

XTRA PHONES UK LTD (REFERRED TO HEREINAFTER AS "XTRA") TERMS AND CONDITIONS

The Customer's attention is particularly drawn to the provisions of clauses 2, (Basis of Contract), 12 (Limitation of liability) and 13 (Termination).

1. Interpretation

The following definitions and rules of interpretation apply in these terms and conditions.

1.1 Definitions:

Account: the Customer's account for the provision of Services and/or Mobile Equipment under the Contract, set up by XTRA which may or may not have a specific account number.

Airtime Agreement: An agreement for your mobile services, IE, your minutes, texts or data

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Buyout: has the meaning set out in clause 9.2.

Cancellation Fees: the return of any Buyout paid by XTRA to the Customer or its previous network, the return of any Deal Incentives paid to the Customer and the recommended retail price (as at the Commencement Date) of any Mobile Equipment provided by or on behalf of XTRA to the Customer together with any applicable Charges pursuant to clause 7.2.

Charges: the charges detailed at clause 7.

Commencement Date: means the date upon which the "Proposal and Contract" is signed by or on behalf of the Customer by electronic signature.

Conditions: these terms and conditions as amended from time to time in accordance with clause 19.8.

Connection: any mobile, fixed, VOIP or data connection or similar that can or does utilise Network Services pursuant to a Network Contract.

Contract: the contract between XTRA and the Customer that is made up of these Conditions and the Order and the Proposal and Contract for the supply of Services and/or Mobile Equipment.

Control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.

Customer: the party named in the Proposal and Contract which is the recipient of the Services, Network Services and/or Mobile Equipment.

Data Protection Legislation: means any laws and regulations relating to privacy or

processing of data or natural persons including the General Data Protection Regulation (Regulation (EU) 2016/679).

Deal Incentive: a monthly discount agreed between the Customer and the Network Provider as set out in the Network Contract and as against the full charges for the Network Services for the amount specified in the Network Contract.

Delivery Location: has the meaning given in clause 3.4.

Fair Usage Policy: any fair use policy applicable to a Network Contract.

Force Majeure Event: has the meaning given to it in clause 176.

Minimum Period: the minimum period of the Contract as may be specified in the Proposal and Contract or the Network Contract (including, but not limited to, a period referred to in the Proposal and Contract as the contract length, length, term, minimum term, period or contract period).

Mobile Equipment: any mobile or wireless device, handset, tablet, USB data drive, data card, memory card, SIM card or similar device or card provided to the Customer under the Contract for use in connection with the Services.

Network Contract: a contract entered or to be entered in to between the Customer and the Network Provider for the provision of Network Services in addition to the Contract

Network Provider: means Plan Communications Limited a third-party telecommunications network provider.

Network Services: the supply of telecommunications or data services provided by the Network Provider.

Proposal and Contract: the proposal and contract created by the Network Provider (Plan Communications Limited or such other Network Provider as XTRA appoints) which the Customer is required to sign in order that a legally binding contract is created between the Customer and XTRA.

Personal Data: has the meaning given to that term in the Data Protection Legislation.

XTRA: means Xtra Phones UK Limited, of Suite 2 Haughmond View, Shrewsbury Business Park, Shrewsbury, Shropshire, England, SY2 6LG registered in England with company number 08204476.

Purchase Order: any purchase order issued by XTRA to the Customer detailing the Services and subsequently signed by or on behalf of the Customer.

Services: the services supplied by XTRA to the Customer as set out in the Proposal and Contract including for the procurement of (but not the provision of) Network Services.

Small Business Customer: a Customer with not more than 10 employees.

1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

- (b) A reference to a party includes its personal representatives, successors and permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. Basis of contract: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 2.1** The Contract starts on and is effective from the Commencement Date, shall renew in accordance with clause 155.4 and shall continue until terminated by either party in accordance with these Conditions.
- 2.2** Where applicable and where the Network Provider rejects the Network Contract and/or refuses to enter into the Network Contract (on or after the Commencement Date), the Contract shall remain in full force.
- 2.3** Where a Network Provider insists on the payment of a deposit as a condition precedent to entering into the Network Contract the Customer shall be liable to pay such deposit. If the Customer refuses to pay such deposit, contrary to this clause 2.3 or fails to do so within 14 days of a request by XTRA or the Network Provider, XTRA shall be entitled to terminate the Contract and clause 13 shall apply.
- 2.4** XTRA offers no warranty in respect of mobile signal coverage. The Customer acknowledges that prior to signing the Contract, the Customer has taken all reasonable steps to ensure that the mobile network being connected to under the Contract or Network Contract has sufficient signal or coverage in the Customer's location or locations where the Customer desires a reliable mobile signal.
- 2.5** Notwithstanding clause 133.2 of these Conditions, XTRA may terminate the Contract, without any liability to the Customer, during the first 30 days from the Commencement Date for any reason whatsoever upon providing 7 days' notice to the Customer.
- 2.6** These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.7** Any quotation given by XTRA shall not constitute an offer and is only valid for a period of 10 Business Days from its date of issue.
- 2.8** All of these Conditions shall apply to the supply of both Services and Mobile Equipment

