

MOBILE TERMS AND CONDITIONS

1 DEFINITIONS

- 1.1 In these terms and conditions, the following definitions apply:
- 1.2 **Business Day** means a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
- 1.3 **Call Charges** means a predetermined charge unit of time, costed at the rates set out in the Tariff Sheets.
- 1.4 **Commercial Terms** means the cover sheet to these terms and conditions titled 'Mobile' which sets out the commercial terms of the Mobile Agreement.
- 1.5 **Connection Date** means the date that the Devices, or substantially all of the Devices, are connected to the Network, as specified in the Commercial Terms (subject to amendment in writing by K5 from time to time).
- 1.6 **Credit Limit** means the monthly financial limit for Usage Charges, as specified in the Commercial Terms.
- 1.7 **Customer** means the customer named in the Commercial Terms.
- 1.8 **Data Charges** means the pre-determined charge per megabyte of data costed at the rates set out in the Tariff Sheets.
- 1.9 **Device** means each mobile phone (including iPhones and Android mobile phones), BlackBerry device, other handheld device or SIM Card in relation to which K5 is providing the Services. The Devices are listed in the Commercial Terms and may be varied from time to time by agreement between the parties in accordance with clause 3.4.
- 1.10 **Extended Term** has the meaning given in clause 2.3.
- 1.11 **Minimum Term** means the minimum term of the Mobile Agreement, as specified in the Commercial Terms.
- 1.12 **Mobile Agreement** means the contract between K5 and the Customer for the supply of the Services in accordance with these terms and conditions and the Commercial Terms.
- 1.13 **Monthly Charges** means the monthly amount payable by the Customer for receipt of the Services (excluding the Usage Charges). The Monthly Charges applicable on the effective date of the Contract is specified in the Commercial Terms and may be updated from time to time in accordance with these terms and conditions.
- 1.14 **K5** means K5 Communications Limited a limited company incorporated and registered in England and Wales with company number 13831237 whose registered office is at Hello House, 135 Somerford Road, Christchurch, BH23 3PY.
- 1.15 **Network** means the telecommunications network which K5 connects the Devices to in order to receive the Services.
- 1.16 **Previously Paid Termination Charges** means the early termination charges paid by K5 on behalf of the Customer to the Customer's previous mobile provider at any time before or after the Commencement Date.
- 1.17 **Roaming Charges** means (as applicable) Call Charges and Data Charges made or received in a country outside of the UK. Subject to clause 3.7, the amount of the Roaming Charges, and the affected countries, are set out in the Tariff Sheets.
- 1.18 **Services** means the ability to make and receive calls and (handset permitting) receive voice and data services by means of the Devices being connected to the Network, as more particularly described in the Commercial Terms.
- 1.19 **SIM Card** means the "Customer Identity Module" which is a unique card containing network information which, when used with a compatible mobile phone, BlackBerry or other device, enables access to the Services.
- 1.20 **Tariff Sheets** means K5's current tariff price list from time to time which itemises the Call Charges, Data Charges, Roaming Charges and any other usage-based charges applicable to the Services. K5 will provide a copy of the Tariff Sheets on request.
- 1.21 **Usage Charges** means the Call Charges, Data Charges and Roaming Charges.

