

## **Mobile Terms and Conditions**

**The Customer's attention is particularly drawn to the provisions of clauses 2, (Basis of Contract), 8 (Charges), 9 (Deal Incentive) 12 (Limitation of liability), 13 (Termination) and 14 (Consequences of Termination).**

### **1. Interpretation**

The following definitions and rules of interpretation apply in this agreement.

#### **1.1 Definitions:**

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

**Administration Fee:** the amount of £50 per Line.

**Application form:** any application form issued by Better Mobile to the Customer detailing the Services and subsequently signed (electronically, digitally or otherwise) by or on behalf of the Customer.

**Better Mobile:** is a trading name and wholly owned subsidiary of Ice Telecommunications Ltd of Crewe House, 4 Oak Street, Crewe, Cheshire CW2 7BX registered in England with company number 09180490.

**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 10.

**Cancellation Fees:** the Termination Fees, the return of any Buyout paid by Better Mobile to or on behalf of the Customer, the return of any Deal Incentives paid by Better Mobile to the Customer (including invoice credits) and the recommended retail price (as at the Commencement Date) of any Mobile Equipment provided by or on behalf of Better Mobile to the Customer (including Mobile Equipment subject to a Mobile Equipment Leasing Contract) and the Administration Fee.

**Charges:** the charges detailed at clause 8.

**Commencement Date:** means the date upon which the Contract is signed by or on behalf of the Customer (including any electronic signature).

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 18.8.

**Contract:** the contract between Better Mobile and the Customer that is made up of these Conditions and the Order 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 Better Mobile contracts with to provide the Services and/or Mobile

Equipment.

**Deal Incentive:** a monthly discount offered by Better Mobile to the Customer as against the full charges for the Services for the amount specified in the Order.

**Delivery Location:** has the meaning given in clause 3.4.

**Fair Usage Policy:** the fair usage policy is detailed at Ice Comm's website at [ice-comms.co.uk](http://ice-comms.co.uk).

**Force Majeure Event:** has the meaning given to it in clause 17.

**Hardware Fund:** a fund for Mobile Equipment to the maximum value specified in the Order.

**Line:** a mobile communications telephone number commencing with the numbers 07.

**Minimum Period:** the minimum period of the Contract of 2 years from the Commencement Date or connection of all the Services (whichever is the latter) or such other longer period as may be specified in the Order or the Network Contract (including, but not limited to, a period referred to in the Order as 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 and or the Mobile Equipment Leasing Contract for use in connection with the Services.

**Mobile Equipment Leasing Contract:** the mobile equipment leasing contract between the customer and a third party whereby some or all of the Mobile Equipment detailed in the Order is to be financed by and/or leased via a third party.

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

**Network Provider:** means a third party telecommunications network provider including, but not limited to EE Limited, Plan Communications Ltd, Vodafone Limited or Telefonica UK Ltd (O2).

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

**Order:** the Customer's order for the supply of Services and/or Mobile Equipment, as set out in the Application Form or Purchase Order.

**Pro-rata Charges:** from time to time, it may be appropriate for Better Mobile to include charges in the Customer's invoice which equate to a portion of the monthly contract value dependent on the date the services are connected to the network and costs which may be applied by the network.

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

**RPI Rate:** the retail prices index rate published by the Office for National Statistics.

**Services:** the services supplied by Better Mobile to the Customer as set out in the Order.

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

**Termination Fees:** in respect of any Network Services, 60% of the monthly fees payable under the Network Contract calculated by multiplying the remaining number of months of the Minimum Period by the monthly fees payable under the Network Contract or £250 per Line whichever is the higher amount (the monthly charges to be multiplied by the remaining number of months of the Minimum Period shall be the full monthly charges specified in the Order and exclusive of any Deal Incentive).

**Verification Call:** a telephone call between Better Mobile and the Customer whereby Better Mobile summarise the Contract including but not limited to summarising the Services, Charges, Mobile Equipment and Minimum Period and the Customer confirms the accuracy of the same.

**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 is legally binding from the Commencement Date, shall renew in accordance with clause 15 and shall continue until terminated by either party in accordance with these Conditions.

