

SOUTHERN COMMUNICATIONS LTD - AGREEMENT FOR THE PROVISION OF MOBILE SERVICES

1. Definitions and Interpretation

Agreement: means these Terms and Conditions together with the Order.

Bonus: means any introductory or anniversary bonus or credit made available to the Customer by the Supplier or the Supplier's supplier. The financial value of the bonus shall be specified in the Order or otherwise notified to the Customer by the Supplier in writing.

Call Charge: means the Supplier's charges for calls made on the System (including reverse charge calls) in accordance with the tariff as initially specified in the Order and or as specified by the Supplier in writing from time to time.

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

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

Customer: means the party purchasing the Service, as named in the Order.

Early Termination Fee: means:

- the Monthly Access Charge for each Line supplied by the Supplier until the end of the Minimum Period (and any additional Minimum Period under Clause 2) of each Line or handset supplied; and
- the pro rata amount of any Bonus paid (in cash and/or in kind) to the Customer by the Supplier in respect of any existing Line until the end of the Minimum Period.

Equipment: means any equipment (including without limitation handsets) supplied by the Supplier to the Customer, as specified in the Order or otherwise notified by the Supplier in writing.

IPR: means all intellectual property rights including, without limitation, copyright and related rights, patents, trade marks, registered designs, design rights, mask works, know how, rights to inventions, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in computer software, database rights, moral rights, rights in confidential information (including without limitation trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights and all similar or equivalent rights or forms of protection in any part of the world.

Line: means one or more cellular connections.

Minimum Period: means twelve (12) months (or such longer period as is set out on the Order) from the date of connection for each Line to the network provider's network or date of delivery of a handset upgrade [*whichever is later*]. Where the Supplier provides further Equipment in respect of any Line at a subsidised rate (upgrade) or financial support in lieu of Equipment (upgrade support) then the Minimum Period that relates to that Line is extended by a further Minimum Period from the date of the supply of the upgrade or upgrade support, or such other period as has been agreed between the Parties in writing.

Minimum Spend; means the minimum value of Call Charges (excluding VAT) per calendar month (or pro rata in relation to the first and final months) per [*handset*] as specified in the Order or otherwise notified by the Supplier averaged over the total number of handsets supplied by the Supplier to the Customer.

Monthly Access Charge: means the monthly charge per Line to obtain the Service, as set out in the Order or otherwise notified to the Customer by the Supplier in writing.

Offending Material: means any material, data, images or information that is:

- (i) in breach of any law, regulation, code of practice or the Supplier's acceptable use policy; or
- (ii) abusive, indecent, defamatory, obscene or menacing or otherwise offensive; or
- (iii) in breach of confidence, IPR, copyright, privacy or any right of a third party.

Oftel: means the Director General of Telecommunications or any similar office that may be appointed in addition or in substitution from time to time.

Order: means the Supplier's service order agreement signed by the parties or such other document that the Supplier deems to constitute the Order.

Service: means any and all of the services that the Supplier has agreed to supply to the Customer, as set out in the Order.

SIM: means subscriber identification module.

Supplier: means Southern Communications (Company number 1328040) whose registered office is at Glebe Farm, Down Street, Dummer, Hampshire, RG25 2AD.

System: means the network that the Supplier uses to provide the Service.

Working Day: means 09:00 to 17:00 Monday to Friday but excluding public holidays in the United Kingdom recognised by the Supplier.

1.1. Any reference in the Agreement to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.2. Headings in the Agreement shall not affect interpretation.

2. Duration and Scope of the Agreement

2.1. Each order for the Service or Equipment by the Customer to the Supplier shall be deemed to be an offer by the Customer to purchase the Service or Equipment subject to these Terms and Conditions. No order placed by the Customer shall be deemed to be accepted by the Supplier until a written acknowledgement of order is issued by the Supplier or (if earlier) the Supplier provides the Service or delivers the Equipment to the Customer.

2.2. The Agreement for each Line shall commence on the date of acceptance of the Order by the Supplier and will continue (subject to Clause 7 and Clause 11.2) until terminated by either Party on four (4) weeks written notice, to be served on or at any time after the end of the Minimum Period for any applicable Line. The commencement date for each Line may vary and the Minimum Period will apply to each individual Line. Subject to Clause 2.4, the Customer may only terminate the Agreement pursuant to this Clause 2.2 only for Lines where the Minimum Period has expired. The Customer will continue to comply with the terms of the Agreement in relation to any subsisting Lines but will not be able to order any new Lines after such termination.