2 BASIS OF CONTRACT AND TERM

- 2.1 The Commercial Terms are a quotation by K5 to provide the Services in accordance with these terms and conditions. Within 20 Business Days of its issue, the Customer can accept the quotation by signing and returning the Commercial Terms to K5, at which point the Mobile Agreement will come into effect. The Customer cannot accept the quotation after 20 Business Days from its date of issue without K5's express prior written agreement.
- 2.2 Subject to the remaining sections of these terms and conditions and in consideration for the Customer paying the Monthly Charges, K5 will make reasonable endeavours to connect the Devices to the Network and to provide the Services from the Connection Date. Both parties acknowledge that the Connection Date is an estimate only and that time shall not be of the essence.
- 2.3 Subject to clause 2.4 below, the Mobile Agreement shall continue, unless terminated earlier in accordance with these terms and conditions, until the end of the Minimum Term at which point the Mobile Agreement shall automatically extend for successive periods of 24 months (each an "Extended Term"). If either party gives written notice to the other no later than 30 days before the end of (as applicable) the Minimum Term or the current Extended Term then the Mobile Agreement will terminate at the end of (as applicable) the Minimum Term or the current Extended Term.
- 2.4 In the event the Customer has ten or fewer employees, clause 2.3 shall not apply and instead the Mobile Agreement shall continue, unless terminated earlier in accordance with these terms and conditions, until either party gives 30 days' written notice to the other party to terminate the Mobile Agreement, such notice to take effect at any time after the Minimum Term.
- 2.5 When the Mobile Agreement renews for an Extended Term in accordance with clause 2.3, these terms and conditions shall be deemed to have been replaced by K5's latest terms and conditions (published at <https://k5communications.co.uk/terms-and-conditions>) with effect from the start of that Extended Term.
- 2.6 These terms and conditions and the Commercial Terms apply to the Mobile Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing. For the avoidance of doubt, terms referenced on the Customer's purchase orders shall have no legal effect.

3 SERVICES

- 3.1 K5 shall make commercially reasonable endeavours to ensure continuity of the Services from the Connection Date but, as the Network is not operated by it, K5 does not give any warranties regarding the availability of the Services, the guaranteed minimum uptime of the Network or the suitability of the Services for the Customer's requirements. Except as expressly provided

in these terms and conditions, all warranties, conditions or other terms (whether express or implied) as to the quality of the Services or their fitness for any particular purpose are hereby excluded to the fullest extent permitted by law.

- 3.2 Calls by the Customer to certain telephone numbers (principally international numbers, satellite phone numbers, and premium rate services such as directory enquiries) are subject to additional Call Charges which are payable in addition to the Monthly Charges. A full list is available from K5 on request. K5 reserves the right to bar access to such numbers at its discretion (for example, if K5 believes that fraudulent calls are being placed to such numbers).
- 3.3 On behalf of the Network provider, K5 reserves the right to deallocate (i.e. claw-back) telephone numbers issued to the Customer. K5 will only exercise this right to comply with a request from the Network provider. In K5's experience, such requests are rare.
- 3.4 The Customer may add or remove Devices by contacting K5 in writing. Such changes only take effect once confirmed in writing by K5 and may be conditional, if adding new Devices, upon the Customer agreeing to incur additional charges.
- 3.5 Following a request from the Customer, K5 may at its absolute discretion agree to transfer the Customer from the Network to another network provider's network which is offered by K5. The transfer is conditional upon the Customer agreeing to the revised Monthly Charges and Usage Charges which apply to the new network and to the Customer committing to a minimum contractual term of 24 months under the new network.
- 3.6 Provided it gives 30 days' written notice to the Customer, K5 may transfer the Customer from the Network to another network provider's network which is offered by K5. If K5 exercises this right then the Customer's Monthly Charges, Usage Charges and minimum contract term will be unaffected.
- 3.7 K5 will make reasonable endeavours to ensure that the Tariff Sheets are accurate and up to date. However, the Customer accepts that Roaming Charges are set by third party network providers with whom K5 does not have a direct business relationship and therefore the network provider may change its charges without K5 being made aware. As such, the Customer also 'accepts':
- (a) that it is solely responsible for ensuring its users carefully read all roaming notifications sent to the Devices by third party network providers operating outside of the UK; and
- (b) that the charges outlined in such notifications shall be binding upon the Customer even if they conflict with the Tariff Sheets.
- 3.8 Unless expressly stated in these terms and conditions or the Commercial Terms, K5 assumes no responsibility or liability for the Devices, their functionality or any hardware or software defects/issues affecting the Devices.