except where application to one or the other is specified.

- 2.9 The Customer acknowledges that the Contract is a business to business contract and warrants that s/he is acting in the course of his or her business, trade or profession.
- 2.10 The Customer may specify a spend cap or billing limit upon entering into the Contract or upon 30 days' notice to XTRA. Notwithstanding any agreed spending cap or data cap (or alert) between the Customer and XTRA (and/or the Network where applicable) the Customer hereby accepts full responsibility for data usage plus charges and acknowledges that usage information available to XTRA is provided by third parties and is not live and may be significantly delayed.

3. **Mobile Equipment**

- 3.1 The Mobile Equipment to be provided under the Contract shall be specified in the Proposal and Contract.
- 3.2 The provision of Mobile Equipment is subject to availability.
- 3.3 Subject to clause 3.6 of these Conditions, the Mobile Equipment shall be delivered within 3 months of the commencement date and if XTRA is unable to source or provide the Mobile Equipment within such period, the Customer shall be entitled to have the Account credited to the equivalent value of XTRA's trade purchase cost of the Mobile Equipment.
- 3.4 The Mobile Equipment shall be delivered to the location set out in the Proposal and Contract or such other location as the parties may agree (**Delivery Location**).
- 3.5 Delivery of the Mobile Equipment shall be deemed completed on the second business day after posting by XTRA or the Network Provider or on the second business day following the Mobile Equipment being collected from XTRA or the Network Provider by a courier with instructions to deliver to the Delivery Location.
- 3.6 Any dates quoted for delivery of the Mobile Equipment are approximate only, and the time of delivery is not of the essence. In the case of a Migration, no Mobile Equipment will be dispatched until the Customer has provided porting access codes irrespective of any delivery date specified on the Proposal and Contract. XTRA shall not be liable for any delay in delivery of the Mobile Equipment that is caused by a Force Majeure Event or delays caused by a third party manufacturer (or supplier) or the Customer's failure to provide XTRA with adequate delivery instructions or any other instructions that are relevant to the supply of the Mobile Equipment.

4. **Quality of Mobile Equipment**

- 4.1 XTRA shall pass on the benefit to the Customer of any warranties it receives from the manufacturer of the Mobile Equipment.
- 4.2 The Customer acknowledges that any attempt by the Customer to repair, service or tamper with the Mobile equipment may invalidate the manufacturer's warranty.
- 4.3 If the Customer notifies XTRA in writing within a reasonable time of discovery, that the Mobile Equipment does not comply with the warranties referred to in clause 4.2, and Customer returns the Mobile Equipment to XTRA, XTRA will, at its option, repair or replace the defective Mobile Equipment or credit the Account with the cost of the defective Mobile Equipment (if the Customer has already paid for the Mobile Equipment) or issue a credit note (if the Customer has not yet paid).
- 4.4 XTRA will not be liable for any obligation under this clause if (a) the Customer makes any further use of the Mobile Equipment after giving XTRA notice under clause 4.3; or (b) Customer alters, repairs or tampers with the Mobile Equipment; and (c) The defect arises as a result of fair wear and tear, wilful or accidental damage, negligence, or abnormal storage or working conditions; or (e) If the Mobile Equipment differs from its description or specification as a result of changes made to ensure that it complies with statutory or regulatory requirements

