

Mobile Phone and Equipment Agreement (v3)

Customer Contract,
Pricing Schedule,
Equipment Schedule

BACKGROUND

- (a) FCC supplies mobile services to businesses and the Customer wishes to purchase the mobile services from FCC subject to the terms of this Agreement.

THE PARTIES AGREE:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Act	means the Communications Act 2003 and any amendments to the Act from time to time or any subsequent substitution thereof;
Access Fee	means the fee payable by the Customer to FCC for access to the Service Operators;
Bar	means the act of barring the Customer from making or receiving calls on the Customer Apparatus;
Charges	includes but not limited to those charges described in Clause 7.3 and Appendix A;
Confidential Information	means any and all confidential information (whether in oral, written or electronic form) given including technical or other information imparted in confidence or disclosed by one party to the other or otherwise obtained by one party relating to the other's business, finance or technology, know-how, intellectual property, assets, strategy, products and customers, including without limitation information relating to manufacturing or other processes, management, financial, marketing, technical and other arrangements or operations of any associate, person, firm, or organisation associated with that party;
Connection/ Connected	means the connection of the equipment or SIM card to the selected tariffs and Systems;
Customer Apparatus	means the approved equipment and SIM card connected to the systems as detailed in Appendix A;
Early Termination Charges	means the remaining Charges for the outstanding period of the Minimum Term as at the date of the notice of termination;
Force Majeure	means an event or sequence of events beyond a party's reasonable control (which could not reasonably have been anticipated and avoided by a party) preventing or delaying it from performing its obligations hereunder, including without limitation war, revolution, terrorism, riot or civil commotion, or precautions against any such; strikes, lock outs or other industrial action, whether of the affected party's own employees or others; blockage or embargo; acts of or restrictions imposed by government or public authority; explosion, fire, corrosion, flood, natural disaster, or adverse weather conditions. Force Majeure does not include, without limitation, inability to pay, mechanical difficulties, shortage or increase of price of raw

materials, over-commitment or market or other circumstances which may make the terms of this Agreement unattractive to a party;

Migration means the transfer of a mobile number to any alternative Service Operator on the same network;

Payment Date means the date determined by FCC on which FCC invoices fall due for payment;
Portability means the transfer of a mobile number or Service to any alternative Service Operator;

Service(s) means the provision of airtime, together with those services identified in this Agreement, by means of the systems offered by FCC;

Service Operators means the network providers;

SIM Card means a module which contains Customer information and which, when used with GSM/UMTS equipment, enables access to the GSM/UMTS services;

Systems means the public telecommunications systems that FCC makes available to the Customer;

Upgrade means any supply of a new handset or mobile device.

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- 1.2.1 the singular includes the plural and vice versa;
- 1.2.2 references to subclauses, clauses, Schedules or Appendices (if any) are to subclauses, clauses, Schedules or Appendices, and references to paragraphs are to paragraphs in a Schedule or in an Appendix of this Agreement;
- 1.2.3 references to persons include individuals, trusts, partnerships, unincorporated bodies, government entities, companies and/or corporations (in each case whether or not having separate legal personality);
- 1.2.4 'including' (or similar words) means including without limitation;
- 1.2.5 clause headings do not affect their interpretation;
- 1.2.6 references to legislation (including any subsidiary legislation) include any modification or re-enactment thereof;

2 Duration

2.1 This Agreement shall continue from the Commencement Date for a minimum period as outlined in the summary contract (the "Minimum Term") and thereafter for further periods each equivalent to the Minimum Term until it is terminated:

- 2.1.1 by either party giving the other not less than ninety calendar days written notice expiring at the end of the Minimum Term or at the end of any subsequent period as appropriate; or
- 2.1.2 in accordance with clause 11 (Termination) of this Agreement.

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- 2.2 In the event the Customer terminates this Agreement prior to the end of any Minimum Term (unless it is terminated in accordance clauses 2.1.1 or 11.4) FCC shall be entitled to invoice and charge the Customer:
- 2.2.1 any Early Termination Charges;
 - 2.2.2 the replacement cost of the Customer Apparatus where the Customer fails to return the Customer Apparatus at all or undamaged and in good order (save for fair wear and tear) to FCC in accordance clause 5.2; and
 - 2.2.3 any additional charges including those detailed in Clause 9.5 or which FCC have been charged by the Service Operator as a result of the early termination
- the Customer shall pay any such invoices in full without deduction or set-off, in cleared funds within 14 of the date of each invoice; and to the bank account nominated by FCC.
- 2.3 Where a Customer requests a new Connection or Upgrade after the Commencement Date, the new Connection or Upgrade shall continue for a minimum period of 24 months (unless otherwise agreed) and shall remain in force until such Connection or Upgrade is terminated:
- 2.3.1 by either party giving the other not less than ninety calendar days written notice expiring at the end of the Minimum Term or at the end of any subsequent period as appropriate; or
 - 2.3.2 in accordance with clause 11 (Termination) of this Agreement.
- 2.4 The provisions of this Agreement in particular the provisions of this Clause 2 are applicable to all mobile numbers and/or handsets Connected to FCC and will also apply to subsequent Connections or Upgrades from the individual Connection or Upgrade date.

