

TERMS AND CONDITIONS

1 DEFINITION

"Administration Charges" - means those administration charges referred to in the Tariff;
 "Call Charge" - means the charges payable at the rates set out in the Tariff. Where a new type of call charge which is not set out in the Tariff is introduced by any System Provider, the rate Charged will be that determined by the System Provider. Calls made whilst using networks not included in the Tariff are charged at the rate published by the relevant network operator and are subject to a handling charge as specified by Spitfire from time to time;
 "Charges" - together means Call Charges, Connection Charges, Monthly Charges, Disconnection and/or Reconnection Charges, Administration Charges and any other charges in respect of the use of the Services by the Subscriber including, without limitation, any listed in the Network Services Agreement;
 "Connection" - means the connection of the Equipment or the SIM Card to the System;
 "Connection Charges" - means the charge as set out in the Tariff for Connection;
 "Credit Limit" - means the maximum amount of Call Charges which may be incurred by the Subscriber during any defined billing period;
 "Disconnection" and/or "Reconnection Charges" - means such reasonable charges as Spitfire shall determine;
 "Equipment" - means the cellular telephone equipment, acceptable to Spitfire and the System Provider, for Connection whether supplied by Spitfire or not;
 "International Calls" and/or "Premium Rate Calls" - means those services as set out in the Tariff;
 "Monthly Charges" - means the charge payable monthly in advance, as set out in the Network Services Agreement and as varied from time to time by Spitfire;
 "Network Services Agreement" - means the agreement between Spitfire and the Subscriber for provision of the Services incorporating those terms and conditions;
 "Spitfire" - means Spitfire Technology Group Limited;
 "Services" - means a service providing two way communication of speech via the System, together with such additional services as Spitfire at its option makes available to the Subscriber from time to time;
 "SIM Card" - means a subscriber information module which contains Subscriber information and which, when used with the appropriate equipment, enables access to the Services;
 "Subscriber" - means the customer named in the Network Services Agreement;
 "System Provider" - means the operator of the System;
 "System" - means that cellular radio telecommunications system made available by Spitfire to the Subscriber;
 "Tariff" - means Spitfire's list of charges from time to time applicable.

2 TERM

The Network Services Agreement will commence on written acceptance by Spitfire, or Connection, whichever is the earlier, and, subject to the provisions for earlier termination set out in Clause 10, shall continue for the initial period mentioned in the Network Services Agreement (or if no such period is mentioned, for a period of 12 months) ("the Initial Period") and thereafter unless and until terminated by the Subscriber or Spitfire giving 30 days' written notice to the other.

3 CONNECTION TO THE SYSTEM AND PROVISION OF SERVICES

3.1 Spitfire will provide and maintain Connection and will use reasonable efforts to make the Services available for the duration of the Network Services Agreement, subject to these terms and conditions.
 The Subscriber recognises that the Services, by their nature, may from time to time be adversely affected by physical features, atmospheric conditions and other causes of interferences and may fail or require maintenance without notice. The Subscriber acknowledges that the Services provided will be limited and dependent on the Equipment used by the Subscriber and the availability of the System. The Subscriber acknowledges that Spitfire will have no liability to the Subscriber in respect of any such adverse effects, limitations, or lack of availability, unless caused by the default of Spitfire.