2.3. Termination of the Agreement pursuant to Clause 7 or Clause 11.2 will automatically terminate all Lines from the date of termination of the Agreement.

2.4. If the Customer terminates the Agreement during the Minimum Period (except under Clause 7 or Clause 11.2), it shall in addition to any other sums payable at or as a result of termination pay the Early Termination Fee to the Supplier.

2.5. Until termination for whatever reason, the Supplier agrees to provide the [*Equipment and the*] Service to the Customer in accordance with the Agreement in consideration of the Customer agreeing to use the Service [*and the Equipment*] in accordance with the Agreement and to pay the Charges when they are due.

2.6. The Customer may place orders for further Lines or Equipment after the date of the original Order. If the Supplier accepts such orders, they will become an Order for the purposes of the Agreement and these Terms and Conditions will apply.

2.7. These Terms and Conditions shall prevail over any inconsistent terms or conditions contained in or referred to in the Customer's purchase order, confirmation of order, specification or other document or implied by law, trade custom, practice or course of dealing or simply as a result of such document being referred to in the Agreement.

3. The Supplier's General Obligations

3.1. The Supplier shall use reasonable endeavours to meet any agreed dates but shall not be liable for failure to meet them. Time shall not be of the essence of the Agreement.

3.2. The Customer shall report any fault to the Service or the Equipment to the Supplier's Customer Services Department, where it will be dealt with in accordance with the agreed fault repair service. The Supplier shall not be obliged to fix any fault if:

3.2.1. the defect arises because the Customer failed to follow the manufacturers user manual or other documentation available from the manufacturer or the Supplier's oral or written instructions as to the storage, use or maintenance of the Service or Equipment or (if there are none) good trade practice;

3.2.2. the defect is caused by improper use of the Equipment or use outside its normal application;

3.2.3. the defect arises due to circumstances set out in clause 3.5.1;

3.2.4. the defect arises due to normal wear and tear; or

3.2.5. the Customer, its employees, agents or subcontractors alter or repair the Equipment without the prior written consent of the Supplier.

If the Supplier agrees to fix a fault caused by the circumstances set out in this clause 3.2 or that is caused by the Customer or that otherwise falls outside the responsibility of the Supplier or where no fault is found, the Supplier may charge the Customer for any work that the Supplier has undertaken at its applicable man-hour rate.

3.3. The Supplier shall not be liable for any fault whether under clause 3.2 or otherwise unless:

3.3.1. the Customer gives written notice of the defect to the Supplier within seven (7) days of the time when the Customer discovers or ought to have discovered the defect; and

3.3.2. *after receiving the notice, the Supplier is given a reasonable opportunity to investigate such fault and the Customer (where applicable and if asked to do so by the Supplier) returns the Equipment to the Supplier's place of business in its original packaging.*

3.4. The Supplier will request the network provider to connect the Customer to the System. The Supplier cannot be responsible for the coverage or quality of service that the Customer receives from the System.

3.5. The Customer acknowledges that:

3.5.1. the Supplier cannot guarantee that the Services will be available without interruption or will be free from error and that the operability and quality of the Service may sometimes be affected by factors outside the Supplier's or network provider's control including without limitation [*coverage area, local physical obstructions, atmospheric conditions, features or functionality of the Service, network coverage and other interference with reception both natural and manmade;*]

3.5.2. the Service and the Equipment has not been developed to meet their individual requirements and that it is therefore the Customer's responsibility to ensure that the facilities and functions of the Service and the Equipment meets their requirements;

3.5.3. the existence of any minor errors in the Service or the Equipment shall not constitute a breach of the Agreement;

3.5.4. the Supplier or the network provider may at any time and without liability modify, expand, improve, maintain or repair the Service and this may require suspension of the operation or provision of the Service.