4 CUSTOMER'S OBLIGATIONS

- 4.1 The Customer must:
- (a) promptly provide K5 with all reasonably requested cooperation in relation to the Devices and Services;
- (b) comply with the Network provider's policies and terms and conditions (to the extent they apply to the Customer) from time to time. Such policies are available from the Network provider's website;
- (c) comply with all applicable laws which govern its use of the Devices, Network and Services;
- (d) not use or permit others to use the Devices or Services for any improper or immoral purpose or in a manner which may (in K5's reasonably opinion) impair the performance or availability of the Services or Network;
- (e) only use the Devices supplied under the agreement which are approved for use with the Network; and
- (f) notify K5 immediately in writing if a Device is stolen or lost.
- 4.2 The Customer understands that the Services may from time to time be adversely affected by local geography, topography and/or atmospheric conditions and/or other causes of interference which are outside of K5's control and that, subject to clause 7.2, K5 shall have no liability for such matters.

5 CHARGES

- 5.1 The Customer agrees to pay the Call Charges, Data Charges, Roaming Charges and any other usage-based charges applicable to the Services in accordance with these terms and conditions and the Commercial Terms.
- 5.2 K5 may, on 30 days' prior written notice to the Customer, increase the Monthly Charges, Call Charges, Data Charges and/or Roaming Charges in response to one of K5's suppliers (typically the Network provider) increasing its charges.
- 5.3 K5 may additionally increase the Monthly Charges, Call Charges, Data Charges and/or Roaming Charges subject to the following restrictions:
- (a) K5 may not increase any of the charges within the first 12 months of the Mobile Agreement (calculated from when the contract is entered into);
- (b) K5 may not increase any single charge by more than 5% over a 12 month period and no single charge may be increased more than once in any 12 month period; and
- (c) K5 must give at least 30 days' written notice to the Customer of the increase.
- 5.4 K5 reserves the right to amend the Credit Limit from time to time by giving 30 days' written notice to the Customer.
- 5.5 K5 will make reasonable endeavours to notify the Customer once it has reached 50% and then 75% of its monthly data allowance. K5's failure to give such notice shall have no effect on the Customer's obligation to pay the Data Charges.

6 PAYMENT

- 6.1 The Monthly Charges are invoiced monthly in advance whereas the Usage Charges are invoiced monthly in arrears.
- 6.2 With the exception of the first month's charges, the Monthly Charges for the coming month and the Usage Charges for the previous month are invoiced at the same time. If the Services commence partway through K5's monthly billing cycle then the first Monthly Charges calculation will include a pro rata charge for the remainder of the current month, plus next month's Monthly Charge.
- 6.3 Payment of K5's invoice is due no later than 14 days from the date of the invoice.
- 6.4 Payment must be made by Direct Debit unless K5 has expressly agreed in writing to accept payment by another method. K5 reserves the right to charge its then-current admin fee (available on request) as a condition of accepting payment other than by direct debit.