4 PAYMENT

4.1 The Subscriber shall pay all Charges and any other sum due from the Subscriber to Spitfire by direct debit, or such other method that Spitfire may allow, within 14 days of the date of Spitfire's invoice therefore.
 4.2 All Charges are subject to Value Added Tax and any other relevant tax, duty or levy, which shall be payable by the Subscriber in addition at the prevailing rate from time to time applicable.
 4.3 In the event that any Charges and any other sums are not paid by their due date:-
 (A) Interest may be levied at the rate of 2% above the base lending rate of Barclays Bank Plc from time to time in force, calculated from the date payment was due until the date of actual payment, together with all costs incurred in the collection of the outstanding amount; and
 (B) Spitfire shall be authorised to debit the Subscribers nominated bank account, or credit card, pursuant to the Network Services Agreement, with the full amount of such Charges and other sums, together with sums due under Clause 4.3.1.
 4.4 The Subscriber is solely responsible for the Equipment or SIM Card including Insurance and shall remain liable for all Charges including all Charges during any period of loss, theft, damage or other inability to use the Equipment or SIM Card.
 4.5 Spitfire will only consider billing queries regarding Call Charges from the Subscriber if made within three months of the date of invoice.
 4.6 If required by Spitfire at any time, the Subscriber shall pay a deposit to be used as security against any Charges due to Spitfire, or which may become so due, which will be returnable to the Subscriber only when payment has been made to Spitfire of all Charges due under this Agreement, or upon termination, whichever is the later. The Subscriber shall not be entitled to any interest on any deposit held by Spitfire.

5 INTERNATIONAL AND PREMIUM RATE CALLS

On Connection the Subscriber will automatically be barred from making International Calls and/or Premium Rate Calls.
 This bar may (at Spitfire's sole discretion) be removed at the Subscriber's written request and Spitfire shall, in exercising its discretion, be entitled to carry out such credit checks on the Subscriber as Spitfire reasonably deems necessary.

6 CREDIT LIMIT

The Subscriber may be allocated by Spitfire a Credit Limit at the time of Connection or at any subsequent time, which Credit Limit may be varied by Spitfire from time to time and in the event of such variation Spitfire shall be entitled to carry out such credit checks on the Subscriber as Spitfire reasonably deems necessary.

7 EQUIPMENT

Where the Equipment is supplied by Spitfire and title to the Equipment passes to the Subscriber, Spitfire will use its reasonable endeavours to transfer to the Subscriber the benefit of any warranty or guarantee given to Spitfire in respect thereof. All warranties, conditions and other terms implied by statute or common law (save for conditions as to title) are excluded from the Network Services Agreement.

8 USE OF THE SERVICE

The Subscriber agrees with Spitfire that the Subscriber will:-
 8.1 comply with all applicable laws relating to wireless telegraphy and tele communications services and use of the Services, Equipment and SIM Card;
 8.2 not use, or allow others to use, the Services for any improper, immoral or unlawful purposes, or any purpose not recommended by the System Provider;
 8.3 only use Equipment which is approved under relevant legislation for use on the System;
 8.4 comply with any reasonable request by Spitfire which concerns the Equipment, the SIM Card or use of the Services or connected matters;
 8.5 promptly, but in any event within 7 days, advise Spitfire in writing of any change of address, bank or credit card details;
 8.6 notify Spitfire immediately of any loss or theft of, or damage to, the Equipment or SIM Card (and confirm in writing to Spitfire within 48 hours);
 8.7 keep confidential and not disclose to any third party:-
 (A) the electronic serial number ("ESN") associated with the Equipment
 (B) the personal unblocking key
 (C) any personal identification number issued by Spitfire (or its authorised representatives) permitting access to the Services; and
 8.8 not make or accept any reverse charge telephone calls on the System (or allow anyone else to do so).