3.6. The Customer will receive the manufactures standard warranty in relation to all Equipment (other than Equipment manufactured by the Supplier) unless otherwise specifically agreed in writing between the parties. It is acknowledged and agreed that no warranties or representations are made by the Supplier in relation to such Equipment and the Supplier shall have no obligations to the Customer in relation thereto. The Supplier will endeavour to provide, in respect of any Equipment, the benefit of the warranty that the supplier of the Equipment has provided to the Supplier or any additional warranty expressly provided by the Supplier in writing. The Customer will only be able to rely on any warranty if it can show that it has used the Equipment in accordance with any documentation or reasonable instructions provided by the Supplier.

3.7. Notwithstanding clause 5.7 the Customer acknowledges that, in respect of any international roaming services forming part of the Service:

3.7.1. such service will only be available in those countries where the Supplier or the Supplier's third party supplier has international roaming agreements from time to time; and

3.7.2. certain additional terms and conditions may be imposed by third party operators on the Supplier which may affect the Supplier's provision of the Service.

4. The Customer's Obligations

4.1. The Customer shall not utilise and shall ensure that no other person uses the Service:

4.1.1. for storing, reproducing, transmitting, communicating or receiving any Offending Material; or

4.1.2. fraudulently or for any criminal purpose or in a manner that is contrary to any regulatory or legal requirement; or

4.1.3. to cause annoyance, inconvenience or needless anxiety to any person; or

4.1.4. [*for accessing age restricted services (where the user is under 18); or*]

4.1.5. contrary to any instructions that the Supplier may give to the Customer.

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

4.2. The Supplier shall have the right to deny access to the Service by any handset or Equipment:

4.2.1. which adversely affects the operation of the System or provision of the Service; or

4.2.2. which will or may adversely affect the operation of the System or any other third party network or provision of the Service; or

4.2.3. if the Supplier suspects fraudulent, criminal or illegal activities are being carried out, or are likely to be carried out, via that handset or the Equipment,

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

4.3. The Customer will provide the Supplier with all information that the Supplier needs and consent to the Supplier using that information for credit checking and debt collection (including disclosure to and use by third parties acting for the Supplier) and any other uses and disclosures permitted under the Data Protection Act 1998 and will allow the Supplier to disclose such information to the extent that the Supplier is required to do so the network provider, by Ofcom, the law or any relevant authority or which is reasonably requested by the network operator.

4.4. The Customer shall comply with the terms and conditions, codes of practice, procedures, directions and licenses of the network provider relevant to the Agreement, and the management of any related fraud, deception or unauthorised or unlawful use. The Customer must report to the Supplier as soon as the Customer becomes aware of any loss, fraud, deception, or unauthorised or unlawful use relating to the Equipment, SIM or Service and/or the Agreement and until the Supplier has had a reasonable opportunity to disconnect the Service, the Customer will be responsible for all Charges incurred.

4.5. The Customer shall provide the Supplier with all information relevant to the Services within 14 days of any request. This will include any relevant information relating to the format of directory information. In particular, the Customer will advise the Supplier if it changes its name or address. The Customer authorises the Supplier to process such data and make it generally available in conjunction with the network provider's directory services. The Customer also authorises the Supplier and network provider to use personal data for the purposes of performing the Services and for the purpose of direct marketing via telephone, post, email, SMS, WAP or web sites or any other similar means. The Supplier undertakes that it will process all directory information in accordance with the Data Protection Act 1998 and any code of practice issued or approved by the Information Commissioner relating to or in connection with the processing of such data.

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

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

5. Payments

5.1. The Charges are exclusive of Value Added Tax, which shall be payable by the Customer in addition to the Charges at the rate applicable from time to time. Time for payment of the Charges shall be of the essence of the Agreement.

5.2. The Customer shall (without set-off or deduction) pay in pounds sterling all invoices issued by the Supplier within fourteen (14) days of the date upon them. If the Customer's credit rating decreases at any time, the Supplier shall be entitled to revise the credit terms to require payment upon invoice or in less than 14 days.

5.3. If the Customer fails to pay the Supplier any sum due pursuant to the Agreement the Customer will be liable to pay interest to the Supplier on such sum from the due date for payment at the annual rate of [5]% above the base lending rate from time to time of HSBC Bank.