5. Title and risk

- 5.1 The risk in the Mobile Equipment shall pass to the Customer on completion of delivery.
- 5.2 Title to the Mobile Equipment shall not pass to the Customer until the Contract is validly terminated in accordance with these Conditions and all sums due under the Contract, including but not limited to Cancellation Fees, have been paid by the Customer to XTRA.
- 5.3 Until title to the Mobile Equipment has passed to the Customer, the Customer shall:
 - (a) maintain the Mobile Equipment in satisfactory condition and keep it insured against all risks for its full price on XTRA's behalf from the date of delivery;
 - (b) notify XTRA immediately if the Customer becomes subject to any of the events listed in clause 13.2(b) to clause 13.2(d); and
 - (c) give XTRA such information relating to the Mobile Equipment as XTRA may require from time to time.
- 5.4 If before title to the Mobile Equipment passes to the Customer, the Customer becomes subject to any of the events listed in clause 13.2(b) to clause 13.2(d), then, without limiting any other right or remedy XTRA may have:
 - (a) XTRA may at any time:
 - (i) require the Customer to deliver up all Mobile Equipment in its possession;

and

- (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Mobile Equipment is stored in order to recover each item of Mobile Equipment.

5.5 In consideration of the Customer paying the Charges and fulfilling all of its commitments as set out in the Contract, XTRA agrees to supply and the Customer agrees to receive the Services and/or the Mobile Equipment subject to the provisions of the Contract.

6. Customer's obligations

6.1 The Customer shall:

- (a) ensure that the terms of the Proposal and Contract are complete and accurate;
- (b) co-operate with XTRA in all matters relating to the Services and Network Services including, but not limited to, promptly signing a Network Contract;
- (c) provide XTRA with such information and materials as XTRA may reasonably require in order to supply the Services (including, but not limited, to providing porting access codes to enable connection of the Services), and ensure that such information is complete and accurate in all material respects;
- (d) promptly notify XTRA of a change of address, change of registered office, change of trading location(s), change of directors or change of authorised signatories;
- (e) comply with all terms of the Network Contract including, but not limited to, the terms for payment of all charges and fees under the Network Contract.
- (f) authorise the Network Provider to disclose all information to XTRA relating to the Network Contract;
- (g) provide XTRA with authority to review, monitor and manage (in accordance with the Customer's instructions or in the Customer's best interests) the Customer's account using the functionality provided by that Network Provider including (but not limited to) adding bolt-ons, adding or removing spending caps, bars, alerts, data boosts, billing analysis
- (h) return to XTRA a copy of the Proposal and Contract within 14 days of the Commencement Date;
- (i) within 14 days of the Commencement date, send to XTRA all mobile phone handset(s) (together with any pass code(s) or word(s) required to operate each handset) specified as returnable in the Proposal and Contract. Each handset provided under this clause shall be free from any "Find My iPhone" activation lock or similar lock which prevents a new account or profile being registered on the handset. The value of each handset to be returned or the total value shall be specified in the Proposal and Contract and shall be based on the trade in value

available at mazumamobile.com according to the state and condition declared by the Customer.

6.2 The obligations set out at clauses 6.1 (a) to (i) above are conditions of the Contract. In addition to any other remedies that XTRA may have for a breach of those conditions by the Customer, whether set out in the Contract or otherwise, if the Customer breaches condition 6.1 (i), the Customer shall be liable to pay £250.00 to XTRA for each handset that is retained by the Customer (or £250.00 where the Customer has failed to provide a pass code or word or any such pass code or word provided is incorrect or if a handset has an activation lock). Where XTRA is liable to pay a Buyout, termination fees or any other sums to the Customer, it may elect to set off those monies due against any sums due from the Customer under this clause 6.2. If the trade in value available at mazumamobile.com for the returnable handset(s) is less than the value specified in the Proposal and Contract (due to the state and condition being worse than declared by the Customer or for any other reason), XTRA may elect to set off the difference in value against any Deal Incentive or Cancellation Fees.

7. Charges and payment

7.1 The price for the Services and Mobile Equipment shall be the price set out in the Proposal and Contract together with the charges set out in clauses 7.2 and 7.3. The Customer acknowledges that certain charges may be payable directly to the Network Provider. The price payable for additional services and out of bundle charges (unless indicated as inclusive in the Proposal and Contract), including but not limited to, bolt on services, call features, calls to international numbers, calls to the Channel Islands, roaming charges, calls to service numbers, calls to premium rate numbers, calls to 08 & 09 numbers, calls to 0845 & 0870 numbers, calls to 0500 numbers, calls to mobiles, calls to retrieve messages, internet calls, calls to 074 numbers, calls to 070 numbers, calls to a personal numbering service, satellite calls, calls to or involving Lyca Mobile or similar international call providers, calls above the Fair Usage Policy, information and paging services, data usage, text messages, picture or multi-media messages shall be the price specified in and subject to the terms of, the Network Contract at the time such additional services or out of bundle services are utilised.

