

## 1. Agreement structure

1.1 Each Order Form between Customer and Your Comms Ltd (“YC”) will incorporate these General Terms and any applicable Service Specific terms (together, the ‘Agreement’). Unless specifically stated otherwise in an Order Form, the Service Period shall be 24 months (the “Minimum Period”) and the relevant term per connection for each connection shall be 24 months.

1.2 If there is any inconsistency between the various provisions of the Agreement, the following order of precedence will apply, where 1 has a higher precedence than 2 and so on: (1) Any agreed amendment/Amendment Notice (2) Order Form; (3) Service specific terms (4) General Terms.

## 2. Services and Coverage

2.1 YC shall use reasonable endeavours to provide Customer with the Services and to ensure the security of Customer’s communications at all times. However, due to the nature of mobile technology, it is impossible to provide a fault-free service.

2.2 YC/Network Carrier may suspend the Services: (i) in order to carry out maintenance or testing of the Network; (ii) during any technical failure of the Network, (iii) when it is necessary to safeguard the security and integrity of the Network or to reduce the incidence of fraud; (iv) where it identifies Artificially Inflated Traffic; or (iv) due to Emergency Planning Measures.

YC/Network Carrier shall endeavour to keep all such suspensions to a minimum and shall give Customer notice of such suspension where reasonably practicable.

2.3 YC shall use reasonable endeavours to give Customer access to Overseas Networks; however, YC/Network Carrier shall not be responsible for the performance of Overseas Networks or any part of the Network not controlled by YC/Network Carrier. Overseas Networks may be limited in quality and coverage and access and service availability depends on the arrangements between the Network and Overseas operators.

## 3. Customer’s use of Equipment and Services

3.1 Customer may supply the Equipment and Services to End Users, but not to any other party. Customer is responsible for ensuring the compliance of End Users with the terms of this Agreement, all applicable laws and Codes of Practice.

3.2 Customer shall only use Equipment authorised for use on the Network.

3.3 Customer shall not:

(a) Use any Equipment or Services for any purpose that YC (acting reasonably) believes is abusive, a nuisance, illegal or fraudulent; or

(b) Do anything that causes the Network to be impaired or damaged; or

(c) Modify Equipment and/or Services (including any Software or integral safety features) that YC has supplied to Customer or End Users, except in accordance with the manufacturer’s written specifications, as required by law or with our prior written permission.

3.4 Where a specific End User causes Customer to be in breach of its obligations of clause 3.3, YC shall be entitled to suspend such End User’s use of the Services. Before exercising this right, YC shall notify Customer of its intention to do so where this is reasonably practicable, allowing an opportunity to remedy the alleged breach (where it is capable of remedy); otherwise YC shall notify Customer as soon as reasonably practicable after the suspension. This right of suspension shall only apply during the period of breach, although re-instatement of the Service may be subject to the payment of a reconnection Charge by Customer.

3.5 During any period of suspension, Customer shall continue to pay all Charges due under this Agreement in respect of the suspended Services.

3.6 Customer may use the Equipment and/or Services to access the internet and services not provided under this Agreement. YC accepts no responsibility for these services, including where in accessing the service, Customer gives unauthorised parties access to its equipment.

## 4. GSM Gateways

Customer shall not connect or continue connection by or on behalf of itself or any End User of any GSM Gateway(s) to the Network without YC’ prior written consent, which may be withheld at YC’s absolute discretion. Customer shall cooperate with YC at all times to ensure that such GSM Gateways that are connected to the Network remain compliant with the applicable law and with YC’ GSM Gateway Commercial Policy.

## 5. Charges and Payment

5.1 YC states all Charges exclusive of VAT, unless specified otherwise. All Charges not specified in an Order Form shall be at Standard List Price. Charges shall include the cost of delivery to the UK mainland of any Equipment we supply to you, but shall not include any special

equipment or work such as cutting away, decoration, ducting, ground work, building work or other similar work.

**5.2** Charges shall be charged in accordance with your price plan and the price plan charges guide which is available on YC's website.

