2 Certain elements of Services are dependent on the Customer using the Equipment. If the Customer does not use the correct Equipment, then:
 - a) the Services may not function correctly;
 - b) YCM may choose not to provide the Customer with the relevant Services; and
 - c) YCM shall have no liability for the Customer's inability to receive those Services and the Customer remains liable for the relevant Charges.

15. ORDERS

- 15.1 The Customer shall be entitled to place with YCM an order for any Mobile Equipment identified by YCM from time to time.
- 15.2 YCM's acceptance of an order is subject to availability and YCM may reject any order without any liability to the Customer. In the event that YCM accepts an order, that order will be processed accordingly. Any order, once accepted by YCM, may not be revoked by the Customer.
- 15.3 YCM reserves the right to add to, substitute, or to discontinue any item of Mobile Equipment at any time. YCM does not guarantee the continuing availability of any particular item of Mobile Equipment.

16. DELIVERY, ACCEPTANCE AND RISK

- 16.1 YCM will deliver the Mobile Equipment to the address specified on the completed order provided that address is within the United Kingdom.
- 16.2 The Customer shall be deemed to have accepted an item of Mobile Equipment:
 - a) when that item of Mobile Equipment has been delivered, if YCM is to deliver the item of Mobile Equipment; or
 - b) when the Customer takes possession of that item of Mobile Equipment, if the item of Mobile Equipment is to be collected by the Customer.
- 16.3 Risk in an item of Mobile Equipment will pass to the Customer when the item of Mobile Equipment is accepted by the Customer. The Customer shall not be liable for any loss or damage to the item of Mobile Equipment to the extent that such loss or damage is caused by the negligence of YCM or its suppliers.

17. TITLE IN THE MOBILE EQUIPMENT

- 17.1 Title in the Mobile Equipment does not pass to the Customer and remains at all times with YCM or YCM's suppliers. Title in Accessories may pass to the Customer upon payment in full for such accessories.
- 17.2 The Customer will:
 - a) only use Mobile Equipment for the purposes of receiving or using the Services in accordance with this Agreement;
 - b) comply with any instructions provided by YCM or a YCM Representative from time to time in respect

- c) of the Mobile Equipment (including in relation to the return of any Mobile Equipment);
- c) not have the Mobile Equipment repaired or serviced except as authorised by YCM; and
- d) not create or allow any charges, liens, pledges or other encumbrances to be created over the Mobile Equipment;

- 17.3 For the avoidance of doubt, clause 14 applies to Mobile Equipment supplied by YCM to the Customer pursuant to this Agreement.
- 17.4 Following any upgrade or replacement of Mobile Equipment or disconnection of Mobile Equipment from the Mobile Services, YCM reserves the right to request the safe return of any such Mobile Equipment in which YCM retains title from the Customer at the Customer's expense.
- 17.5 YCM reserves the right to charge the Customer the full replacement costs for any Mobile Equipment that is not returned to YCM in good working order or in accordance with the provisions of clause 17.4 or where the Customer fails to fulfil its obligations under clause 17 or clause 14.
- 17.6 Without prejudice to clause 17.5, in the event that the Customer sells any Mobile Equipment in breach of clause 17, the Customer agrees that liquidated damages equal to the full replacement costs of the Mobile Equipment on the date on which YCM invokes its right to recover liquidated damages, shall immediately be due and payable from the Customer to YCM.

18. OBLIGATIONS OF THE CUSTOMER

- 18.1 The Customer will, and shall take all reasonable steps to ensure that its employees will pay the standard charges levied by YCM from time to time applicable to repair work on Mobile Equipment which is outside (in scope or time) the warranty provided under this Agreement.
- 18.2 YCM reserves the right to bar service to any Mobile Equipment supplied under this Agreement to which YCM retains title where in YCM's reasonable opinion that Mobile Equipment is not being used in a manner which YCM would expect including but not limited to where the Mobile Equipment is:
 - a) used in conjunction with a SIM Card connected to a tariff other than one which the Customer has ordered under this Agreement;
 - b) used in conjunction with a SIM Card allocated to any other YCM customer's account;
 - c) used solely or predominantly on a roaming basis; or
 - d) (or the SIM Card supplied in conjunction with such Mobile Equipment is) not used on the Network within 45 days from the date of despatch by YCM, or during any other period of 30 consecutive days; unless YCM and the Customer have agreed otherwise.
- 18.3 At the Customer's expense, the Customer shall return to YCM any Mobile Equipment that has been barred pursuant to clause 18.2 of these Mobile Equipment