7.2 If the Contract or Network Contract is cancelled before the end of the Minimum Term, the Customer shall be liable to pay to XTRA:

- (a) a fee of £250.00 per Connection which is connected or to be connected under the Contract; plus
- (b) a consultation fee of £250.00.

7.3 XTRA reserves the right to increase the price of the Mobile Equipment, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Mobile Equipment to XTRA.

- 7.4** XTRA may invoice the Customer for Charges under the Contract. Network Services shall be invoiced by and payable to the Network Provider.
- 7.5** The Customer shall pay each invoice submitted by XTRA:
- (a) within 14 days of the date of the invoice; and
 - (b) in full and in cleared funds to a bank account nominated in writing by XTRA, and
time for payment shall be of the essence of the Contract.
- 7.6** The Customer shall be liable to pay the Charges whether the Services are being utilised by the Customer or a third party. This includes all Charges arising from unauthorised or fraudulent use.
- 7.7** Invoices shall be deemed to be undisputed and the Customer acknowledges that it shall not be entitled to dispute an invoice unless the Customer notifies XTRA in writing of any dispute (clearly identifying the reasons for the dispute) within 30 days of the date of the invoice.
- 7.8** All amounts payable by the Customer under the Contract or Network Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by XTRA to the Customer, the Customer shall, on receipt of a valid VAT invoice from XTRA, pay to XTRA such additional amounts in respect of VAT as are chargeable on the supply of the Services or Mobile Equipment at the same time as payment is due for the supply of the Services or Mobile Equipment.
- 7.9** If the Customer fails to make a payment due to XTRA under the Contract by the due date, then, without limiting XTRA's remedies under clause 13 (Termination), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.9 will accrue each day at 4% per annum above the Barclays Bank base rate compounding quarterly.
- 7.10** The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). XTRA may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by XTRA to the Customer.
- 8. Deal Incentives**
- 8.1** The Customer shall be liable to pay the Network Provider the full amount of all charges under the Network Contract irrespective of any Deal Incentive. Providing the Customer

has not committed a breach of the Contract or any Network Contract, the Customer will benefit from the Deal Incentive from (i) the commencement of the Network Contract; to (ii) the date specified in the Proposal and Contract and if no such date is specified then until the date ending at the Review point referred to in clause 155.4. For the avoidance of doubt, no Deal Incentive shall be applicable after the Review point and if no Review is specified in the Proposal and Contract, no Deal Incentive shall apply. Where the terms of this clause 8 are inconsistent with the Proposal and Contract, this clause 8 shall prevail.

9. Buyout

9.1 The Customer acknowledges that by entering into the Contract and/or the Network Contract, the Customer may have to pay termination or other charges to a Network Provider or third party for cancelling or terminating a pre-existing contract with that Network Provider or any third party.

9.2 The Purchase Order may specify a sum that XTRA is prepared to reimburse the Customer to cover some or all of the termination charges referred to in clause 9.1 (**Buyout**). Subject to clause 9.3, XTRA shall reimburse the Customer the amount of the Buyout specified in the Proposal and Contract upon receipt of VAT invoices for the amount of the Buyout from the Customer's old supplier and from the Customer to XTRA (the value of the Buyout specified in the Proposal and Contract shall be inclusive of VAT). Where the Buyout figure specified in the Proposal and Contract is insufficient to cover all of the charges referred to at clause 9.1, the Customer shall remain liable to pay the remainder.

9.3 Notwithstanding this clause 9, it shall remain the Customer's liability to pay any termination or similar charges referred to in clause 9.1. Providing the Customer has not committed a breach of the Contract or any Network Contract (excluding any pre-existing contract for services similar to those provided under the Contract), and upon receipt of invoices in accordance with clause 9.2, XTRA shall reimburse the Customer for the amount of the Buyout. The reimbursement under this clause 9 shall be paid in three monthly instalments and the first reimbursement payment shall be made by XTRA within 90 days of receipt of the invoice issued in accordance with clause 9.2.

9.4 Where XTRA, despite not being contractually obliged to do so, pays the Buyout sum whether in a lump sum or instalments, to the Customer up front as opposed to by way of reimbursement, such Buyout sum paid by XTRA to the Customer shall be paid over to the Network Provider in respect of the pre-existing contract without delay.