**2.2** Where applicable and where a 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 and Better Mobile may elect to provide the services in place of the Network Provider or shall use reasonable endeavours to procure Network Services from an alternative Network Provider on similar terms to the Network Contract whereupon the Customer shall be obliged to co-operate in entering into an alternative Network Contract. If the Customer refuses to sign an alternative Network Contract, contrary to this clause 2.2 or fails to do so within 14 days of a request by Better Mobile to sign an alternative Network Contract, Better Mobile shall be entitled to terminate the

Contract and clause 14 shall apply.

- 2.3** Where a Network Provider or the relevant Mobile Equipment Leasing Contract provider insists on the payment of a deposit as a condition precedent to entering into the Network Contract or Mobile Equipment Leasing 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 Better Mobile, the Network Provider or the relevant Mobile Equipment Leasing Contract provider, Better Mobile shall be entitled to terminate the Contract and clause 14 shall apply. At its sole discretion, Better Mobile may elect to pay a deposit requested by the Network Provider or Mobile Equipment Leasing Contract provider, on behalf of the Customer whereupon Better Mobile shall be entitled to deduct the value of the paid deposit from any sums due from Better Mobile to the Customer under clause 9 (Deal Incentives).
- 2.4** Better Mobile, the Network Provider or the Mobile Equipment Leasing Contract provider may at any time during the Contract require the Customer to pay a deposit or provide a guarantee as security for the payment of future invoices. If the Customer refuses to pay a deposit or provide a guarantee (or fails to procure a guarantee from a third party) within 14 days of a request, Better Mobile shall be entitled to terminate the Contract and clause 14 shall apply.
- 2.5** Better Mobile offers no warranty in respect of mobile signal coverage and both parties acknowledge that each of the major Network Providers advertise 98 per cent or more network coverage in the United Kingdom and such coverage cannot be verified by Better Mobile. 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.
- 2.6** Notwithstanding clause 13 of these Conditions, Better Mobile 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.
- 2.7** 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.
- 2.8** Any quotation given by Better Mobile shall not constitute an offer and is only valid for a period of 10 Business Days from its date of issue. An Application Form or Purchase Order when emailed or sent to the Customer for signature shall constitute an offer. Once signed, the Order shall be strictly in accordance with the Application Form or Purchase Order as transmitted by Better Mobile and no variations shall be binding unless the Order is signed by a director of Better Mobile. The signatory of the Order, on behalf of the Customer, confirms that they are fully authorised to sign on behalf of & bind the Customer and agrees personal liability for all fees (as though standing in place of and substituting the Customer)

should the signatory not, in fact, be so authorised or if the Customer rejects the Contract on grounds that the signatory was not authorised to sign on behalf of the Customer save that the Customer shall be deemed to have approved the Contract and authorised the signatory if the Contract is not rejected by the Customer (on grounds of a lack of authorisation) within 1 calendar month of the Commencement Date.

- 2.9** 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.
- 2.10** 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.
- 2.11** The Customer may specify a spend cap or billing limit upon entering into the Contract or upon 30 days' notice to Better Mobile. Notwithstanding any agreed spending cap or data cap (or alert) between the Customer and Better Mobile (and/or the Network where applicable) the Customer hereby accepts full responsibility for data usage plus charges and acknowledges that usage information available to Better Mobile is provided by third parties, is not live and may be significantly delayed. The Customer further agrees that it shall use its best endeavours to monitor and limit data usage so as not to exceed any contracted allowance or agreed billing limit and a failure to use best endeavours (which as a minimum requirement shall include the use of an 'app' that monitors and records usage) shall represent a material breach of Contract on the part of the Customer which is not capable of remedy whereupon Better Mobile shall be at liberty to terminate the Contract with immediate effect and clause 14.2 shall apply.
- 2.12** The Customer acknowledges that usage of the Services abroad may be very costly and the Customer should check out of bundle rates before travelling. Bundles such as World Traveller Select (also known as WTS) and similar bundles allowing the Customer to use their UK allowance whilst abroad attract a daily charge or set bundle charge (which may be triggered more than once daily) in accordance with the Network Provider's published rates. The Customer agrees to check WTS or other bundle charges for usage abroad before travelling as exceeding the bundle or incurring charges outside of the UK allowance will be very expensive.
- 2.13** We can introduce you to a limited number of lenders and their finance products which may have different interest rates and charges. We are not an independent financial advisor. We will provide details of products available from the lenders we work with, but no advice or recommendation will be made. You must decide whether the finance product is right for you. We do not charge you a fee for our services. Whichever lender we introduce you to, we will typically receive commission from them (either a fixed fee or a fixed percentage of the amount you borrow). The lenders we work with could pay commission at different rates.