**5.3** Access Fees shall be invoiced by YC monthly in advance and all other Charges shall be invoiced monthly in arrears. Invoices shall be paid by Customer in cleared funds no later than 14 calendar days from the date of the invoice ("Due Date"), by direct debit. If customer does not pay by direct debit, an administration charge may be charged, If Customer subsequently cancels its direct debit instruction without arranging an alternative direct debit mandate, YC shall be entitled to terminate this Agreement for material breach.

**5.4** If Customer reasonably and in good faith disputes an invoice or part of it, Customer shall notify YC of such dispute within 14 days of receipt of the invoice, providing details of why the invoiced amount is incorrect and, if possible, how much Customer considers is due. All Charges not in dispute shall be paid by the Due Date.

**5.5** Where YC has not received payment for undisputed Charges by the Due Date, YC shall: (i) contact Customer's Accounts Payable Department to request payment; (ii) be entitled to charge interest on the overdue Charges at the highest rates permitted by applicable law; and (iii) be entitled to charge any administration fees or other similar charges levied by a bank in respect of any unpaid items returned by the bank. Where YC has not received payment within 16 calendar days of the Due Date, YC may take all or any of the following actions until such time as payment, including any interest due, has been received.

**(a)** Withhold any sums owing to Customer by YC and offset it against any sums Customer owes to YC under this Agreement.

**(b)** Suspend Customer's and/or End User's use of the Services in relation to which Charges are outstanding;

**(c)** Withdraw any discount in relation to the relevant Equipment or Service and charge Customer YC' Standard List Prices for that Equipment or Service; and

**(d)** Subject to YC having first invoked at least one of the remedies as set out in Clauses 5.5 (a) to (c), YC shall be entitled to terminate this Agreement in whole or in part in accordance with Clause 11.3.

**5.6** Customer shall not be entitled to offset any sums owed to it by YC under any Agreement or

dispute between the Parties against any sums that Customer owes to YC under this Agreement.

**5.7** YC may credit assess Customer from time to time as reasonably required to assess YC' risk. Each credit assessment shall entitle Customer to have a credit limit on Customer's YC account (details of which are available on request). YC may release this information to the Partner responsible for managing your account.

**5.8** Customer is not entitled to change its tariff to another tariff with a lower monthly fixed charge during the Minimum Period.

**5.9** If Customer does upgrade or change its tariff before the end of the initial Minimum Period (the "Initial Period"), Customer acknowledges and agrees that it must extend the Agreement by a further Minimum Period (the "Extension Period"). If the Initial Period has not expired at the date of upgrade or tariff change, the relevant Extension Period to the

Initial Period shall be extended by the number of months by which the Initial Period had not been achieved. For example, if at month 21 of a 24 month Initial Period Customer wishes to extend by a further 12 month period, the Extension Period will be increased by 3 months to 15 months.

## **6. SIM Cards and Numbers**

**6.1** SIM Cards shall remain the property of YC at all times and Customer shall be entitled to use the SIM Cards (including any Software they contain) provided for use with the Services only.

**6.2** Customer shall use all reasonable endeavours to ensure that SIM Cards are only used with Customer's authorisation and shall inform YC as soon as is reasonably practicable after Customer becomes aware that a SIM Card is lost, stolen or damaged. Subject to Clause 9.1 Customer shall be liable for any loss or damage suffered by Customer or its End Users as a result of unauthorised use of SIM Cards (including due to loss or theft), up to the time that Customer has notified YC that such SIM Card is being used without Customer's authorisation.

**6.3** YC shall allocate telephone numbers to Customer which Customer shall only use to access the Services. YC may reallocate or change such telephone numbers as a result of changes in applicable law or instructions from the Regulatory Authorities, but will exercise all reasonable endeavours to minimise any disruption to Customer or End User. YC may withdraw telephone numbers that have been allocated to Customer as a result of Customer's failure to comply with this Agreement.

6.4 If Customer decides to Port a mobile telephone number allocated to Customer by YC, YC shall transfer Customer's mobile telephone numbers to Customer's nominated mobile network operator for Customer's use in accordance with OFCOM regulations.

## **7. Software License**

7.1 Equipment and Services provided under this Agreement may contain or use Software. This Software is generally not owned by YC. Any Software that is used by Equipment or Services shall be governed by the terms of the relevant Software license set out in such Services Schedule or any shrink wrap or click through Software license provided with the relevant Equipment or Service. In all other cases, where Software is provided YC grants the Customer and/or its End Users, as applicable, a non-exclusive, royalty free license to use any such Software for the Term of this Agreement.