5.4. The Supplier may change the level of its Charges after giving the Customer 21 days notice of its intention to do so. This notice may be included in an invoice to the Customer. If the Supplier increases the Charges during the Minimum Period other than in accordance with clause 5.5, the Customer may terminate the Agreement in accordance with Clause 2 within ten (10) days of receipt of the notice of increase, without the obligation to pay the Early Termination Fee.

5.5. The Supplier may also change the level of its Charges at any time, as a consequence of:

5.5.1. any OfTel direction, determination, order or similar decision, or

5.5.2. any notice issued by the network provider increasing its tariff with the Supplier. In both cases, the Supplier shall only be entitled to change the level of its Charges where the foregoing impacts upon the basis upon which the Charges were calculated.

5.6. The Supplier shall send an invoice to the Customer for:

5.6.1. the Connection Charge when the Service is available to the Customer;

5.6.2. for the Monthly Access Charge and any SIM charge monthly in advance;

5.6.3. for the Call Charges after the end of the month in which the relevant calls were made; and

5.6.4. for Equipment at any time after the Supplier accepts an Order from the Customer for that Equipment.

5.7. The Charges, unless expressly agreed otherwise, are based upon there being facility to make international calls or to make or receive calls whilst abroad. If these facilities are used, the Supplier may levy additional Charges (in accordance with its tariff or otherwise notified by the Supplier) and/or require payment of a deposit. In the event that the Customer uses the Service abroad, Call Charges will include incoming calls received whilst abroad.

5.8. The Customer shall pay all Monthly Access Charge and Call Charges whether the Customer or someone else uses the Service (including use following a theft of the Equipment). The Call Charges will be calculated using the details recorded or logged by the Supplier and not details recorded by the Customer.

5.9. The Monthly Access Charge shall continue to be payable during any period of suspension or restriction [*whether or not*] requested by the Customer in addition to any Charges for such suspension or restriction.

5.10. Unless otherwise agreed, the Supplier will require the Customer to pay by direct debit and will ask the Customer to sign a direct debit form with the Agreement. If another payment method is agreed, it

may be necessary for the Supplier to pass on to the Customer any bank charges that it incurs and/or a reasonable administration fee to cover any costs incurred by the Supplier.

5.11. If the network provider exercises any right against the Supplier to withhold or claw-back payments made by the network provider to the Supplier, the Supplier shall be entitled to charge, claw-back or adjust payments, tariffs or discounts made or given by the Supplier to the Customer to the extent that they are based on payments from the network provider.

5.12. If any Line is not being used for commercial purposes, which includes chargeable calls or data transmission during the first ninety (90) days following the date of connection, then the Supplier shall be entitled to charge, claw-back or adjust any payments, tariffs or discounts made or given in respect of that connection.

5.13. If the Customer receives a discount on the Supplier's standard tariff and/or line rental and the Agreement is terminated (other than validly by the Customer under clause 7.2 or 7.3) prior to expiry of the Minimum Period, then the Supplier shall be entitled (without prejudice to any other rights) to charge the Customer the difference between the Supplier's standard tariff and line rental and the discounted tariff or line rental for all calls made or the period prior to the date of termination.

5.14. The Supplier is not able to raise billing queries with the network operator unless made within six months of the date of the network operator's invoice for call charges (the "**Dispute Period**"). Accordingly the Customer agrees that it shall not be entitled to raise any billing enquiries relating to Call Charges unless the Supplier receives notice in writing prior to six months from the date of the Supplier's invoice.

5.15. If the Customer fails to achieve the Minimum Spend in any calendar month, it shall pay to the Supplier the difference between the actual value of the Call Charges (excluding VAT) and the Minimum Spend within fourteen (14) days of the date of the Supplier's invoice.

6. Suspension and Variation of the Service

6.1. The Supplier may, in its sole discretion and upon giving the Customer written notice, suspend or vary the Service without compensation for any period during which:

6.1.1. The Supplier is obliged or requested to comply with an order or instruction of, or a recommendation or request to take such action received from the Government, Oftel, Radio Communications Agency, an emergency services organisation or a competent administrative authority;

6.1.2. The Supplier reasonably suspects or believes that the Customer is in breach of Clause 4.1 or Clause 5; or

6.1.3. The Customer's credit rating decreases at any time, and the Customer fails to supply reasonable security in response to a request from the Supplier; or

6.1.4. The Supplier is advised by the network provider that it is necessary or desirable because of technical problems or work on the System or for reasons of safety; or

6.1.5. The network provider suspends its agreement with the Supplier.

6.2. If suspension occurs for technical reasons or to prevent third party fraud and that suspension lasts for more than a continuous period of 24 hours, the Supplier will credit against the Monthly Access Charge for the whole period of the suspension the relevant proportion of any amount credited to the

Supplier by the network provider in full and final satisfaction of the Supplier's liability for such suspension.