### **3. Mobile Equipment**

- 3.1 The Mobile Equipment to be provided under the Contract shall be specified in the Order. The Customer acknowledges that some or all of the Mobile Equipment shall be provided under a Mobile Equipment Leasing Contract and the Customer is obliged to sign and return a Mobile Equipment Leasing Contract pursuant to clause 7.
- 3.2 The provision of Mobile Equipment is subject to availability. Where the customer specifies a preference for a particular colour of Mobile Equipment (handset) Better Mobile may substitute the colour for a different colour at its discretion.
- 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 Better Mobile 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 Better Mobile's trade purchase cost of the Mobile Equipment. Such credit to be made in accordance with clause 9 of these Conditions as though it were a Deal Incentive.
- 3.4 The Mobile Equipment shall be delivered to the location set out in the Order 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 Better Mobile or the Network Provider or on the second business day following the Mobile Equipment being collected from Better Mobile or the Network Provider from 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. No Mobile Equipment will be dispatched until the Customer has provided porting authorisation codes irrespective of any delivery date specified on the Order. Better Mobile 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 Better Mobile 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 Better Mobile 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 to repair, service or tamper with the Mobile equipment may invalidate the manufacturer's warranty.

#### 5. **Title and risk**

- 5.1 The risk in the Mobile Equipment shall pass to the Customer on completion of delivery.

**5.2** Subject to clause 5.3, 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 Better Mobile.

**5.3** Where the Customer has entered into a Mobile Equipment Leasing Contract, in addition to the Contract, the Customer holds the Mobile Equipment as bailee and title to the Mobile Equipment shall pass (if at all) in accordance with the terms of the Mobile Equipment Leasing Contract.

**5.4** 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 Better Mobile's behalf from the date of delivery;
- (b) notify Better Mobile 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 Better Mobile such information relating to the Mobile Equipment as Better Mobile may require from time to time.

**5.5** 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 Better Mobile may have:

- (a) Better Mobile 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.

## **6. Supply of Services**

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

## **7. Customer's obligations**

**7.1** The Customer shall promptly:

- (a) ensure that the terms of the Order are complete and accurate;
- (b) co-operate with Better Mobile in all matters relating to the Services and Network Services including, but not limited to, promptly signing a Mobile Equipment Leasing Contract and/or a Network Contract where applicable (to the satisfaction of the Mobile Equipment Leasing Contract provider and/or Network Contract

provider), completing a Verification Call to the satisfaction of Better Mobile & the Mobile Equipment Leasing Contract provider and providing all information reasonably requested by such provider;

- (c) provide Better Mobile with such information and materials as Better Mobile may reasonably require in order to supply the Services including, but not limited to providing porting authorisation codes and authorising Better Mobile to use such codes to enable connection of the Services, re-signing an Order form to correct any defects or errors and ensure that all information provided is complete and accurate in all material respects;
- (d) promptly notify Better Mobile of a change of address, change of registered office or change of trading location(s);
- (e) where applicable, comply with all terms of the Network Contract and/or the Mobile Equipment Leasing Contract including, but not limited to, the terms for payment of all charges and fees under the Network Contract and/or the Mobile Equipment Leasing Contract.
- (f) authorise the Network Provider to disclose all information to Better Mobile relating to the Network Contract;
- (g) if provided with 15 or more mobile devices under the Contract, set up on-line billing and not cancel on-line billing prior to the termination of the Contract;
- (h) return to Better Mobile a hardcopy of the signed Contract and where applicable the signed Mobile Equipment Leasing Contract within 14 days of the Commencement Date;
- (i) within 14 days of the Commencement date, send to Better Mobile by way of trade in, all pre-existing mobile phone handset(s) (together with any pass code(s) or word(s) required to operate each handset) which are owned by the Customer. Each handset provided by the Customer 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 and shall be fully functional failing which the Customer shall no longer be eligible for any agreed Deal Incentive under clause 9 or Buyout under clause 10.