7.2 Customer or End User's license shall be a single user license. Customer may make one copy of the Software for back up purposes. If Customer does not accept the terms of the relevant click through or shrink wrap Software license, Customer shall be prohibited from using the relevant feature of the Service to which the Software relates and YC shall not be bound to deliver the relevant Service. Customer shall be responsible for any Software upgrades (including charges) specified by the licensor or YC.

## **8. Orders and Equipment**

8.1 Customer shall order Services and Equipment by submitting an order form through YC online ordering system or by email or as notified to Customer by YC from time to time. Customer shall accurately complete all fields set out in the order form.

8.2 Orders are binding on both Parties from the date of acceptance by YC. If acceptance is not express, it shall be deemed to have occurred on dispatch of Equipment or activation of Service by YC.

## **9. Equipment**

9.1 If Customer orders Equipment directly from YC, which YC supplies directly to Customer the provisions of this clause shall apply in relation to that Equipment. YC shall bear the risk of loss or damage to Equipment and SIM Cards until the point of delivery to Customer. Subject to clause 9.2, Customer shall bear the risk of loss or damage to Equipment and SIM Cards from the time of delivery to Customer.

9.2 Customer shall notify YC in writing within 5 Business Days of receipt if Equipment or SIM Cards arrive having been damaged, or if the order has been incorrectly fulfilled. Customer shall notify YC in writing within 10 Business Days of confirmation of YC' order acceptance if Customer does not receive the Equipment or SIM Card. Following such notification by Customer, YC shall replace damaged new Equipment or SIM Cards, Equipment lost or stolen in transit, and any incorrect Equipment or SIM Card, free of charge. In the case of damaged used Equipment YC shall (at its option) replace or repair the Equipment.

9.3 Subject to clause 6.1, title to Equipment shall pass to Customer as soon as YC has received payment for it in full. Where Equipment is provided free of charge and is paid for over the duration of the Initial Period, title shall pass at the end of the Initial Period.

9.4 Where Equipment supplied to Customer by YC becomes faulty for reasons other than through Customer's acts, omissions or misuse within the manufacturer's warranty period, Customer shall return such Equipment to YC at YC's cost and YC shall repair or replace the Equipment in accordance with YC's Recovery Policy, or where mandated by the manufacturer of the device, in accordance with the relevant manufacturer's repair, replacement or recovery policy. Any out of warranty repairs shall be at YC's Standard List Price.

9.5 YC does not manufacture Equipment and save for Clause 9.4 above excludes, to the fullest extent permissible at law, all warranties, terms or conditions in relation to Equipment, whether implied by law or otherwise. YC shall pass on the benefit of any warranties that YC obtains from the manufacturer of any Equipment supplied to Customer by YC. However, on expiry of this Agreement, any commitment YC has to liaise with the manufacturer in respect of any warranty shall cease.

9.6 Customer shall not remove or obscure any logo or writing on Equipment that YC has supplied to Customer and which Customer does not own. Customer shall replace all batteries and other consumable parts of the Equipment.

9.7 Customer shall not, and shall ensure that End Users do not tamper with or attempt to repair or service the Equipment or allow any party other than YC to do so. Any attempt to do this may invalidate the manufacturer's warranty

9.8 Customer shall keep all Equipment that YC has supplied to Customer and which Customer does not own, in Customer's possession (which shall be deemed to include the possession of

Customer's End Users), and shall not sell it, place a charge on it or otherwise dispose of it.

9.9 YC's supply of Equipment and accessories shall be subject to availability.

9.10 If YC provides Customer or an End User with security codes as part of the Services, Customer agrees, and agrees to ensure, that its End Users shall keep the security codes confidential. Customer must inform YC immediately if it suspects that security codes have been disclosed to a third party so we can issue new security codes.

9.11 YC is not obliged to agree to any upgrades to the Equipment it supplies to the Customer (either directly or via a Partner) during or after the Minimum Period but if it does, YC shall be entitled to extend the Minimum Period.