6.3. The Customer shall reimburse the Supplier for all reasonable costs and expenses incurred as a result of the suspension and any recommencement or variation of the Service where suspension or variation is implemented as a result of any act or omission of the Customer, its employees, agents or subcontractors.

7. Termination

7.1. Either Party may immediately terminate the Agreement by written notice if the other Party commits a material breach that is not capable of being remedied.

7.2. Either Party may serve written notice requiring the other Party to remedy within fourteen (14) days of receipt of the notice a material breach of the Agreement that is capable of remedy. In the absence of a remedy in this period, the Party that served notice to remedy may immediately terminate the Agreement by written notice.

7.3. The Supplier may immediately terminate the Agreement by written notice if the Customer commits an act of bankruptcy or goes into or is put into liquidation (other than solely for the purposes of a reconstruction or amalgamation) or if a receiver, administrative receiver or administrator is appointed over all or part of the Customer's assets or the Customer suffers seizure of any of its property for non payment of monies owing.

7.4. If the Agreement is signed before the Supplier has completed its credit check of the Customer, the Supplier shall be permitted to terminate the Agreement immediately by written notice if the Customer fails to pass the Supplier's credit policy.

7.5. The Supplier shall be permitted to terminate the Agreement immediately by written notice at any time for the reasons set out in Clauses 6.1.1 and 6.1.2.

7.6. The Supplier may immediately terminate the Agreement by notice if the network provider terminates its agreement with the Supplier.

7.7. The rights to terminate the Agreement given by this Clause 7 shall be without prejudice to any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

7.8. On termination of the Agreement under Clause 7 and of each Line:

7.8.1. The Supplier will disconnect the Customer from the System and the Customer must pay all Charges owed to the Supplier;

7.8.2. All numbers shall revert to the Supplier and the Customer shall return all SIMs that are not connected and permit the disconnection of all and any SIMs that are connected and shall indemnify the Supplier against all liability howsoever arising for such disconnection; and

7.8.3. The Customer shall refund (and the Supplier shall be entitled to set-off against any payments due to the Customer) the pro rata value of the Bonus for each day from the date of termination to the end of 12 months from the date the Bonus was made available.

7.8.4. The Customer shall immediately return to the Supplier any equipment provided free of charge by the Supplier in good and complete condition, fair wear and tear excepted.

7.8.5. If the Customer wishes to change its supplier of mobile services after any of the relevant Minimum Periods has expired, the Supplier will arrange for the transfer of the telephone number to the new supplier provided that the Customer has given the appropriate period of notice to terminate the Line and paid a reasonable administration fee and all Charges due to the Supplier and agreed in writing to pay for any unbilled calls.

8. Limitations and Exclusions of Liability

8.1. This Clause 8 sets out the Supplier's entire liability (including any liability for acts or omissions of the Supplier's employees, agents or subcontractors) to the Customer in tort, contract or otherwise arising in connection with the performance, non-performance or contemplated performance of the Agreement.

8.2. Except as set out in the Agreement, the Supplier provides no warranties, conditions or guarantees as to the description or quality of the Service, and all warranties, conditions or guarantees implied by or expressly incorporated as a result of custom and practice, statute, common law or otherwise are hereby expressly excluded so far as permitted by law. The Supplier's duty in performing any obligations under the Agreement is only to exercise reasonable care and skill of a reasonably competent communications provider.

8.3. Subject to Clause 8.5, the Supplier's entire liability for non-fraudulent misrepresentation, or in tort (including negligence or breach of statutory duty) or under the express terms of the Agreement shall not in the aggregate exceed £1,000,000 (one million pounds sterling) for any one incident or series of related incidents and £2,000,000 (two million pounds sterling) in aggregate during the term of the Agreement.