Terms and to which YCM retains title. In the event that the Customer fails to return any such Mobile Equipment within two (2) weeks of written notice from YCM to do so, then the Customer agrees to pay YCM the full replacement costs for such Mobile Equipment.

- 18.4 The Customer shall ensure that their Mobile Equipment is up to date with the latest available version of the manufacturer's Software. Any failure by the Customer to ensure their Mobile Equipment Software is maintained on the latest version may result in performance issues which YCM shall not be liable for.

19. MOBILE SERVICE STANDARDS

The Customer acknowledges that provision of the Mobile Services is subject to the geographic extent of Network coverage and local geography, topography and or atmospheric conditions and/or other physical or electromagnetic interference and/or the number of users trying to access the Mobile Services in any particular location that may, from time to time, adversely affect the provision of the Mobile Services in terms of availability, line clarity and call interference.

20. SIMS CARDS AND NUMBERS

20.1 Where the Customer is not already an YCM customer, YCM will supply to the Customer such number of SIM Cards as is necessary for the Customer to receive the Mobile Services to be provided under the relevant order.

20.2 YCM shall:

- a) provide to the Customer such mobile numbers as are necessary for the Customer to receive the Mobile Services; or
- b) port mobile numbers from another mobile network in accordance with standard porting procedures between mobile networks in the United Kingdom.

20.3 Nothing in this Agreement shall be construed as to grant the Customer any right in relation to the mobile numbers other than to receive the Mobile Services as described in this Agreement.

21. CHARGES

21.1 Unless otherwise stated in writing the following apply to UK domestic calls:

- a) call prices are quoted by the minute;
- b) the duration of each call shall be measured in whole seconds, any part second will be rounded up to the next whole second;
- c) each call shall be charged excluding VAT, based on the duration, the ex VAT cost of each call is then calculated and the result rounded up to the nearest penny. VAT is then added where applicable to the total of all charges on the Customer's invoice;
- d) peak rate call Charges apply from 07:00 to 19:00, Monday to Friday; weekend rate call Charges apply from midnight on Friday to midnight on Sunday and off peak rate call Charges apply at all times when peak rate or weekend rate call Charges do not apply; and
- e) all calls are subject to a minimum Charge. Full details of international and roaming call Charges (including rounding policies) are available.

21.2 The Customer acknowledges that roaming calls may take longer to be billed than other types of calls.

21.3 YCM may monitor the Customer's usage of the Mobile Services for the purpose of controlling YCM's credit risk and the Customer's exposure to fraudulent usage.

21.4 The Customer will be liable for any Charges incurred as a result of unauthorised use of the Mobile Services (including any SIM Card) until YCM has received a request from the Customer to suspend the provision of such Mobile Services.

21.5 Any credits accrued in the Airtime Account may be used solely for the purposes of offsetting Charges for Airtime, do not have any monetary value, and the Customer is not entitled to:

- a) use any credits accrued in the Airtime Account to offset Charges for Services other than Airtime or vice versa;
- b) offset any credits accrued in the Airtime Account against any outstanding debt;
- c) any payments from any credits accrued in the Airtime Account; or
- d) any future use of credits accrued in the Airtime Account upon termination of this Agreement.

21.6 Any credits to which the Customer is entitled will be applied to the Customer's nominated Airtime Account within 30 days of the end of the Minimum Holding Period, unless otherwise stated.

21.7 Credits accrued in the Customer's Airtime Account may be used to purchase Network capacity from YCM.

22. DISCONNECTION OF SIM CARDS

22.1 The Customer may serve on YCM a disconnection notice in respect of a SIM Card(s) at any time.

22.2 YCM will, within 30 days from receipt of a disconnection notice, disconnect the relevant SIM Card(s) from the Mobile Services.