## **10. Call Limit, Deposit and part payment**

10.1 YC may set a limit on the amount of Charges Customer may incur during each calendar month and/or a maximum number of active Connections and/or a bar on SIM Card(s) being used on overseas networks or for making international calls or premium rate calls, which we refer to as a call limit. YC may agree to increase or remove the call limit, after making credit checks. Customer may be able to go over your call limit, but if this happens you shall be required to pay all Charges immediately. YC reserves the right to refuse to provide Equipment and/or Services to you if in YC's opinion it may cause you to exceed your call limit or if the call limit is already exceeded.

10.2 YC may ask you for a deposit:

10.2.1 When we connect your SIM card;

10.2.2 If you wish to increase or remove your call limit;

10.2.3 If you increase how much you use the Services; or

10.2.4 To unblock your SIM card from contacting international numbers, using overseas networks, or making premium rate calls.

10.3 When this Agreement expires or is terminated for whatever reason, YC will repay any deposit that you have provided to us, less any money you owe us. YC will not pay any interest on any deposit we receive from you.

10.4 If there is a significant increase in your usage between bills, we may contact you and require you to pay all or part of your outstanding usage Charges in order to continue to use the Services.

## **11. Termination**

11.1 Customer shall have the right to terminate this Agreement in whole or in part by giving YC 1 month's written notice of termination, subject to the payment of any early termination charges as set out in Clause 12.7.

11.2 The Parties shall each have the right to terminate this Agreement with immediate effect (by serving written notice of termination to the other Party):

11.2.1 If the other Party becomes subject to an Insolvency Event; or

11.2.2 If the other Party is in material breach of any of its obligations under this Agreement (provided that where such breach is capable of remedy, the breaching Party is given 30 days to rectify such breach from the date that notice of any breach is received from the non-infringing Party).

11.3 Subject to Clause 5.5(d), YC may terminate this Agreement in whole or in part with immediate effect, by giving notice in writing:

11.3.1 Where Customer has failed to pay any Charges due within 30 calendar days of the Due Date and has gone through the YC collection cycle; or

11.3.2 where YC has repeatedly invoked its rights of suspension pursuant to Clause 3.3 or Clause 5.5(b), or has invoked its right of suspension under clause 2.2 (iv) for a period of not less than 14 days.

11.4 The Parties shall acknowledge, as soon as reasonably possible, the receipt of any notice of termination of this Agreement (in whole or in part) received in writing from the other Party.

## **12. Consequences of termination**

12.1 On termination of this Agreement as a whole, or partial termination (for example of a specific Order), Customer shall immediately cease use of the Software (except Software which is embedded in Equipment to which Customer has title).

12.2 Customer shall (if requested by YC, delete or destroy all copies of the user documentation which YC has supplied or which Customer has copied, in whatever form and return, delete or destroy all copies of the Software (except Software which is embedded in Equipment to which Customer has title) within 7 calendar days of termination of this Agreement or of termination of the relevant Service, and provide YC with written confirmation that all such copies have been returned, deleted or destroyed.

12.3 Where this Agreement is terminated as a whole, YC's entire relationship with Customer shall terminate and YC shall no longer supply,



and Customer shall immediately cease to use any Services that were supplied pursuant to this Agreement.

**12.4** On expiry of a Service Period, the Service shall continue until terminated by either Party on 30 days' notice, in accordance with the Order Form and this Agreement.

**12.5** On termination of the Order Form, the Customer's Services supplied pursuant to the relevant Order Form shall cease immediately and the Customer will immediately pay to YC all sums due or payable under the relevant Order Form in relation to the terminated or expired Services, including any early termination payment calculated in accordance with clause 12.7 below.

**12.6** Where this Agreement or any Service has been terminated in accordance with Clause 10 or as otherwise permitted in this Agreement prior to expiry of a Service Period, Customer shall pay to YC a lump sum termination payment calculated in accordance with the provisions of 12.7. For the avoidance of doubt, where this Agreement is terminated as a whole, each Connection placed under this Agreement shall also terminate.

**12.7** Where Customer terminates any Connection prior to the expiry of that Connection's term per connection (whether on termination of the Services as a whole, or otherwise, Customer shall pay to YC a lump sum termination payment calculated as:

(a) Access Fee RRP X number of months remaining of each term per connection that has been terminated. Any customer that has an agreed discount on their tariff and wishes to terminate before their contract term has expired will be charged the remaining rental at RRP.