8.4. Subject to Clause 8.5, the Supplier shall not be liable to the Customer whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise the Agreement, for:

8.4.1. any loss of profits; or

8.4.2. loss of revenue;

8.4.3. loss of income or business;

8.4.4. depletion or loss of goodwill, reputation or similar losses;

8.4.5. loss of anticipated savings;

8.4.6. loss of or corruption of data or information;

8.4.7. loss of use,;

8.4.8. loss of goods;

8.4.9. loss of contract;

8.4.10. loss or expenses; or

8.4.11. any indirect or consequential or special loss or damage or pure economic loss, costs, damages, charges or expenses whatsoever and howsoever caused.

8.5. The Supplier shall not exclude or restrict liability for death or personal injury resulting from its own negligence or for fraudulent misrepresentation.

8.6. Subject to Clause 8.5, the Supplier shall not be liable for any direct or indirect loss or damage (whether physical, financial or otherwise) howsoever arising from the act or default of the network provider.

8.7. Each of the Supplier and the Customer acknowledges that it considers the provisions of this Clause 8 to be reasonable, taking account of the other terms of the Agreement (including the Charges) and its ability to insure against losses which may arise from any breach by the other Party of its obligations under the Agreement.

8.8. The provisions of this Clause 8 shall survive termination or expiry of the Agreement.

9. Equipment Supply

9.1. The Supplier may supply certain Equipment to the Customer (as agreed between the Parties) pursuant to an Order. The Supplier shall use reasonable endeavours to meet any agreed delivery dates for Equipment but will not be liable for a failure to do so. Time shall not be of the essence in respect of delivery dates.

9.2. The Customer will pay the cost of delivery in addition to the price of the Equipment. The Customer will have three (3) days to inspect the Equipment. Upon expiry of the three (3) days the Equipment will be deemed accepted by the Customer.

9.3. All IPR and rights to confidence in the Equipment and in all parts thereof and anything supplied in connection therewith or to facilitate the use thereof are and shall remain the property of the Supplier or its suppliers and no rights in or under such property will pass to the Customer.

9.4. In relation to Equipment purchased by the Customer from the Supplier:

9.4.1. the Equipment is at the risk of the Customer from the time of delivery;

9.4.2. ownership of the Equipment other than Equipment provided to the Customer free of charge shall pass to the Customer on the later of completion of delivery or when the Supplier has received in full in cleared funds all sums due to it in respect of:

9.4.3. the Equipment; and

9.4.4. all other sums which are or which become due to the Supplier from the Customer on any account.

9.5. In relation to Equipment provided to the Customer free of charge:

9.5.1. risk in such Equipment will pass immediately to the Customer when they leave the physical possession or control of the Supplier;

9.5.2. risk in such Equipment will not pass back to the Supplier from the Customer until such Equipment is back in the physical possession of the Supplier;

9.5.3. ownership of such Equipment remains at all times with the Supplier. The Customer has no right, title or interest in such Equipment except that they are provided to the Customer for the duration of and on the terms of the Agreement;

9.5.4. the Customer cannot deal with the ownership or any interest in such Equipment. This includes but is not limited to selling, assigning, mortgaging, pledging, charging, securing, hiring, withholding, exerting any rights to withhold, disposing and/or leasing.

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

10. Ownership, Numbers and SIMs

10.1. All IPR shall vest in, and ownership of the SIMs and the System shall remain with the Supplier or its licensors, as appropriate. The Customer acknowledges that it shall have no license, right, title or interest in or to any IPR of the Supplier or its licensors or the SIMs or the System, except as expressly set out in the Agreement. This Clause shall survive termination or expiry of the Agreement.

10.2. All IPR relating to the Lines or the network shall be retained by the Supplier or its suppliers and the Customer will acquire no such rights by virtue of the Agreement or otherwise.

10.3. The Customer will not have any rights in numbers allocated to it, except as expressly set out in the Agreement.

10.4. The Customer will comply with and implement such terms and codes of practice, procedures and directions as are established and/or adopted by the Supplier or its suppliers from time to time in relation to any numbers and/or the allocation, re-allocation and/or transfer of them.

10.5. If any number allocated to the Customer remains unconnected to or is disconnected from the network for any reason for a continuous period of two (2) months, the Supplier may withdraw and re-allocate to a third party without liability on notice to the Customer.