- 6.5 All charges must be paid in full in pounds sterling without deduction, set off or withholding. If accepted by K5, payments by BACS must be in cleared funds.
- 6.6 K5 reserves the right to amend the date and frequency of its invoices upon 60 days' written notice to the Customer.
- 6.7 K5 reserves the right to submit ad hoc invoices for products or services not included within the Monthly Charge or Usage Charges and for Usage Charges in excess of the Credit Limit. Such invoices are payable immediately on demand.
- 6.8 All invoices will be submitted via email to the invoicing email address of the Customer set out in the Commercial Terms. The Customer may amend its invoicing address by giving K5 60 days' prior written notice.
- 6.9 Value added tax (VAT) is payable in addition to all charges levied by K5 unless otherwise specified.
- 6.10 K5 reserves the right to withhold or withdraw discounts on invoices that are not paid in accordance with this clause 6.
- 6.11 During the Term K5 may ask for a deposit as security for payment in respect of additional Services to be provided. The Customer may request the return of any deposit at the expiry of the Minimum Term as stated in the Agreement, but the decision to return any monies prior to termination of the Agreement is at the discretion of K5. K5 reserves the right to set off any deposit against any amounts due and owing by the Customer to K5 (including but not limited to under the Agreement) at any time.
- 6.12 If the Customer fails to pay any amount due under these terms and conditions then K5 reserves the right to charge interest at the rate of 4% above the base rate of National Westminster Bank PLC from time to time. Interest is payable when the overdue sum becomes payable until it is paid.
- 6.13 K5 reserves the right to charge its then-current administration fee if the Customer has cancelled its Direct Debit instruction or has insufficient funds in its bank account on the direct debit due date.
- 6.14 K5 reserves the right to vary the Customer's payment terms upon 30 days' notice in writing if:
- the Customer fails to pay any of K5's invoices in accordance with these terms and conditions; or
 - K5 reasonably determines that the Customer is at risk of failing to pay K5's invoices on time due to a deterioration or anticipated deterioration of its financial position.
- 6.15 The Customer agrees that any dispute relating to an invoice (including the calculation of any amounts payable) must be notified to K5 within six months of the date of the invoice and the Customer shall not be entitled to any credit or refund relating to disputes raised after the expiration of that period.
- 7 LIABILITY**
- 7.1 References to liability in this clause 7 include every kind of liability arising under or in connection with the Mobile Agreement, including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 7.2 Nothing in these terms and conditions limits any liability which cannot legally be limited, including liability for:
- death or personal injury caused by negligence;
 - fraud or fraudulent misrepresentation; or
 - breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 7.3 Subject to clause 7.2, the following types of loss are wholly excluded:
- loss of profits;
 - loss of sales or business;
 - loss of agreements or contracts;
 - loss of anticipated savings;
 - loss of use or corruption of software, data or information;
 - loss of or damage to goodwill; and
 - indirect or consequential loss.
- 7.4 Subject to clauses 7.2 and 7.3, K5's total liability to the Customer shall not exceed the greater of:
- the Monthly Charges which would be payable in the 12 months following the Connection Date; and
 - the Monthly Charges and Usage Charges paid by the Customer in the 36 months prior to the breach or the first breach of a series of connected breaches.
- 7.5 Subject to clauses 7.2, K5 shall not be liable to the Customer for any breach of or delay in performing K5's obligations under the Mobile Agreement which results from the Customer's breach of its obligations under these terms and conditions.
- 8 FORCE MAJEURE**
- 8.1 Neither party shall be in breach of the Mobile Agreement nor liable for delay in performing, or failure to perform, any of its obligations under the agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances:
- the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed; and
 - if the period of delay or non-performance continues for three months, the party not affected may terminate this agreement by giving 28 days' written notice to the affected party.
- 9 SUSPENSION**
- 9.1 Provided it gives prior written notice to the Customer, K5 may without liability to the Customer and without affecting its other rights and remedies: (a) suspend the Services; (b) disconnect any or all Devices from the Network; and/or (c) suspend any other services provided to the Customer by K5 (whether under the Mobile Agreement or otherwise) if:
- the Customer materially breaches any of these terms and conditions (including but not limited to a failure to pay any charges when due);
 - the Customer becomes subject to any of the circumstances set out in clause 10.4(c) to clause 10.4(m) (inclusive);