**12.8** If Customer disconnects a material part of its Connections, or systematically disconnects Connections on a recurring basis during the term of this Agreement, YC shall have the right to terminate the relevant Service and charge Customer a termination payment calculated in accordance with the formula set out in clause 12.7.

**12.9** Where this Agreement is terminated due to Customer porting to another network or where Customer migrates the mobile phone number(s) to another service provider, YC may charge a reasonable administration fee in respect of each number that is ported or migrated in addition to any termination fees payable in accordance with clause 12.7.

### **13. Intellectual Property**

**13.1** The Intellectual Property Rights that exist in Services, Software and Equipment are owned by

YC and YC's licensors. By supplying Customer with Services, Software and Equipment, YC is not transferring or assigning ownership of any Intellectual Property Rights in or relating to them to Customer.

**13.2** Where YC creates Intellectual Property Rights during or as a result of the supply by YC of Services, Software and Equipment to Customer, YC shall own all such Intellectual Property Rights.

**13.3** Customer must not do anything to jeopardise YC or its licensor's Intellectual Property Rights.

### **14. Changing the terms of this Agreement**

**14.1** YC shall be entitled to change the terms of this Agreement by issuing an Amendment Notice, without Customer's consent, to the extent that such changes are required by or are necessary (in YC's opinion acting reasonably) to comply with applicable law. Where practicable, YC shall provide Customer with advance notice of such changes. If advance notice cannot be provided, YC shall advise Customer of the change as soon as practicable after it has been made. YC shall not be liable to Customer for any claims by Customer as a consequence of such changes.

**14.2** YC may change the terms of this Agreement without Customer's consent where to the extent that such changes are required due to alterations to the Network; the manner in which YC operates; the way in which YC provides Services (including where, in YC's reasonable opinion, it is no longer commercially viable to provide a particular Service), provided that such changes affect at least 90% of YC's relevant customer base. In these circumstances, YC shall advise Customer of the change via an Amendment Notice, at least 30 days in advance of the change taking effect. If Customer is materially disadvantaged and objects to such change, YC shall not be liable to Customer for any claims by Customer as a consequence of such changes.

**14.3** (O2 Only) In line with O2 YC will change the price of mobile tariffs in March 2014 and thereafter in April each year in line with the previous February RPI inflation rate.

**14.4** Save as set out in Clauses 14.1 and 14.2, changes to this Agreement must be made by written agreement of the Parties.

### **15. Confidentiality**

**15.1** This Agreement and any information about Services that is not publicly available, is confidential, and may be disclosed by Customer to Customer's employees only, strictly on a need-to-know basis, unless otherwise agreed in writing with YC.

15.2 YC shall be entitled to keep records of Customer information, which YC shall use to perform YC' obligations under this Agreement, and for related purposes.

15.3 YC shall be entitled to disclose Customer information as required by any legal, regulatory or financial agency or by court order, any YC group company or any third party (some of whom may be outside of the European Union) for the purposes of providing the Service.

## **16. Liability**

16.1 Nothing in this Agreement shall operate to restrict either Party's liability to the other from: death or personal injury resulting from negligent acts or omissions; claims for non-payment; the non-excludable statutory rights of consumers (for example, under laws providing for strict product liability); breaches of any Software license; breach of any obligation of confidence; and any infringement of YC' Intellectual Property Rights.

16.2 Except for Clause 16.1 above and to the extent not prohibited by law:

16.2.1 each Party's maximum aggregate liability for all claims relating to Equipment or a Service provided pursuant to this Agreement, whether for breach of contract (including repudiatory breach), breach of warranty or in tort, including negligence, will be limited to 100% of the value of the Charges paid or payable under the relevant Order Form during the previous 12 month period under which the Equipment or Service that is the subject matter of the claim is supplied; and

16.2.2 neither Party will be liable for any indirect, punitive, special, incidental or consequential damages in connection with or arising out of the terms of this Agreement; nor any direct or indirect loss of business, revenue, profits, goodwill, use, data, compensation, ex gratia payment or other economic advantage, however they arise, whether in breach of contract (including repudiatory breach), breach of warranty or in tort, including negligence, and even if that Party has previously been advised of the possibility of such damages or whether such liability could be assumed to be the responsibility of YC, YC shall not be liable to Customer if it is unable to provide any of the Services contemplated by this Agreement due to circumstance outside its reasonable control.