10.6. The Customer will comply with such procedures as the Supplier may notify from time to time in relation to the ordering management and the use of the SIMs. The Supplier will charge the Customer for SIMs at the rate specified from time to time by the Supplier and the Customer will pay the Supplier's charges applicable for such SIMs.

11. Circumstances Beyond Reasonable Control

11.1. Neither Party shall be liable for any delay in performing its obligations under the Agreement caused by circumstances beyond its reasonable control. These are circumstances such as, but not limited to, Acts of God, insurrection or civil disorder or military operations, national or local emergency, acts or omissions of government or other competent authority or regulatory authority, fire, flood, lightning or other weather of exceptional severity, subsidence, explosion or industrial disputes. This Clause does not apply to the Customer's obligation to pay the Charges.

11.2. If either Party is affected by circumstances beyond its reasonable control, it shall notify the other Party and shall use reasonable endeavours to overcome the effects. If those effects continue for more than three (3) months, either party may terminate the Agreement by giving the other party 30 days' notice.

12. Confidentiality

12.1. The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Supplier or its agents and any other confidential information concerning the Supplier's business or its products which the Customer may obtain. The Customer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Customer's obligations to the Supplier and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Customer.

12.2. All materials, Equipment, specifications and data supplied by the Supplier to the Customer shall at all times be and remain the exclusive property of the Supplier, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Supplier and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.

13. Notices

13.1. Notices must be written and delivered by hand or first class prepaid post. The address for service on the Supplier (subject to any change notified by the Supplier) is: Mobile Division, Southern Communications Limited, Glebe Farm, Down Street, Dummer, Hampshire, RG25 2AD. The address for service on the Customer is as set out in the most recent invoice.

13.2. A notice will be deemed served as follows:

13.2.1. On hand delivery, except where this is outside a Working Day, in which case the next Working Day;

13.3. Two Working Days after posting (proof that the envelope containing the notice was properly addressed, prepaid and posted and that it has not been returned to the sender shall be proof of posting).

14. General

14.1. Failure or delay by the Supplier in enforcing or partially enforcing any provision of the Agreement will not be construed as a waiver of any of its rights under the Agreement.

14.2. If any provisions of the Agreement (or part of a provision) are found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

14.3. The termination or expiry of the Agreement shall be without prejudice to the rights of either Party, which have accrued prior to termination or expiry. Clauses that are expressed to survive or which are by implication intended to survive termination or expiry of the Agreement shall so survive.

14.4. It is acknowledged and agreed that the Agreement (including the documents and instruments referred to herein) ("the Documents") shall supersede all prior representations arrangements understandings and agreements between the parties relating to the subject matter hereof and shall constitute the entire complete and exclusive agreement and understanding between the parties hereto;

14.5. The parties irrevocably and unconditionally waive any right they may have to claim damages for any misrepresentation arrangement understanding or agreement not contained in the Documents or for any breach of any representation not contained in the Documents (unless such misrepresentation or representation was made fraudulently);

14.6. It is further acknowledged and agreed that no representations arrangements understandings or agreements (whether written or oral) made by or on behalf of any of the other parties have been relied upon other than those expressly set out or referred to in the Documents.

14.7. This Agreement may only be varied in writing (including by e-mail) with the consent of both parties.

14.8. The Supplier shall be entitled to reasonably amend the Agreement at any time upon notice to the Customer if there is any amendment to the agreement between the Supplier and the network provider which directly or indirectly impacts upon the Agreement.

14.9. Nothing in the Agreement shall create, or be deemed to create, a partnership or the relationship of principal and agent or employer and employee between the Parties.

14.10. This Agreement is not intended to be for the benefit of and shall not be exercisable by any third party (other than the network operator) under the Contracts (Rights of Third Parties) Act 1999 or otherwise and neither Party can declare itself trustee of the rights under it for the benefit of any third party.

14.11. The Supplier 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 Agreement. The Customer may not transfer, assign, sub-licence or subcontract any rights, licences or obligations under the Agreement without the prior written consent of the Supplier, which will not be unreasonably withheld or delayed.

14.12. English law shall govern the validity, construction and performance of the Agreement and the Parties submit to the exclusive jurisdiction of the English Courts.