 - if the Credit Limit is exceeded;
 - K5 reasonably suspects that the Customer's phone number(s) are being used fraudulently;
 - the relevant system(s) are required for maintenance, repair or upgrade of any of K5's systems and/or services (provided K5 shall use reasonable endeavours to give as much advance notice to the Customer as is reasonably practicable in the circumstances);
 - K5 is dealing with an actual or suspected security breach, virus, or attack whereby K5 cannot reasonably address that threat without suspending the Services (or parts thereof) and in which case K5 shall endeavour to minimise the interruption to the Customer;
- it is necessary because of an emergency or because K5 has a legal obligation to do so; or
 - the Services depend on a Third Party Provider and that Third Party Provider has suspended its services.
- 9.2 If K5 suspends the Services under clause 9.1 then the Customer shall nevertheless remain liable to pay the Monthly Charges and the Usage Charges.
- 9.3 K5 reserves the right to charge a £50.00 plus VAT administrative charge for resuming the Services following a period of suspension for the reasons set out in clause 9.1(a), 9.1(b) or 9.1(c).
- 10 TERMINATION**
- Termination without cause**
- 10.1 Either party may terminate the Mobile Agreement without cause in accordance with clause 2.3.
- 10.2 The Customer may additionally terminate the Mobile Agreement at any time prior to the expiration of the Minimum Term or current Extended Term by giving K5 notice in writing. Termination takes effect, and is conditional upon, the Customer having paid K5 in full:
- all Previously Paid Termination Charges, plus the value of all discounts offered by K5, plus any rebates paid by K5 to the Customer, plus the amount of any promotional credit applied by K5 to the Customer's account which has been expended by the Customer;
 - all Monthly Charges and Usage Charges incurred up to date of termination; and
 - an early termination fee equal to the remaining Charges that would fall due from the date of termination until the expiry of (as applicable) the Minimum Term or current Extended Term.
- 10.3 K5 may additionally terminate the Mobile Agreement at any time by giving 30 days' written notice to the Customer.
- Termination for cause**
- 10.4 Without affecting any other right or remedy available to it, either party may terminate the Mobile Agreement by giving 14 days' written notice if:
- the other party fails to pay any amount due under the Mobile Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
 - the other party commits a material breach of any other term of the Mobile Agreement and (if such breach is remediable) fails to remedy that breach within a period of: (in respect of the Customer's breach) 30 days or (in respect of K5's breach) 60 days after being notified in writing to do so;
 - the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 ("IA 1986") as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986; or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the IA 1986; or (being a partnership) has any partner to whom any of the foregoing apply;
 - the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - the other party applies to court for, or obtains, a moratorium under Part A1 of the IA 1986;
 - a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
 - the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
 - a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
 - the other party (being an individual) is the subject of a bankruptcy petition, application or order; a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
 - any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 10.4(c) to clause 10.4(k) (inclusive); or
 - the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 10.5 K5 may additionally terminate the Mobile Agreement immediately upon notice if:
- K5 determines that any information provided by the Customer is false or misleading; or
 - for any reason, the network provider ceases to operate the Network or otherwise ceases to provide the underlying services necessary for K5 to continue providing the Services in accordance with the Mobile Agreement.
- 10.6 K5 may additionally terminate any or all of the contracts between it and the Customer upon written notice in the event that the Customer fails to pay any amount due under the Mobile Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment.
- 11 CONSEQUENCES OF TERMINATION**
- 11.1 Following termination of the Mobile Agreement:
- K5 shall disconnect the Devices from the Network and the Services shall cease;
 - K5 will use reasonable endeavours to co-operate with any reasonable request from the Customer to transfer any telephone numbers allocated to the Customer hereunder to another service provider provided that the Customer pays K5's reasonable costs and expenses;
 - K5 shall invoice the Customer for all outstanding charges up to termination;
 - if the Mobile Agreement was terminated prior to the expiration of the Minimum Term then K5 shall invoice the Customer for the following unless the Customer has already paid such amounts pursuant to the early termination provisions in clause 10.2:
 - all Previously Paid Termination Charges;