**7.2** The obligations set out at clauses 7.1 (a) to (i) above are conditions of the Contract. In addition to any other remedies that Better Mobile may have for a breach of those conditions by the Customer, whether set out in the Contract or otherwise, if the Customer breaches condition 7.1 (i) the Customer shall be liable to pay £500 to Better Mobile for each handset that is retained by the Customer (or £500 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 Better Mobile is liable to pay a Deal Incentive, 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 7.2. If the trade in value available at [mazumamobile.com](http://mazumamobile.com) for the returnable handset(s) is less than the value

specified in the Order (due to the state and condition being worse than declared by the Customer or for any other reason), Better Mobile may elect to set off the difference in value against any Deal Incentive or Termination Fees.

## **8. Charges and payment**

**8.1** In addition to the charges detailed at clause 8.2 of these Conditions, the price for the Services and Mobile Equipment shall be the price set out in the Order or, if no price is quoted, the price set out in Better Mobile's price list as at the Commencement Date. The full monthly (non-discounted) charges detailed in the Order shall be payable for the Minimum Period as a primary obligation and the Customer's entitlement to a Deal Incentive shall be in accordance with clause 9 and entitlement to a Buyout shall be in accordance with clause 10. The Customer acknowledges that certain charges may be payable directly to the Network Provider and/or where applicable to a third party under the Mobile Equipment Leasing Contract. The price payable for additional services and out of bundle charges (unless indicated as inclusive in the Order), 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, usage above or in breach of the Fair Usage Policy, information and paging services, data usage, text messages, picture or multi-media messages shall be the price specified in Better Mobile's price list in force at the time such additional services or out of bundle services are utilised. Fixed bundles (including World Traveller Select) for usage outside of the UK (where available) attract a daily or bundle charge the price for which is available upon request.

**8.2** The Customer shall be liable to pay to Better Mobile:

- (a) a fee of £250 per Line which is connected or to be connected under the Contract; and
- (b) a consultation fee of £500.

**8.3** The Customer shall pay £30 for each porting authorisation code (pac code) requested in respect of each and any Line connected under the Contract or Network Contract and if such a request is made during the Minimum Period, clause 14.2 shall apply.

**8.4** In respect of Customers that are not Small Business Customers, Better Mobile reserves the right to:

- (a) increase the Charges from time to time and shall provide the Customer with at least 7 days' notice prior to such increase taking effect. For the avoidance of doubt, the Customer shall not be entitled to terminate the Contract upon any

increase in Charges; and

(b) 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 Better Mobile.

**8.5** Each year the monthly tariff charge (as detailed in the Order) will be subject to an annual adjustment by the RPI Rate and the adjusted amount (new tariff price) will appear on the Customer's April invoice onwards. The Customer also acknowledges and agrees that (where applicable) the Network Contract is subject to an RPI Rate adjustment each year. Purchase Orders for Small Business Customers shall contain the precise monetary value of the RPI Rate increase applicable to the monthly tariff, to be applied in April of each contractual year.

**8.6** Better Mobile may invoice the Customer for Charges under the Contract. Liability for Charges arises from the Commencement Date irrespective of connection of the Services. Better Mobile reserves the right to apply Pro-rata Charges to the Customer's invoices calculated in relation to the connection date and network provider charges. Where applicable, Network Services shall be invoiced by and payable to the Network Provider. Where a Mobile Equipment Leasing Contract has been entered into, the provider of Mobile Equipment under such contract shall invoice the Customer in accordance with the terms of the Mobile Equipment Leasing Contract.

**8.7** The Customer shall pay each invoice submitted by Better Mobile:

- (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 Better Mobile by way of direct debit, failing which a payment processing fee of £15 per invoice shall be payable by the Customer.

Time for payment shall be of the essence of the Contract. Where the Customer cancels a direct debit mandate to Better Mobile a cancellation fee of £15 shall be payable in respect of each instance of cancellation.