9 SUSPENSION/DISCONNECTION

9.1 Spitfire may from time to time and without notice suspend the Services and/or disconnect the Equipment or the SIM Card from the System in any of the following circumstances:-
 (A) during any period in which the System is subject to technical failure, modification or maintenance, or access to the System is denied to Spitfire for any reason;
 (B) when Spitfire becomes aware, or has reasonable cause to believe that, fraudulent use of the Subscriber's telephone number is taking place;
 (C) if the Subscriber breaches any terms of this Agreement, until such time as the breach, if capable of being remedied, is so remedied;
 (D) if Spitfire shall have reasonable cause to believe any Charges due from the Subscriber may not be paid;
 (E) if the Call Charges incurred by the Subscriber exceed the Credit Limit allocated to the Subscriber by Spitfire;
 (F) if the Subscriber does, or allows to be done, or omits to do anything, which in Spitfire's opinion may have the effect of jeopardising the operation of the Services and/or the System;
 (G) in the event of notification of loss or theft of the Equipment or the SIM Card; or
 (H) if the direct debit mandate (and credit card) completed by the Subscriber is not accepted by the Subscriber's bank or is subsequently cancelled.
 9.2 Disconnection shall entitle Spitfire to levy a Disconnection Charge.
 9.3 Any reconnection subsequently made shall be at the sole discretion of Spitfire who shall be entitled to levy a Reconnection Charge.
 9.4 Notwithstanding any suspension of the Services under this Clause the Subscriber shall remain liable for all Charges due hereunder throughout the period of suspension, unless Spitfire, at its sole discretion, determines otherwise.

10 TERMINATION

10.1 Spitfire shall have the right to terminate the Network Services Agreement forthwith on notice in writing to the Subscriber if any of the following events occur:-
 (A) the Subscriber
 (i) has entered into any composition or voluntary arrangement (whether formal or informal) with its creditors, or
 (ii) has a bankruptcy order made against it or a petition for a bankruptcy order presented in respect of it, or
 (iii) has been made subject to an application for an interim order under Section 253 of the Insolvency Act 1986 or has an interim receiver of its property appointed under Section 286 of the Insolvency Act 1986, or
 (iv) is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or
 (i) has a receiver, manager, administrator or administrative receiver appointed over all or any parts of its undertaking, assets or income, or
 (vi) has passed a resolution for its winding-up, or
 (vii) has a petition presented to any court for its winding-up or for an administration order;
 (B) the Subscriber has in the reasonable opinion of Spitfire ceased or threatened to cease trade;
 (C) the Subscriber fails to make payment to Spitfire when due;
 (D) the Subscriber commits any breach of any provision of the Network Services Agreement or any other agreement between Spitfire and the Subscriber (other than a failure to make payment when due) and, where that breach is capable of remedy, the Subscriber fails to remedy it to Spitfire's reasonable satisfaction within 14 days of Spitfire requesting remedy in writing; or
 (E) the operation of the Services and / or the System is discontinued, suspended or terminated for any reason beyond the reasonable control of Spitfire or any licence to operate or use the System is revoked (in whole or in part) for any reason.
 10.2 The Subscriber shall have the right to terminate the Network Services Agreement forthwith on notice in writing to Spitfire if Spitfire commits any breach of any provision of the Network Services Agreement and, where that breach is capable of remedy, Spitfire fails to

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remedy it within 30 days of the Subscriber requesting remedy in writing.

10.3 Upon any termination of the Network Services Agreement:-

- (A) Spitfire shall disconnect the Equipment or SIM Card from the System; and
- (B) the Subscriber shall pay forthwith to Spitfire:-
 - (i) all outstanding Charges and other sums due to Spitfire, including a Disconnection Charge;
 - (ii) any costs reasonably incurred by Spitfire in connection with enforcing its rights, or the Subscriber's obligations; and
 - (iii) if termination is within the Initial Period and 1 or 30 days notice of termination has not been given, the Charges that would have been due to Spitfire within the remainder of those periods are applicable.

10.4 The termination of the Network Services Agreement howsoever arising is without prejudice to the rights duties and liabilities of either party accrued prior to termination. The clauses in these terms and conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

10.5 In the event that, upon termination for any reason, the Subscriber wishes to port any telephone number to any other provider or System, Spitfire:-

- (A) shall be entitled to charge the Subscriber a reasonable administration fee therefore in accordance with the Tariff; and
- (B) may decline any request to do so until the Subscriber has complied with all its outstanding obligations under the Network Services Agreement.

11 LIABILITY

11.1 Spitfire shall be under no liability for any indirect or consequential loss (including, without limitation, any economic loss, increased costs or expenses, loss of profit, business, contracts, revenues or savings) in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of the Network Services Agreement, including, without limitation, in respect of any defect in the Equipment.