10. Deal Incentives/Early Term Fees/Payments and reclamations/Subsidies

10.1 Subject to the provisions in this clause 10, XTRA may at their sole discretion give a subsidy as a result of a Customer entering into an Airtime Agreement with the Network provider. Such a subsidy will be provided using the following methods:-

(a) deducting the value of the subsidy from the value of the Mobile Equipment; or

- (b) deducting the value of the subsidy from the Airtime Agreement with the Network Provider; or
- (c) the Payment of monies equal to the amount of the subsidy to the Customer in full after a period of 6-12 months from the connection date where a contract of a minimum term of 36 months is taken out; or
- (d) using such amount equal to the subsidy to discharge any termination charges or fees levied upon the Customer by the Network service provider for terminating their previous Airtime Agreement, this subject to XTRA being provided with a valid invoice from the network provider; or

10.2 any subsidy payable by XTRA, whether by instalment or by deduction, shall be paid within fourteen (14) days from the date that the Customer presents the relevant qualifying invoice providing that:

- (a) the connection is still active on the date the payment of the subsidy is due; or/and
- (b) where the payment is payable by instalments or after a prescribed period, the relevant effective date has passed; or/and
- (c) the invoice has been raised in accordance with the terms of this Agreement.

10.3 Where:

- (a) the invoice is raised in respect of termination charges (in accordance with clause 10.1(d) above) this amount must be invoiced within three (3) months from the connection date; or/and
- (b) the invoice is for the payment of monies pursuant to clause 10.1(c), the amount is invoiced during the Minimum term; or/and
- (c) amount claimed is being deducted from the price of the Mobile Equipment /services ordered by the Customer pursuant to clause 10.1(a) & (b), the amount is claimed during the minimum term.

10.4 In the event that the Customer fails to invoice/claim the subsidy within the timescales set out on clause 10.1(a) to (d) above, the Customer's right to that subsidy ceases.

10.5 The Customer acknowledges that the payment of any subsidy is conditional upon:

- (a) the Customer maintaining the connection for the minimum term agreed under their contract; and
- (b) no downward migration of their connection during the term of the contract; and

(c) any such other conditions as notified by XTRA to the Customer from time to time.

10.6 Should any of the conditions in 10.5 (a) to (c) be breached by the Customer, XTRA shall be entitled to reclaim or withhold that portion of the subsidy that is affected by the breach of those conditions.

10.7 Further conditions which will render the subsidy repayable, whether payable in whole or by instalment, in whole or in part are:

(a) if the connection is discontinued, for whatever reason, prior to the expiry of the minimum term; or

(b) a connection is upgraded/reassigned without the relevant written permission from another Network provider, dealership or broker prior to the expiry of the minimum term; or

(c) a connection or the care of a connection is transferred to another network, service provider, dealership or broker prior to the end of the minimum term; or

(d) a connection is downward migrated during the minimum term for whatever reason.

10.8 If the relevant Service or Network provider (for whatever reason) withholds or reclaims in part or in full any of the connection commissions paid to XTRA by the provider in respect of the qualifying connection, XTRA shall be entitled to reclaim the proportion of the subsidy, from the Customer, that is equivalent to the monthly subsidy amount, for each month, (pro rata for each incomplete month) for the balance of the minimum term which is unexpired at the date of disconnection, downward migration upgrade or reassign or transfer.

10.9 Any such sum either reclaimed or withheld pursuant to clause 10.7 (a) to (d) shall be invoiced to the customer and shall be payable in accordance with these terms and conditions.

10.10 Any breach of the terms and conditions of this Agreement shall render all subsidies repayable on demand.

11. Confidentiality

11.1 Each party undertakes that it shall not at any time during the Contract, and for a period of three years after termination of the Contract, disclose to any person any confidential information including, but not limited to, the business, affairs or charges of the other party, except as permitted by clause 11.2.

11.2 Each party may disclose the other party's confidential information:

(a) to its employees, officers, representatives, subcontractors or advisers who need

to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11; and

- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

12. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

12.1 Nothing in these Conditions shall limit or exclude XTRA's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation; and
- (c) any other matter in respect of which liability cannot lawfully be limited or excluded;

12.2 Subject to clause 12.1, XTRA shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; or
- (g) any indirect or consequential loss.

12.3 Subject to clause 12.1, XTRA's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Contract, shall be limited to the amount paid by the Customer to XTRA for Charges paid under the Contract.