22.3 In the event that the Customer gives a disconnection notice resulting in disconnection of a SIM Card prior to the expiry of its Minimum Period (as set out in the Commercial Schedule), the Customer will pay to YCM any applicable Termination Fee.

23. OBLIGATIONS OF THE CUSTOMER

23.1 The Customer shall notify YCM immediately (and confirm in writing) on becoming aware that any SIM Card has been lost or stolen or that any person is making improper or illegal use of a SIM Card and shall remain liable for any Charges incurred in respect of and any information contained within that SIM card up until the point at which it notifies YCM.

23.2 The Customer shall, and shall take all reasonable steps to ensure that Users (or anyone having access to the Services) will:

- a) not use the Mobile Services in any way to generate AIT; and
- b) not, without the prior written consent of YCM which may be withheld at YCM's absolute discretion, establish, install or use a Gateway so



that telecommunication services are provided via the Gateway;

- c) not make nuisance calls or use the Services to spam or to send unsolicited advertising or promotional material;
- d) comply with YCM's reasonable instructions relating to health, safety, security and use of the Network; and
- e) comply with any applicable fair use policy that YCM may issue from time to time.

23.3 The Customer agrees not to use SMS or MMS for the purpose of marketing or advertising anything to users of mobile services without the consent of those users.

23.4 The Customer agrees that in respect of SMS and MMS, YCM is acting as a network operator and as such has no knowledge of, involvement with, or liability for the specific content of any text messages sent to the Customer's SIM Cards, which do not originate from YCM.

23.5 The Customer shall not be permitted to transfer a SIM Card from the tariff which that SIM Card was originally connected to under this Agreement to another tariff except where YCM at YCM's absolute discretion agrees to do so and confirms such a change in writing to the Customer.

23.6 YCM can at its discretion suspend any SIM Card from making calls (other than to emergency services) and disconnect any SIM Card from the Mobile Services if YCM has reasonable cause to suspect fraudulent use of the SIM Card or relevant Mobile Equipment, or either are identified as being stolen. The Customer shall remain liable for all Charges levied in accordance with this Agreement during any period of suspension.

24. CUSTOMER EQUIPMENT

24.1 Certain elements of the Mobile Services are dependent on the Customer having suitable customer equipment available and in the event that the Customer is unable to provide such customer equipment, then:

- a) some of the Mobile Services may not function correctly (the "Affected Services");
- b) YCM may choose not to provide the Customer with the Affected Services; and
- c) YCM shall have no liability for the Customer's inability to receive those Affected Services.

24.2 Any customer equipment must be:

- a) technically compatible with the Network and the relevant Mobile Service and shall not harm the Network or equipment belonging to another customer;
- b) connected to the Network strictly in accordance with the instructions of YCM; and
- c) used by the Customer in compliance with any relevant instructions, standards and laws

25. INTELLECTUAL PROPERTY

25.1 All intellectual property rights in the Software, Equipment associated documents and all parts thereof will be and remain vested in and be the absolute property of the owner of the copyright in the Software, Equipment or associated documents as appropriate, which owner shall be entitled to enforce any of the terms of this Agreement relating to the Customer's use of that Software, Equipment or associated documents and all

parts thereof, directly against the Customer.

25.2 Unless otherwise specified in this Agreement, all intellectual property developed in the provision of any Service will vest in YCM or its licensors. YCM may use know-how acquired, principles learned or developed or experience gained during the performance of any Service, to perform work for other customers.

25.3 All information or materials exchanged between YCM and the Customer in connection with the Agreement, together with the copyright therein, will remain the property of YCM, YCM's suppliers or the Customer as applicable and will be returned to the owning party on termination of the Agreement, if requested by such party.

25.4 YCM grants to the Customer a non-exclusive, non transferable licence to use, in object code form, any Software and the Equipment provided by YCM or its suppliers solely in the United Kingdom in connection with the proper use of the Services. The Customer undertakes not to copy, alter, adapt, translate, software develop, decompile, license, sub-license, reverse engineer or resell any Software (or any part of the Software), unless expressly permitted to do so by YCM or by relevant law. This licence will terminate on the termination of this Agreement (or any relevant part of this Agreement).