**8.8** 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.

**8.9** 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 Better Mobile in writing of any dispute (clearly identifying the reasons for the dispute) within 30 days of the date of the invoice.

**8.10** All amounts payable by the Customer under the Contract, Network Contract or Mobile Equipment Leasing 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 Better Mobile to the Customer, the Customer shall, on receipt of a valid VAT invoice from Better Mobile, pay to Better Mobile 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.

- 8.12 If the Customer fails to make a payment due to Better Mobile under the Contract by the due date, then, without limiting Better Mobile'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 8.12 will accrue each day at 4% a year above the Bank of England base rate compounding quarterly.
- 8.13 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). Better Mobile may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Better Mobile to the Customer.

## 9 Deal Incentives

- 9.1 Providing the Customer has complied with all obligations under clause 7 (and clause 2 where applicable) and providing the Customer is not in breach of the Contract, the Customer shall be entitled to the Deal Incentive detailed in the Order (subject to clause 9.2). Where the Customer is entitled to a Deal Incentive, Better Mobile shall provide a credit to the Customer for the amount of the Deal Incentive. upon the Customer first providing Better Mobile with a VAT invoice from the Customer to Better Mobile for the amount of the monthly Deal Incentive (the value of the Deal Incentive specified in the Order shall be inclusive of VAT). The value of the Customer's invoice shall be paid in monthly instalments in accordance with the terms of the discount referenced in the Order; Better Mobile does not accept the terms stated on the Customer's invoice.
- 9.2 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 or any Mobile Equipment Leasing Contract and upon receipt of an invoice in accordance with clause 9.1, Better Mobile shall reimburse or credit the Customer for the amount of the Deal Incentive. The payment under this clause 9 shall be made monthly in equal instalments starting with the first payment within 90 days of receipt of the Customer's invoice issued in accordance with clause 9.1 and ending at the Review point referred to in clause 15. For the avoidance of doubt, no Deal Incentive shall be due or payable after the Review point and if no Review is specified in the Order no Deal Incentive shall be due or payable during the second half of the Minimum Period. The monthly payment date under this clause may not be the same each month and is subject to change at any time. Where the terms of this clause 9 are inconsistent with the Order, this clause 9 shall prevail.
- 9.3 Entitlement to any Hardware Fund expires at the Review point if not already utilised by the

Customer. Unless otherwise specified on the Order the Hardware Fund shall be utilised by the Mobile Equipment being ordered through and supplied by Better Mobile and the Hardware Fund shall be reduced by the RRP (as at the time of the order) of the Mobile Equipment ordered. Where the Order expressly states that part or all of the Hardware Fund is available in cash the payment for such cash value shall be made in 4 monthly instalments commencing 90 days from the Customer providing an invoice to Better Mobile for the agreed Hardware Fund.

## 10 Buyout

- 10.1 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 third party.
- 10.2 The Order may specify a sum that Better Mobile is prepared to reimburse the Customer to cover some or all of the termination charges referred to in clause 10.1 (**Buyout**). Providing the Customer has complied with all obligations under clause 7 (and clause 2 where applicable) and providing the Customer is not in breach of the Contract, subject to clause 10.3, Better Mobile shall reimburse the Customer with the Buyout specified in the Order upon receipt of VAT invoices for the amount of the Buyout from the Customer's old supplier and from the Customer to Better Mobile (the value of the Buyout specified in the Order shall be inclusive of VAT). Where the Buyout figure specified in the Order is insufficient to cover all of the charges referred to at clause 10.1, the Customer shall remain liable to pay the remainder. For the avoidance of doubt, the maximum liability to Better Mobile for a Buyout is the amount that the Customer is liable to pay to its old supplier or the amount specified in the Order (whichever is the lower amount).
- 10.3 Notwithstanding this clause 10, it shall remain the Customer's liability to pay any termination or similar charges referred to in clause 10.1. Providing the Customer has not committed a breach of the Contract or any Network Contract or any Mobile Equipment Leasing Contract (excluding any pre-existing contract for services similar to those provided under the Contract), and upon receipt of invoices in accordance with clause 10.2, Better Mobile shall reimburse the Customer for the amount of the Buyout. The reimbursement under this clause 10 shall be paid in three monthly instalments and the first reimbursement payment shall be made by Better Mobile within 90 days of receipt of the invoice issued in accordance with clause 10.2. The monthly payment date under this clause may not be the same each month and is subject to change at any time.
- 10.4 Where Better Mobile, 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 Better Mobile to the Customer shall be paid over to the Network Provider in respect of the pre-existing contract without delay.