11.2 Spitfire's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of the Network Services Agreement, including, without limitation, in respect of any defect in the Equipment, shall be limited to the Monthly Charge at the date of the last claim multiplied by a factor of twenty (20).

11.3 Nothing in the Network Services Agreement:-

- (A) excludes or limits the liability of Spitfire for death or personal injury caused by Spitfire's negligence or fraudulent misrepresentation; or
- (B) where the Subscriber deals as a consumer, shall affect the Subscriber's statutory rights.

12 VARIATION

Spitfire may from time to time with immediate effect vary, by written notice, any of the terms and conditions of the Network Services Agreement (or introduce new terms and conditions) as a direct result of new legislation, statutory instruments, Government regulations or licences, amendments to the System Provider's standard terms and conditions, or similar events, providing this shall be limited to the extent deemed by Spitfire to be reasonably necessary for compliance therewith. [Spitfire at its sole discretion may elect to notify the Subscriber of any such variations in writing or by publishing such variation at its principle place of business.]

13 DISCLOSURE

Spitfire may at any time disclose to its agents, or any credit reference bureaux, any information with respect to the Subscriber's account, his use of the Equipment or SIM Card and his financial affairs. The telephone number of the Equipment ("CLI") may be sent through the System so as to be identified to the equipment being called and the CLI may be used to divert calls to Spitfire. CLI will always be sent if a short dial code is used.

14 ASSIGNMENT

The Network Services Agreement may not in any event be assigned by the Subscriber to any third party. Spitfire may at any time assign the Network Services Agreement to any third party.

15 MISCELLANEOUS

15.1 Spitfire will not be liable to the Subscriber for any breach of these terms and conditions, or failure on Spitfire's part to perform any obligation, as a result of technical problems relating to the System, termination of any licence to operate or use the System, acts of God, Government control, restrictions or prohibitions or any other Government act or omission whether local or national, act or default of any supplier, agent or subcontractor. Industrial disputes of any kind or any other similar or dissimilar cause beyond Spitfire's reasonable control

15.2 All SIM Cards supplied under the Network Services Agreement to the Subscriber for use on the System shall at all times remain the property of the System Provider and in the event of termination of this Agreement must be returned to Spitfire in good condition. If a replacement SIM Card is required, or supplied by Spitfire, then Spitfire may levy a charge for such a card.

15.3 The Network Services Agreement reflects the entire understanding between the parties in relation to the Services and supersedes all prior agreements, discussions, representations: whether oral or written, relating to the subject matter of the Network Services Agreement.

15.4 Any notice or other information required or permitted to be given by either party under the Network Services Agreement shall be deemed to be validly given if served personally upon the other party or if sent by first class prepaid post to the address of the other party as stated above.

15.5 The failure or delay by Spitfire in exercising any right, power or remedy of Spitfire under the Network Services Agreement shall not in any circumstances impair such right, power or remedy nor operate as a waiver of it. The single or partial exercise by Spitfire of any right, power or remedy under the Network Services Agreement shall not in any circumstances preclude any other or further exercise of it or the exercise of any other right, power or remedy. Any waiver of a breach of, or default under, any of the terms of the Network Services Agreement shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Network Services Agreement.

15.6 The rights, powers and remedies provided in these terms and conditions are cumulative and not exclusive of any rights, powers and remedies provided by law.

15.7 Where the Subscriber is more than one person, the obligations of the Subscriber under the Network Services Agreement are joint and several. Where any liability of one or some but not all of them arising out of an obligation which is both joint and several is discharged, whether by release, accord and satisfaction or otherwise, the other persons who are the Subscriber

shall continue to be jointly and severally liable on that obligation.

15.8 The Network Services Agreement shall be governed by and construed in all respects in accordance with the laws of England and Wales and the parties hereby submit to the exclusive jurisdiction of the Courts of England and Wales.