12.4 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 (as amended) and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 (as amended) are, to the fullest extent permitted by law, excluded from the Contract.

- 12.5** This clause 12 shall survive termination of the Contract.
- 12.6** Subject to clause 12.1, XTRA and the Customer agree that the Contract shall not be rescindable on grounds of misrepresentation.

13. Termination and Suspension: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 13.1** Subject to clause 13.2 the Customer may terminate the Contract at any time by giving XTRA 30 days' written notice.

- 13.2** Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

The Customer shall be deemed to have provided a written notice to terminate under clause 13.1 if during the Minimum Period, the Customer requests a porting access code (pac) from XTRA or the Network Provider or enters into a contract with a third party during the Minimum Period for such third party to take over the Services or part of the Services.

- 13.3** Without affecting any other right or remedy available to it, XTRA may terminate the Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under the Contract or Network Contract on the due date for payment; or
- (b) cancels a direct debit or other automated payment method in place under the Contract or Network Contract; or
- (c) there is a change of control of the Customer.

- 13.4** Without affecting any other right or remedy available to it, XTRA may suspend the supply of Services, disconnect the Services or suspend all further deliveries of Mobile Equipment under the Contract or any other contract between the Customer and XTRA if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 13.2(b) to clause 13.2(d), or XTRA reasonably believes that the Customer is about to become subject to any of them.
- 13.5** Without affecting any other right or remedy available to it, XTRA may suspend the supply of Services, disconnect the Services or suspend all further deliveries of Mobile Equipment under the Contract or any other contract between the Customer and XTRA if the customer fails to sign a Network Contract or pay a deposit contrary to clause 2.3.

14. Consequences of termination

- 14.1** On termination of the Contract the Customer shall immediately pay to XTRA all Charges together with all of XTRA's outstanding unpaid invoices and interest and, in respect of Services and Mobile Equipment supplied or Charges for which no invoice has been submitted, XTRA shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 14.2** Cancellation Fees will be payable by the Customer to XTRA if prior to the expiry of the Minimum Period:
- (a) the Contract is terminated; or
 - (b) the Network Contract is terminated; or
 - (c) the Network Services are disconnected as a consequence of the Customer's breach of the Network Contract;
- 14.3** The Cancellation Fees payable in accordance with clause 14.2 shall be invoiced by XTRA to the Customer and shall be payable immediately upon receipt.
- 14.4** The Customer acknowledges that the Cancellation Fees represent a genuine pre-estimate of the loss suffered by XTRA due to early termination, having regard to the overall commercial deal between the parties and that the Cancellation Fees do not represent a penalty.
- 14.5** Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 14.6** Any provision of the Contract that expressly or by implication is intended to have effect after

termination or expiry shall continue in full force and effect.

15. Upgrades and Renewal

15.1 Where the Proposal and Contract specifies an upgrade or review point, XTRA shall review the Contract and/or the Network Contract and the monthly charges being paid by the Customer (Review). Following any Review, XTRA may elect to offer the Customer a new contract whereupon, if the Customer elects to accept the offer, the Customer shall sign a new Contract (**New Contract**) including a new Proposal and Contract (**New Proposal**).

15.2 Where the Customer agrees to a New Contract, clause 15.2 shall not apply to the (old) Contract and the Customer will be bound by the terms of the New Proposal, including any new minimum period or period specified in the New Proposal.

15.3 Where the terms of this clause 15 are inconsistent with the New Proposal, this clause 15 shall prevail.

15.4 Nothing in this clause 15 or the Contract obliges XTRA to either (i) procure a new Network Contract; (ii) provide any upgraded or new Mobile Equipment; or (iii) to reduce the Charges payable by the Customer upon conducting a Review. Any Mobile Equipment and the cost of such Mobile Equipment to be provided in the New Contract shall be specified in the New Proposal.

15.5 Unless the Customer has provided 30 days' written notice to terminate the Contract prior to the expiry of the Minimum Period, the Contract shall automatically renew for a further period of 12 months (Renewal Period), whereupon no Deal Incentive shall be due and the Contract shall continue to renew for successive Renewal Periods until the Customer provides 30 days' written notice to terminate. Clause 15.2 shall apply if the Contract is terminated prior to the expiry of any 12 month Renewal Period.