25.5 YCM grants to the Customer a non-exclusive, non transferable royalty free licence for the term of this Agreement (in whole or in relation to a particular Service(s)) to use any information or materials provided by YCM to the Customer under this Agreement to the extent necessary for the Customer to receive the benefit of the Service(s). The Customer must not copy, reproduce, distribute, alter, adapt, translate, develop, decompile, license, sub-license, reverse engineer or resell any such information or materials (or any part thereof), unless expressly permitted to do so by YCM or relevant law.

25.6 In the event that the Customer is subject to a claim by a Third Party in respect of any alleged infringement of any trademark, patent, registered design or copyright arising from its normal use or possession of the Equipment, Software, information or materials provided by YCM then YCM will indemnify the Customer in relation to sums awarded or paid in settlement for such claim provided that the Customer promptly notifies YCM of such claim, makes no admission in respect of such claim, the Customer seeks to mitigate the loss where it can do so without unreasonable inconvenience or cost, allows YCM or its licensor to conduct all negotiations and proceedings (providing YCM or its licensor with all reasonable assistance) and allows YCM at YCM's own discretion and expense to modify or replace the Equipment, Software, information or materials so as to avoid any continuing infringement. This indemnity does not apply to any such infringements caused by the Customer's own breach of the terms of this Agreement or the



operation or use of the Equipment, Software, information or materials in conjunction with other equipment and software or Services not supplied by YCM pursuant to this Agreement in which event the Customer shall indemnify YCM in respect of any claims, proceedings and expenses arising from any such infringement by the Customer.

- 25.7 The Customer will not be entitled to and agrees not to:
- a) use in the course of trade or otherwise in relation to any goods or services of the Customer any registered or unregistered trademark, logotype or abbreviation of the name of YCM (or any of its suppliers) or any part thereof so that any person might reasonably import a connection between those goods or services and YCM (or any of its suppliers) or any part thereof;
 - b) register or attempt to register as a trade mark anything referred to in clause 25.7a) of these General Conditions; and/or
 - c) authorise any Third Party to do anything referred to in clause 25.7a) of these General Conditions. The Customer further agrees not to infringe any copyright, or registered or unregistered trademark rights belonging to any Third Party in respect of any Equipment.

End User Licensed Software

- 25.8 The Customer recognises that the Services may be dependent upon End-User Licensed Software (e.g. click-through licences) and if the Customer does not accept the licence terms relating to any End-User Licensed Software, YCM shall have no liability whatsoever for any failure to provide the Services to the Customer where the Services depend on the use of End User Licensed Software.
- 25.9 Where the Customer accepts the terms of a licence in respect of any End-User Licensed Software, then those licence terms shall take precedence over any terms within this Agreement relating to End-User Licensed Software and shall exclusively comprise the Customer's sole rights and remedies in respect of such End-User Licensed Software.
- 25.10 The Customer shall accept and comply with all licence terms required from time to time by any Third Party provider of any Software or materials as agreed between the relevant Third Party and YCM.

26. CONFIDENTIALITY

- 26.1 Neither party will divulge Confidential Information to any Third Party except such of its employees, contractors, suppliers and agents as may need to know the same for the purposes of the implementation and/or performance of this Agreement and in each case who agree to be bound by the provisions of this clause 26.1.
- 26.2 The obligation of confidence set out in clause 26.1 of these General Conditions shall not apply to any material or information which is:
- a) in the public domain (other than as a result of a breach of this Agreement);
 - b) already known to the receiving party prior to the Commencement Date;
 - c) lawfully received from a Third Party; or
 - d) required to be disclosed pursuant to the order of a

court or other tribunal or regulatory authority of competent jurisdiction.

- 26.3 The obligation of confidence set out in this clause 16 shall apply in the period commencing on the Commencement Date and ending three years after the termination or expiry of this Agreement.