- (ii) the value of all discounts offered by K5 (calculated as the difference between the amount actually paid and K5's list price at the time the Devices were supplied), plus any rebates paid by K5 to the Customer, plus the amount of any promotional credit and hardware fund applied by K5 to the Customer's account which has been expended by the Customer; and
- (e) if the Mobile Agreement was terminated prior to the expiration of (as applicable) the Minimum Term or current Extended Term then K5 shall invoice the Customer for the Monthly Charges which would have been payable for the unexpired part of the Minimum Term or Extended Term,
- 11.2 and the Customer shall pay all of K5's invoices for such amounts immediately upon receipt, without set off or withholding, and in accordance with the payment instructions set out on them.
- 12 **INDEMNITY**
- 12.1 The Customer shall indemnify K5 against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by K5 arising out of or in connection with:
- (a) the Customer's breach or negligent performance or non-performance of the Mobile Agreement;
- (b) the enforcement of the Mobile Agreement.
- 13 **DATA PROTECTION**
- 13.1 K5 processes personal data in accordance with its Privacy Policy which is accessible from <https://K5communications.co.uk/privacy-policy>.
- 14 **NOTICES**
- 14.1 Any notice given to a party under or in connection with the Mobile Agreement shall be in writing and shall be:
- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by email to:
- (i) K5 at info@K5comms.co.uk; and
- (ii) the Customer at the email address specified in the Commercial Terms or, if no such address is specified, the email address specified in the Commercial Terms for receipt of invoices.
- 14.2 Any notice shall be deemed to have been received:
- (a) if delivered by hand, at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
- (c) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause "business hours" means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 14.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 15 **GENERAL**
- 15.1 **Interpretation.**
- (a) A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time. And a reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- (b) A reference to "writing" or "written" includes email unless otherwise stated.
- (c) Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- (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.
- 15.2 **Complaints.** For information about K5's customer complaints procedure please refer to K5's Customer Complaints Procedure at www.K5communications.co.uk/complaints-procedure.
- 15.3 **Copies of the contract.** K5 will only provide copies of the Mobile Agreement to registered directors of the Customer and the Customer's authorised signatory. K5 will not share copies with other staff or purported representatives of the Customer.
- 15.4 **Assignment.**
- (a) K5 may at any time assign its rights under the Mobile Agreement to any third party.
- (b) The Customer may not transfer or otherwise deal with its rights under the Mobile Agreement without K5's prior written consent. K5 may, at its absolute discretion, agree to the Mobile Agreement being novated to a third party in place of the Customer subject to such conditions as K5 sees fit.
- (c) K5's acceptance of payment under the Mobile Agreement from a third party on behalf of the Customer does not constitute its agreement to a variation or novation of the agreement.
- 15.5 **Variation.** No variation of the Mobile Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 15.6 **Severance.** If any provision or part-provision of these terms and conditions becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of these terms and conditions. Additionally, if any provision or part-provision of these terms and conditions is deemed deleted under this clause, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 15.7 **Waiver.** No failure or delay by K5 to exercise any right or remedy provided under these terms and conditions or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 16 **ENTIRE AGREEMENT.**
- (a) These terms and conditions, along with the Commercial Terms, and all documents referred to therein together constitute the entire agreement between the parties and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to their subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these terms and conditions, the Commercial Terms or any documents referred to therein. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Mobile Agreement.
- 16.2 **No partnership or agency.** Nothing in these terms and conditions is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute
- any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party
- 16.3 **Time for payment.** Time is of the essence for the payment of monies by the Customer.
- 16.4 **Third party rights.** The Mobile Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.
- 16.5 **Governing law.** The Mobile Agreement 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.
- 16.6 **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 Mobile Agreement or its subject matter or formation.
- Fair Usage Policy
- 17 Unlimited allowances in tariff are truly unlimited however as per our general terms and conditions Vodafone/O2 reserves the right to suspend or terminate connections where it identifies usage which it believes is:
- Outside normal commercial practice
 - Made via automated means e.g Sim Gateway
 - Damages or impairs our network
 - Fraudulent, abusive, illegal or a nuisance
- All of these activities would fall outside of the Fair Usage policy, and such will not be supported by the Mobile Bill Limit Regulation (mobile spend cap).