15.6 Clause 15.5 shall not apply to a Small Business Customer.

15.7 Any Review shall be subject to the Customer's credit status and repayment history and is not a guaranteed right. Any Customer that elects to cancel its Contract or Network Contract at this point will be liable for Cancellation Fees.

16. Dispute Resolution

16.1 The parties shall use their reasonable endeavours to resolve disputes arising from or in connection with the Contract (Dispute). If either party wishes to raise a Dispute, it shall notify the other party in writing (in accordance with clause 20.2) clearly identifying the reasons for the Dispute and providing copies of any supporting documentation that is relied on.

16.2 A Customer with no more than 10 employees may be able to take a Dispute to adjudication under the Ombudsman Services dispute resolution scheme. A copy of XTRA's complaints

code is at www.comparethenetworks.com.

16.3 Nothing in this Contract prevents XTRA from seeking a legal remedy through the courts at any time.

16.4 Any overdue invoice issued by XTRA to the Customer may be referred to a third-party debt agency and the Customer shall be liable to pay such third party's fees in addition to XTRA's Legal Costs.

17. Force majeure

Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

18. Data Protection

18.1 Both XTRA and the Customer will comply with all applicable requirements of the Data Protection Legislation. This clause 18 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

18.2 Both XTRA and the Customer acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and XTRA is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).

18.3 Without prejudice to the generality of clause 18.1, Customer will ensure that it has all necessary and appropriate consents and notices in place to enable lawful transfer of the Personal Data to XTRA for the duration and purposes of this agreement.

18.4 Without prejudice to the generality of clause 18.1, XTRA shall, in relation to any Personal Data processed by it in connection with its obligations under this agreement: (a) process that Personal Data only as is reasonably necessary to fulfil its obligations under the Contract, or in accordance with the Customer's written instructions or as required by any applicable law or regulation; (b) ensure that XTRA has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data having regard to all relevant circumstances; (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; (d) not transfer any Personal Data outside of the European Economic Area unless the Customer has given its prior written consent and the following conditions are fulfilled: (i) appropriate safeguards are in place in relation to the transfer; (ii) the data subject has enforceable rights and effective legal remedies; (iii) XTRA complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and (iv) XTRA complies with the reasonable instructions of the Customer

as notified to XTRA in advance with respect to the processing of the Personal Data; (e) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators; (f) notify the Customer without undue delay on becoming aware of a Personal Data breach; (g) at the Customer's written direction, delete or return Personal Data and copies thereof held by XTRA to the Customer on termination of the agreement unless required by applicable law to store the Personal Data; and (h) maintain records and information to demonstrate its compliance with this clause 17.

18.5 You consent to XTRA appointing the Network Provider as a third-party processor of Personal Data under this agreement where applicable.

19. Indemnity

19.1 In consideration of XTRA entering into the Contract with the Customer, the director of the Customer (and where there is more than one, each director jointly and severally) indemnifies XTRA against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by XTRA arising out of or in connection with: (a) breach or negligent performance or non-performance of the Contract; and (b) the enforcement of the Contract.

20. General

20.1 Assignment and other dealings

- (a) XTRA may at any time novate the Contract or assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

20.2 Notices.

- (a) Any notice or other communication given by the Customer to XTRA under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid recorded delivery post or next working day delivery service at XTRA's registered office or such other address where XTRA asks the Customer to send notices to.
- (b) Any notice or other communication given by XTRA to the Customer under or in connection with the Contract shall be sent to the Customer's contact email address specified in the Proposal and Contract (or such other primary email

address of the Customer as XTRA may elect), or by post to the Customer's registered office (if a company) or the address specified in the Proposal and Contract or any other address where the Customer requests XTRA to send notices to.

- (c) Any notice or other communication shall be deemed to have been received: if delivered by hand or recorded delivery post or by a next working day delivery service, on signature of a delivery receipt; if sent by first or second class post (non recorded) at 9am on the second business day after posting; or if sent by email at the time of transmission.
- (d) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

20.3 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

20.4 Waiver. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

20.5 No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

20.6 Entire agreement.

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty that is not set out in the Contract.

20.7 Third parties rights. The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

- 20.8 Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (in the case of XTRA to be signed by a director). XTRA may change these Conditions from time to time and the varied or updated Conditions shall be available to view at www.comparethenetworks.com. Minor changes will take effect immediately upon the varied Conditions being posted at www.comparethenetworks.com and material changes shall take effect 30 days after the varied Conditions have been posted at www.comparethenetworks.com.
- 20.9 Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 20.10 Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.