27. LIMITATION OF LIABILITY

- 27.1 This clause 27 of these General Conditions sets out each party's entire liability (including any liability for the acts and omissions of each party's employees, agents or sub-contractors) to the other party in tort, contract or otherwise, arising out of or in connection with the performance or contemplated performance or non-performance of this Agreement.
- 27.2 Subject to clauses 27.4 and 27.5 of these General Conditions, neither party shall be liable to the other in respect of any matter arising out of or in connection with this Agreement in contract or tort (including negligence) or otherwise for any loss (whether direct or indirect) of profit, business, revenue, anticipated savings, goodwill, business interruption, from wasted expenditure or any loss or corruption of data, or for any indirect or consequential loss or damage whatsoever.
- 27.3 Subject to clauses 27.2, 27.4 and 27.5 of these General Conditions, YCM's aggregate liability of any sort resulting from breach of contract or negligence, under any indemnity or otherwise arising in connection with this Agreement (whether to the Customer, any Customer Affiliate, Users or otherwise) shall be limited in respect of all claims arising in a Year ("Relevant Year") to the greater of:
- a) the sum of £10,000; or
 - b) an amount equal to the **Annual Agreement Value**, where the "Annual Agreement Value" means the total Charges paid or payable by the Customer in the Year prior to the Relevant Year (or where a claim arises during the first Year of this Agreement, the Charges paid or payable up to the date on which the Customer's right to take action in respect of the claim arose and subject always to YCM's aggregate liability for claims in the first Year being no greater than the total Charges paid or payable by the Customer in the first Year); and "Year" means the first, and each subsequent, consecutive period of 12 months of this Agreement commencing on the Commencement Date.
- 27.4 Nothing in this Agreement shall exclude or restrict the liability of either party for:
- a) death or personal injury resulting from that party's negligence;
 - b) claims in respect of the Customer's liability under clause 10 of these General Conditions;
 - c) any and all damage to any equipment belonging to YCM or the Network caused by the Customer's breach of this Agreement;



- d) breach of any implied term as to title or quiet enjoyment arising out of section 12 of the Sale of Goods Act 1979; or
- e) fraud or fraudulent misrepresentation.

27.5 Nothing in this Agreement shall exclude or restrict the liability of either party in respect of any liability which cannot be excluded or restricted by law.

27.6 Nothing in this clause 27 shall apply to the payment of the Charges.

27.7 Subject to clauses 27.4 and 27.5 of these General Conditions, the express terms of this Agreement are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are hereby excluded to the fullest extent permitted by law.

27.8 The limited warranty, exclusive remedies and limited liability set forth above are fundamental elements of the basis of the Agreement between YCM and the Customer. YCM would not be able to provide the Services and/or Equipment on an economic basis without such limitations.

Liability for third parties

27.9 YCM shall not be liable for the acts or omissions of other providers of telecommunication services unless such other providers have been specifically engaged by YCM as subcontractors or assignees in respect of the performance of YCM's obligations under this Agreement.

28. ASSIGNMENT

28.1 The Customer shall not assign or transfer this Agreement to any Third Party, provided that the Customer may assign or transfer this agreement to a Customer Affiliate with the prior written consent of YCM (such consent not to be unreasonably withheld or delayed).

28.2 YCM may assign or transfer this Agreement to any Affiliate and may subcontract the performance of all or part of the same, provided that YCM shall remain liable for the acts and omissions of its subcontractors.

29. ENTIRE AGREEMENT

29.1 This Agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, representations, proposals, understandings and agreements whether written or oral relating to the subject matter of this Agreement.

29.2 Each of the parties acknowledges and agrees that in entering into this Agreement, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement. Nothing in this clause 29.2 shall, however, operate to limit or exclude any liability for fraudulent misrepresentation.

30. INVALIDITY

If any of the provisions of this Agreement become invalid, illegal or unenforceable, the validity or enforceability of the remaining provisions shall not in any way be affected or impaired. In such circumstances, the parties shall negotiate in good faith in order to agree the terms of a mutual satisfactory provision, achieving as nearly as possible the same commercial effect, to be substituted for the provision which is

found to be invalid, illegal or unenforceable.