## **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 Better Mobile'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, Better Mobile 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, Better Mobile'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 Better Mobile 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, Better Mobile 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 14.2 the Customer may terminate the Contract at any time by giving Better Mobile written notice. At its sole discretion, Better Mobile may accept verbal notice of termination and/or notice by email. The required notice period is a maximum of 60 days and minimum of 30 days prior to the expiry of the minimum period of the Contract.

**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 (whereupon clause 14.2 shall apply) if during the Minimum Period, the Customer refuses to accept delivery of any Mobile Equipment or returns any Mobile Equipment or requests a porting access code (PAC) from Better Mobile 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, Better Mobile may terminate the Contract and any other contract between Better Mobile and the Customer with immediate effect by giving written notice to the Customer if:

- the Customer fails to pay any amount due under the Contract or Network Contract or Mobile Equipment Leasing Contract on the due date for payment; or
- there is a change of control of the Customer.

**13.4** Without affecting any other right or remedy available to it, Better Mobile may suspend the supply of Services, disconnect the Services or suspend all further deliveries of Mobile Equipment under the Contract if the Customer fails to pay any amount due under the Contract, the Network Contract or the Mobile Equipment Leasing 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 Better Mobile 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, Better Mobile 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 Better Mobile if the customer fails to sign a Network Contract or pay a deposit contrary to clauses 2.2, 2.3 or 2.4.

**13.6** Where the Services are suspended or disconnected under clauses 13.4 or 13.5, the Customer shall be liable to pay to Better Mobile a disconnection fee of £29 for each instance of disconnection where the Contract provides for 9 Lines or fewer and where the Contract provides for 10 or more Lines a disconnection fee of £3 per Line shall be payable.

#### **14 Consequences of termination**

**14.1** On termination of the Contract the Customer shall immediately pay to Better Mobile all Charges together with all of Better Mobile's outstanding unpaid invoices and interest and, in respect of Services and Mobile Equipment supplied or Charges for which no invoice has been submitted, Better Mobile 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 Better Mobile if prior to the expiry of the Minimum Period:

- the Contract is terminated; or
- the Network Contract is terminated; or
- the Network Services are disconnected as a consequence of the Customer's breach of the Network Contract; or

- d) the Mobile Equipment Leasing Contract is terminated.
- e) all or any of the Lines under the Contract or Network Contract are cancelled, disconnected, suspended, ceased or transferred to a third party provider.

**14.3** The Cancellation Fees payable in accordance with clause 14.2 shall be invoiced by Better Mobile 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 Better Mobile due to early termination, having regard to the overall commercial deal between the parties and that the Cancellation Fees do not represent a penalty. The Customer further acknowledges that where the Order specifies that the Mobile Equipment is free of charge (or words to that effect), clause 14.2 shall prevail and the cost of the Mobile Equipment shall be repayable by the Customer to Better Mobile.

**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** Upon termination of the Contract until the Customer ports the Line(s)/sim(s) to a new provider using porting authorisation codes or until the Customer requests the Line(s) to be ceased all continued usage including texts, calls and data usage shall be based on a new contract between Better Mobile and the Customer and shall be chargeable at out of bundle rates as detailed in the out of bundle price guides on Ice Telecommunications Ltd website at [ice-comms.co.uk](http://ice-comms.co.uk). Invoices for such charges shall be payable by the Customer within 7 days of issue and the Customer shall not be entitled to a right of set off.

**14.7** 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. For the avoidance of doubt, clause 14.2 and corresponding obligations shall survive termination.

## **15 Upgrades and Renewal**

**15.1** Where the Order specifies an upgrade or review point, Better Mobile shall review the Contract and/or the Network Contract and the monthly charges being paid by the Customer (Review). Following any Review, Better Mobile 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 Purchase Order or Application Form (**New Order**).