16.3 Except for the payment obligations of the Customer, neither Party will be responsible or liable in any way for the failure or delay in the performance of its obligations due to Force Majeure. If a cause relied on by a Party hereunder ceases to exist, the Party will perform

or resume performance of its obligations and the time for performance will be extended by a period equal to the duration of the Force Majeure. If Force Majeure persists for a period of more than 60 days, the other Party will be entitled to terminate this Agreement on written notice.

16.4 The warranties specified in this Agreement and/or any Service Specific Terms are the only warranties provided with respect to Services provided to Customer by YC. To the extent permissible at law, all other warranties (whether express or implied and including any implied warranties of fitness for a particular purpose or merchantability) are excluded provided that where legislation implies warranties or conditions or imposes obligations (statutory provisions) which cannot be excluded, restricted or modified except to a limited extent, this Agreement must be read subject to those implied statutory provisions.

## **17. Transferring this Agreement to others**

17.1 YC shall be entitled to transfer in whole or in part any of its rights and obligations to any company within YC's Group or a supplier at any time. YC may use subcontractors to perform any of its obligations under this Agreement but remains responsible for their performance. YC may transfer in whole or in part any of its rights and obligations under this Agreement to any other third party and in signing an agreement the customer shall be deemed to have given prior written consent of this.

17.2 Customer may transfer in whole or in part any of its rights and obligations under this Agreement to any other person or company, provided that it has obtained 'YC's prior written consent to such transfer and has satisfied any reasonable conditions imposed by YC (including credit vetting of the entity to whom customer intends to transfer its rights and obligations under this agreement).

17.3 Unless expressly provided in this Agreement, no term of this Agreement is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

## **18. General Provisions**

18.1 If Customer supplies YC with personal data (for example relating to End Users) Customer shall ensure that it is accurate and up to date when disclosed. Customer shall also ensure that they have obtained from the individuals concerned all necessary consents under the Data Protection Legislation to both the supply of the

data to YC, and the processing of it by YC, for the purposes of performance of this Agreement, supply of the Equipment and Services and for direct marketing about YC's similar products and services. Customer shall also ensure that any individual to whom personal data relates has given consent for YC to pass such data back to Customer. Customer agrees that where it is reasonably requested by a Partner, YC may provide Customer's billing and contract information to the relevant Partner for the purposes of calculating commissions and administration of the account.

**18.2** Each Party shall comply with its obligations under the relevant Data Protection Legislation. Customer acknowledges that YC retains the role of Data Controller as defined in the Data Protection Act 1998 except in the limited circumstances where YC processes any personal data for and on behalf of Customer.

**18.3** All notices served by Customer under this Agreement shall be in writing and sent to the Head of Legal at Zest4, 308 Moseley Road, Manchester, M19 2LH, or any other address YC directs Customer to use from time to time. YC shall send all notices to Customer at Customer's registered office. Notices will be deemed given: where they are hand delivered, when a duly authorised employee or representative of the recipient gives written acknowledgement of receipt; for e-mail communication, at the time the communication enters into the information system of the recipient; for posting, three days after dispatch; and for fax on receipted transmission of the fax.

**18.4** Neither Party shall lose any right under this Agreement if it fails to use that right, or delays in using it. For a waiver of a right to be valid, it must be written and will not give rise to an ongoing waiver of that right unless it is expressly stated to do.

**18.5** Termination of this Agreement or any part thereof, shall be without prejudice to any other rights or remedies a Party may be entitled to at law or under the Agreement and shall not affect any accrued rights or liabilities of either Party nor the coming into force or the continuance in force of any provision of the Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.

**18.6** This Agreement is governed by English Law and is subject to the non-exclusive jurisdiction of the English Courts.

**18.7** Only provisions set out in this Agreement shall apply to YC's supply of Services to Customer. All other provisions are expressly

excluded to the maximum extent permitted by law. The Parties acknowledge that, in entering into this Agreement, neither Party has relied upon any statement or warranty made, or agreed to, by any person, except those expressly set out within this Agreement. However, this shall not be taken to exclude either Party's liability for fraud.