31. WAIVER

The failure or delay by either party to this Agreement to exercise or enforce any right, power or remedy under this Agreement shall not be deemed to operate as a waiver of any such right, power or remedy; nor shall any single or partial exercise by any party operate so as to bar the exercise or enforcement thereof or of any right, power or remedy on any later occasion.

32. DATA PROTECTION

32.1 YCM operates in accordance with the Data Protection Act 1998 ("DPA") as updated or amended from time to time. The Customer agrees that its details, or those of its Users may be used and disclosed by YCM for the purposes of this Agreement and for marketing purposes including informing the Customer and its Users from time to time about other Services or associated technologies. If the Customer or a User does not want its details, or, in the case of the Customer those details of its Users to be used for direct marketing purposes in this way then the Customer should contact the YCM Data Controller.

32.2 The Customer will ensure that its Users have consented to the use of their details in accordance with clause 32.1 of these General Conditions. Customer details and that of its Users shall be treated in accordance with YCM's Privacy Policy.

32.3 To the extent that YCM is required as part of the Services to process Personal Data only as a Data Processor (each as defined in the DPA), YCM shall:

- a) process the Personal Data only on behalf of the Customer (or, if so directed by the Customer, Customer Affiliates), for the purposes of performing this Agreement and in accordance with instructions contained in this Agreement or the reasonably practicable instructions received from the Customer from time to time;
- b) at all times comply with the provisions of the Seventh Data Protection Principle set out in schedule 1 of the DPA and shall take reasonable steps to:
 - i) implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure;
 - ii) take reasonable steps to ensure the reliability of personnel, suppliers and subcontractors who may process Personal Data.

32.4 YCM may transfer Personal Data in connection with the provision of the Services, including to any subcontractor, and such transfer may be outside the European Economic Area. In such circumstances YCM will:

- a) take reasonable steps to ensure the reliability of such subcontractors and prior to any such transfer



will enter into a written agreement with such subcontractor containing contractual provisions which ensure an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of the Personal Data; and

b) comply with the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred.

32.5 The Customer acknowledges that when acting as a Data Processor, YCM is reliant on the Customer for direction as to the extent YCM is entitled to use and process the Personal Data in connection with the Services. Consequently, YCM shall be entitled to relief from liability in circumstances where a data subject makes a claim or complaint with regards to YCM's actions to the extent that such actions result from instructions received from the Customer.

33. MATTERS BEYOND THE PARTIES' REASONABLE CONTROL

- 33.1 Neither party shall be deemed in default or liable to the other party for any matter whatsoever for any delays in performance or from failure to perform or comply with the terms of this Agreement due to any cause beyond that party's reasonable control including, without limitation, acts of God, acts of Government or other competent regulatory authority, telecommunications network operators, war or national emergency, riots, civil commotion, fire, explosion, flood, lightning, extremely severe weather, epidemic, lock-outs, strikes and other industrial disputes (in each case, whether or not relating to that party's workforce).
- 33.2 The Customer agrees that YCM shall have no liability for improper, incorrect or unauthorised use of the Services or Equipment by the Customer or any Third Party.

34. EXPORT CONTROL

- 34.1 In the event that the Customer proposes to export any Hardware or other equipment supplied by YCM pursuant to this Agreement, the Customer agrees to comply with any applicable export or reexport laws, regulations, prohibitions or embargoes of any country, including obtaining written authority from any relevant licensing authority where necessary.
- 34.2 In the event that the Customer procures Equipment, the Customer agrees that in entering into this Agreement the Customer accepts the terms of the following end-user undertaking: The Customer certifies that it is or will be the end-user of the Equipment and further certifies that it shall use the Equipment only for the purposes of allowing its employees to send, receive, store and process data and voice services in order to perform their everyday contractual duties; that the Equipment will not be used for any purpose connected with explosives, chemical, biological or nuclear weapons, or missiles capable of delivering such weapons; that the Equipment will not be re-exported or otherwise re-sold or transferred if it is known or suspected that they are intended or likely to be used for such purposes; and that the Equipment, or any replica of it, will not be used in any nuclear explosive activity or un-safeguarded nuclear fuel cycle activity.