**15.2** Where the Customer agrees to a New Contract, clause 14.2 shall not apply to the (old) Contract and the Customer will be bound by the terms of the New Order, including any new minimum period or period specified in the New Order and the Customer shall be required to trade in its old handsets in accordance with clause 7.1(i).

- 15.3** If the New Contract involves moving from one Network Provider to a different Network Provider, the Charges, including monthly tariff, under the subsisting Contract (Old Contract) remain payable by the Customer until the Services and connections are live with and connected via the new Network Contract under the New Contract.
- 15.4** Where the Customer fails to pay any amount due under the Old Contract, any sums due from Better Mobile under the New Contract under clauses 9 and/or 10 may be withheld by Better Mobile and Better Mobile may suspend the Services under the Contract or terminate the New Contract with immediate effect whereupon clause 14.2 will apply.
- 15.5** Where the terms of this clause 15 are inconsistent with the Order, this clause 15 shall prevail.
- 15.6** Nothing in this clause 15 or the Contract obliges Better Mobile to provide any upgraded or new Mobile Equipment, to reduce the Charges payable by the Customer or to offer any Deal Incentives as part of a New Contract 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 Order. The Customer will not be able to downgrade the Contract to a sim only New Contract (without Mobile Equipment) unless the Mobile Equipment under the Contract has been paid for in full by the Customer.
- 15.7** 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 14.2 shall apply if the Contract is terminated prior to the expiry of any 12 month Renewal Period.
- 15.8** Clause 15.7 shall not apply to a Small Business Customer.

## **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 18.2) 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 Communications & Internet Services Adjudication Scheme (CISAS) dispute resolution scheme. A copy of Better Mobile's complaints code is at [ice-comms.co.uk](http://ice-comms.co.uk).
- 16.3** Nothing in this Contract prevents Better Mobile from seeking a legal remedy through the courts at any time. The time costs of Better Mobile's In House Solicitor and/or Chartered Legal Executive dealing with a Dispute (including but not limited to the recovery of Charges and/or Cancellation Fees) both before and during any court claim shall be payable by the

Customer to Better Mobile on an indemnity basis at the guideline rate for a band A fee earner specified at [www.gov.uk/guidance/solicitors-guideline-hourly-rates](http://www.gov.uk/guidance/solicitors-guideline-hourly-rates) and at the grade for where the Customer's principal place of business is situated (Legal Costs). The Customer acknowledges that such Legal Costs are reasonable and payable notwithstanding rule 27.14 of the Civil Procedure Rules or any successor provision dealing with the recoverability of costs on the small claims track.

**16.4** Any overdue invoice issued by Better Mobile 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 Better Mobile's Legal Costs.

**17. Force majeure**

Better Mobile shall not 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 General**

**18.1 Assignment and other dealings**

- (a) Better Mobile 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.

**18.2 Notices.**

- (a) Any notice or other communication given by the Customer to Better Mobile 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 to Better Mobile at Ice Telecommunications Ltd's registered office or such other address where Better Mobile asks the Customer to send notices to.
- (b) Any notice or other communication given by Better Mobile to the Customer under or in connection with the Contract shall be sent to the Customer's contact email address specified in the Order (or such other primary email address of the Customer as Better Mobile may elect), or by post to the Customer's registered office (if a company) or the address specified in the Order or any other address where the Customer requests Better Mobile to send notices to.
- (c) Any notice or other communication shall be deemed to have been received: if delivered by hand or recorded deliver 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

(only where permitted under clause (18.2 (d)) 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.

**18.3 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.

**18.4 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.

**18.5 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.

**18.6 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.

**18.7 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.

**18.8 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 Better Mobile to be signed by a director). Better Mobile may change these Conditions from time to time and the varied or updated Conditions shall be available to view at [ice-comms.co.uk](http://ice-comms.co.uk). Minor changes will take effect immediately upon the varied Conditions being posted at [ice-comms.co.uk](http://ice-comms.co.uk) and material changes shall take effect 30 days after the varied Conditions have been posted at [ice-comms.co.uk](http://ice-comms.co.uk).

**18.9 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.

**18.10 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.