**18.8** If a misrepresentation or untrue statement has been made, the only remedy available to the Parties shall be a claim for damages for breach of this Agreement, unless such misrepresentation or untrue statement was made fraudulently, or a provision of the Agreement was induced by fraud, in which case all remedies under English Law shall be available.

**18.9** All headings in this Agreement are there for convenience, and do not have any legal effect. Use of the singular includes the plural and vice versa.

**18.10** Any changes made to Customer's systems or processes that may affect the Services (including any change to computer server software) are at Customer's sole risk. YC shall not be liable to continue to support the Services to the extent that they are affected by such change.

**18.11** Every provision in this Agreement is independent from the others to the extent that, if a provision, or any part of it, is ruled to be illegal or unenforceable by the English Courts, that provision or the relevant part of it shall be treated as having been deleted from this Agreement, without affecting the remainder of that provision or the other provisions of this Agreement, which shall still have full effect.

**18.12** Where YC supplies Equipment and Services to Customer that is not expressly covered by the Order Form, such supply shall be deemed to be governed by the terms and conditions of this Agreement.

**18.13** If there is a dispute under this Agreement, and Partner has been unable to resolve the issue to Customer's satisfaction, Customer may escalate the issue to YC customer services. If YC customer services is unable to resolve the issue, this issue will be escalated through YC's customer complaints procedure. If you are a Customer who employs fewer than 10 employees and our customer services team is unable to resolve your complaint, you may ask that the matter be referred to an independent ombudsman in accordance with our customer complaints code of practise which is available on YC's website or by contacting YC. The Parties shall use the escalation process to its full before taking legal action against the other Party.

**18.14** All information that the Parties provide to each other in relation to this Agreement must be accurate and complete and Customer shall promptly inform YC in writing of all changes to information Customer has provided to YC, in particular, if Customer intends to stop, stops or has stopped trading, if Customer intends to sell its business, if Customer changes name or if the legal status of Customer's business changes.

#### **Definitions**

**Access Fee** - The monthly or other periodic fee payable by Customer for use of the Services.

**Amendment Notice** - A document setting out a change to this Agreement that is issued to Customer by YC that does not require the signature of either Party.

**Artificially Inflated Traffic** - A flow or volume of traffic via any Service, which YC believes is: (i) disproportionate to the flow or volume of traffic which YC expects from good faith commercial practice and usage of the Service; (ii) disproportionate to Customer's previous traffic profiles (in any given month) with YC; (iii) uses automated means to make calls (save where this is expressly approved by YC in writing); or (iv) may result in Customer exceeding the credit limit which YC places on Customer's YC account from time to time.

**Billing Manual** - YC's call- and billing rounding measures from time to time, which shall be available to Customer on request.

**Business Day** - A day (other than a Saturday or a Sunday) on which clearing banks are open for business in the city of London (other than solely for trading or settlement in Euro).

**Charge** - Access Fees, Connection Fees, fees for Equipment, Software License fees, call fees, airtime fees and all other fees payable by Customer for use of the Services.

**Codes of Practice** - All guidelines governing use or provision of mobile telecommunications and data services, issued by any generally recognised bodies (such as PhonepayPlus) or that are adopted by YC from time to time, and all instructions, regulations or guidance issued by the Regulatory Authorities, whether or not mandatory.

**Connection** - A YC SIM Card that has been configured to attach to the Network, with a price plan or SOC associated with it so that End Users can use and be charged for Services supplied under an Order Form.

**Customer Information** - Information that (a) Customer provides to YC; (b) details of how Customer uses Services, including information relating to the volume and types of calls made,

details of charges paid & other financial information; or (c) details of how Customer has performed in meeting its obligations under this Agreement.

**Data Protection Legislation** - The Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003, any amendments or replacements to them, and any other legislation implementing Directives 95/46/EC and 2002/58/EC

**Emergency Planning Measures** - The measures that may be taken as a result of YC's obligations under (i) the General Conditions under section 45 of the Communications Act 2003 and (ii) the Civil Contingencies Act 2004; or any similar law.