35. RELATIONSHIP OF THE PARTIES

Nothing in this Agreement shall create, or be deemed to create, a partnership or joint venture between the parties and nothing in this Agreement shall be construed to appoint one party as the distributor, dealer or agent of the other.

36. NOTICES

Any notice or other communication required or permitted under this Agreement to be given in writing shall be given in writing to the address of the recipient stipulated herein or as notified from time to time and will be deemed to have been given or made: when delivered personally; or, if properly addressed and posted by first class mail in the United Kingdom within two Working Days of posting; or, if sent by facsimile upon being sent; or, if sent by e-mail or other electronic means at the time of transmission provided the sender can provide proof the notice was properly addressed.

37. NO THIRD PARTY RIGHTS

Except as otherwise explicitly set out in this Agreement, a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. For the avoidance of doubt, Customer Affiliates shall have no rights to enforce any term of this Agreement.

38. PRIORITY OF DOCUMENTS FORMING THIS AGREEMENT

- 38.1 This Agreement is recorded in the following documents:
- these General Conditions;
 - the Commercial Schedule;
 - the applicable Terms;
 - the applicable Service Schedule(s) or quotation;
 - any other document incorporated by reference in Terms or Service Schedules; and
 - the YCM Website.
- 38.2 In the event of any conflict between provisions of the documents making up this Agreement, the order of precedence shall be as set out in clause 28.1 of these General Conditions (in order of decreasing precedence) unless explicitly stated otherwise.

39. TUPE

- 39.1 The Customer warrants that it has taken all reasonable steps to verify and, following such investigation, has no grounds to believe that any Customer Employee's employment shall transfer from the Customer or any Third Party to a Services Provider pursuant to the TUPE Regulations at the commencement of this Agreement, however and whenever such transfer takes effect.
- 39.2 If, notwithstanding the warranties given by the Customer and/or the intention of the parties stated in clause 39.1 and 39.2 of these General Conditions, either at the commencement of this Agreement or during the term of this Agreement, any Customer Employee claims or it is determined that his contract of employment has been transferred from the Customer



or any Third Party to a Services Provider pursuant to the TUPE Regulations or otherwise or any Customer Employee claims or it is determined that any liability regarding his employment has so transferred then:

- a) the Services Provider may terminate any such contract forthwith; and
- b) the Customer shall indemnify and hold harmless the Services Provider against any costs, claims, liabilities and expenses of any nature (including legal costs on an indemnity basis) arising out of such termination and against sums payable to or on behalf of such employee in respect of his employment whether arising before or after the transfer of his employment (or alleged transfer of employment) to the Services Provider (including for the avoidance of doubt any liability arising from a failure to comply with any information or consultation requirements under the TUPE Regulations).

39.3 YCM warrants that no Services Provider shall bring any claim under the TUPE Regulations arising out of or in connection with any actual or alleged failure of the Customer or any Third Party to provide Employee Liability Information in accordance with the TUPE Regulations.

39.4 YCM will indemnify and keep indemnified the Customer against any costs, claims, liabilities and expenses of any nature (including legal costs on an indemnity basis) which the Customer or its incumbent supplier may suffer or incur arising out of any breach of clause 39.3 of these General Conditions.

39.5 The parties intend that no YCM Employee's employment shall transfer from a Services Provider to the Successor Supplier pursuant to the TUPE Regulations as a result of the commencement of the provision of the Replacement Services by a Successor Supplier, however and whenever such commencement takes effect.

39.6 If, notwithstanding the intention of the parties stated in clause 39.5 of these General Conditions, as a result of the commencement of the provision of the Replacement Services by the Successor Supplier, any YCM Employee claims or it is determined that his contract of employment has been transferred from a Services Provider to the Successor Supplier pursuant to the TUPE Regulations or otherwise or any YCM Employee claims or it is determined that any liability regarding his employment has so transferred then:

- a) the Successor Supplier may terminate any such contract forthwith; and
- b) YCM shall indemnify and hold harmless the Customer against any costs, claims, liabilities and expenses of any nature (including legal costs on an indemnity basis) incurred or suffered by the Successor Supplier arising out of such termination and against sums payable to or on behalf of such employee in respect of his employment whether arising before or after the transfer of his employment (or alleged transfer of employment) to the Successor Supplier (including for the avoidance of doubt any liability arising from a failure to comply with any information or

consultation requirements under the TUPE Regulations).

39.7 The Customer warrants that no Successor Supplier shall bring any claim under the TUPE Regulations arising out of or in connection with any actual or alleged failure of the Services Provider to provide Employee Liability Information in accordance with the TUPE Regulations.

39.8 The Customer will indemnify and keep indemnified YCM against any costs, claims, liabilities and expenses of any nature (including legal costs on an indemnity basis) which the Services Provider may suffer or incur arising out of any breach of clause 39.7 of these General Conditions.

39.9 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to this clause 39 to the extent necessary to ensure that:

- a) any Services Provider shall have the right to enforce the obligations owed to, and indemnities given to, YCM by the Customer under this clause 39; and
- b) any Successor Supplier shall have the right to enforce the obligations owed to, and indemnities given to, the Customer by YCM under this clause 39, in its own right pursuant to section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

40. CREDIT CHECKS AND FRAUD PREVENTION

40.1 YCM's acceptance of Customer's application for Services, may be subject to YCM checking the following records about the Customer and the Customer's business partners:

- a) YCM's own records;
- b) business records at credit reference agencies ("CRAs") including both public (including the electoral register) and fraud prevention information. When CRAs receive a search from YCM they will place a search footprint on the Customer's business credit file that may be seen by other lenders;
- c) records held by fraud prevention agencies ("FPAs"); and
- d) if the Customer contact is a director, YCM may seek confirmation, from CRAs that the residential address that is provided is the same as that shown on the restricted register of directors' usual addresses at Companies House.

40.2 YCM may also make checks such as assessing the Customer's application for Services and verifying identities to prevent and detect crime and money laundering. YCM may also make periodic searches at CRAs and FPAs to manage the Customer's YCM account.

40.3 YCM will send information on the Customer's applications, YCM account and how the Customer manages its account to CRAs which may record such information, including information on the Customer's



business and its proprietors. The CRAs may create a record of the name and address of the Customer and its proprietors if there is not one already.

- 40.4 If the Customer does not pay the Charges when they become due and payable, CRAs will record the outstanding debt which shall remain on file for six years after they are closed (whether by settlement or default). Such records may be supplied to other organisations by CRAs and FPAs to perform similar checks and to trace the Customer's whereabouts and recover debts owed by the Customer.
- 40.5 If the Customer gives YCM false or inaccurate information or YCM suspect or identify fraud or criminal activity YCM will record this and may also pass this information to FPAs and other organisations involved in crime and fraud prevention.
- 40.6 YCM and other organisations may access and use from other countries the information recorded by fraud prevention agencies.
- 40.7 Customer data may also be used for other purposes for which the Customer or any User gives its specific permission or, in very limited circumstances, when required by law or where permitted under the terms of the Data Protection Act 1998. To read the full details of how data may be used please visit www.yourcommsgroup.com

- 40.8 The Customer can contact the CRAs currently operating in the UK, including CallCredit (Consumer Services Team, PO Box 491, Leeds, LS3 1WZ or call 0870 0601414); Equifax PLC, (Credit File Advice Centre, PO Box 3001, Bradford, BD1 5US; 0870 010 0583; www.myequifax.co.uk); and Experian (Consumer Help Service, PO Box 8000, Nottingham NG80 7WF; 0844 4818000; www.experian.co.uk). The information they hold may not be the same. They will charge a small statutory fee for access to their Records. Details of the relevant fraud prevention agencies are available from YCM on request.

41. GOVERNING LAW

This Agreement, and any issues or disputes of whatever nature arising out of or in any way relating to it or its formation (whether such disputes are contractual or non-contractual in nature, such as claims in tort, for breach of statute or regulation, or otherwise) shall be governed by and construed in accordance with the laws of England and Wales. The Parties submit to the exclusive jurisdiction of the courts of England and Wales.