**End User** - A person using Equipment or a Service, who is an employee or contractor of Customer.

**Equipment** - Any tangible material, but not a SIM Card, supplied by YC to Customer, or connected to the Network on Customer's behalf, such as a mobile phone, a connecting cable, a power supply, or a PC data card.

**Force Majeure** - Any cause beyond a party's reasonable control including without limitation, acts of God, war, fire, flood or other accident, strike, lockouts, delays in transport, material shortages, failures or fluctuations in electric power or telecommunications services or equipment, restrictions or prohibitions of any government or semi-government authority.

**GSM Gateway** - Any equipment containing a SIM Card which enables the routing of calls from fixed apparatus to mobile equipment by establishing a mobile-to-mobile call.

**GSM Gateway Commercial Policy** - YC's policy from time to time governing Customer's use of GSM Gateways, available at: [www.Zest4.co.uk/enterprisecontracts](http://www.Zest4.co.uk/enterprisecontracts).

**Insolvency Event** - An event where a Party either ceases or threatens to cease conducting its business in the normal manner; or is treated as being insolvent, or threatens or is in jeopardy of becoming insolvent because it: (a) is unable to pay its debts (within the meaning of Section 123 of the Insolvency Act 1986); or (b) makes or offers to make any arrangement or composition with any one or more of its creditors; or (c) commits any act of bankruptcy or if any petition or receiving order in bankruptcy is presented or made against it; or (d) any resolution to wind up it up (being a limited company) is issued or passed or presented otherwise than for reconstruction or amalgamation; or (e) has had a receiver, administrator or liquidator appointed to it.



**Intellectual Property Rights** - Patents, design rights, trademarks, copyrights (including any such rights in typographical arrangements, websites or software), rights subsisting in trading, business or domain names and e-mail addresses, rights in inventions, rights in databases and all other intellectual property rights of a similar or corresponding character which subsist now or in the future in any part of the world whether registered or not and whether or not capable of registration, and any applications to register or rights to apply for registration of any of the foregoing in all parts of the world.

**Network** - The telecommunication systems YC uses to provide the Services.

**OFCOM** - The UK communications industry regulator appointed and empowered under the provisions of the Communications Act 2003, or any appointment that replaces it

**Order Form**- The document setting out the agreed commercial terms relating to YC's provision of Equipment and/or Services which includes YC's charges and any specific commercial terms and which incorporates any relevant Service terms and conditions and these General Terms

**Overseas Networks** - Telecommunication systems outside of the UK Mainland used (but not controlled) by YC in providing the Services.

**Partner** a person authorised by YC who may have sold Equipment or Services to the Customer;

**Port** - The transfer of a mobile number that is connected to the YC Network under this Agreement to a different network provided by another supplier;

**Price plan charges guide** – the terms and “out of price plan bundle” charges for your price plan which is available online and updated by YC from time to time.

**Regulatory Authorities** - OFCOM, the Office of Fair Trading, the Competition Commission, the Information Commissioner, the Advertising Standards Authority, or any similar authority established from time to time;

**Recovery Policy** - YC's policy regarding the replacement or repair of faulty equipment, as amended from time to time.

**Service** - A service provided by YC pursuant to this Agreement as described in the relevant Service Specific Terms.

**Service Period** - The minimum term for which Customer commits to receive a Service, as specified in the relevant part of the Order Form.

**Service**

**Specific Terms** - A Schedule that sets out service specific information such as terms and conditions, specifications and other technical information.

**SIM Card** - A subscriber identity module card, which is an electronic memory device for storing user specific data to allow controlled and secure use of Equipment on the Network.

**Software** - A machine executable computer program, software module or software package or any part thereof (in object code only), supplied by YC or its licensors to Customer irrespective of how it is stored or executed.

**Software License** - The terms and conditions that prescribe how Customer shall use Software and set out the rights of the Software owner/licensor and the Software user in relation to such Software.

**Standard List Price(s)** - YC's standard unsubsidised Charges for business Services and Equipment as advised to Customer by YC and/or as made available on request by YC (as amended by YC from time to time).

**Your Comms**- Your Comms Ltd and any company in which YC holds, directly or indirectly, 50% or more of its issued share capital or has the right to exercise, directly or indirectly 50% or more of the voting rights.