3 Services

- 3.1 FCC will provide the Services subject to compliance by the Customer with the terms of this Agreement.
- 3.2 FCC shall only become liable to supply the Services to the Customer once satisfactory responses to credit checks and criminal bureau checks have been received by FCC and (where appropriate) any Service Operator.
- 3.3 FCC will carry out credit and fraud prevention checks with a licensed credit reference and fraud prevention agency & this agency will retain a copy of the search. Information from the application and payment details of the account will be recorded and may be shared with other organisations to help make credit and insurance decisions about you and members of your company and for debt collection and fraud prevention purposes.
- 3.4 FCC's Services are based on the assumption the Customer has ten or more employees as any subsidies and/or benefits are issued on this basis.
- 3.5 Subject to the provisions of this Agreement, FCC will connect and maintain the connection of the Customer Apparatus to the System and, subject to the geographical coverage of the System from time to time and other limiting factors not under FCC's control, FCC will endeavour to make the Services available to the Customer throughout the term of this Agreement.
- 3.6 FCC will connect the Customer to the appropriate tariffs as set out in the Appendix A to this Agreement. The Customer should check their first bill carefully as any mistakes as on the second bill date will be the Customers' responsibility.

- 3.7 Where a Customer is porting a number the Customer acknowledges that with certain networks and service operators that the new phone and SIM cards will be sent out 'live' and connected to a temporary number. Where this is the case the Customer will be charged line rental and/or call charges from the date of connection of the temporary number. The Customer will be responsible for paying these charges.
- 3.8 Where appropriate we will charge £25 for postage, packing and processing. This is non-refundable and will still be chargeable in the event the Service Operator does not allow the Customer to connect due to poor credit.
- 3.6 FCC shall be entitled, at its absolute discretion to transfer the Customer to another Service Operator, provided this incurs no additional costs to the Customer. Wherever practicable, fourteen (14) days written notice shall be given of such changes prior to the changes being made.
- 3.7 The Customer recognises and acknowledges that the Services depend on the availability of the Systems, which may from time to time, by their very nature, be adversely affected by physical features, atmospheric conditions, and other causes of interference may fail or require maintenance without notice.
- 3.8 The Services are provided with a Bar on premium rate and international calls made whilst in the UK and overseas unless the Customer has requested FCC to enable these calls. If enabled, the Customer should be aware that they will be charged for calls received whilst abroad (including voicemail) and that calls made and received whilst overseas may be charged in 30 or 60 second increments at rates set by the overseas network(s) together with any additional handling & network charges Premium rate calls can be charged at rates over £1.57pence per minute. Any such calls/text/data are not included in any bundle of inclusive calls/text/data which may form part of the tariff and billing delays of up to six months may occur for these charges and may be subject to an on advance deposit as requested from time to time.
- 3.9 FCC shall bear no liability to the Customer whatsoever in connection with any Service provided by an overseas network, third party or premium rate provider.
- 3.10 If the Customer requests a new Connection or Upgrade, any Tariff changes will be subject to availability and a minimum spend at the relevant time.
- 3.11 Portability and Migration requests of mobile numbers made during the minimum contract term does not relieve the Customer from contractual obligations to pay any Early Termination Charges due under this Agreement, and in relation to the remainder of the contract term, following termination.
- 3.12 The Customer is responsible for any services and their associated costs that may be accessed via the Service Operator or FCC and the terms and conditions that relate to those services.
- 3.13 FCC accepts no responsibility or liability if the Service Operator's network does not meet the Customers' expectations in any way.
- 3.14 FCC accepts no responsibility for equipment already owned by the Customer, even where FCC provide third party supplier SIMs to enable the Customer to use their existing equipment.

4 Claw back and cash incentives

- 4.1 FCC will be paid commission (initially and on an ongoing basis) by the Service Operator for introducing the Customer and other customers to it. Such commission may be clawed back in certain

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circumstances due to the act or omission of the Customer, including if the airtime service agreement with the Service Operator is terminated, or if tariffs are amended by the Service Operator. The Customer shall indemnify FCC against any such claw back and immediately on demand pay to FCC an amount equivalent to that clawed-back.

- 4.2 Where it is agreed that FCC shall pay to the Customer a cash incentive inducement or subsidy for entering into the Services such terms will be dealt with in accordance the Cash Incentive Schedule.
- 4.3 Payment of any cash incentive shall only be due to the Customer where the Services have not been terminated before the end of the minimum term of this Agreement.
- 4.4 Any cash incentives or subsidies due under this Clause 4 that have not been claimed by the Customer within 14 days from the end of the minimum term of this Agreement shall become null and void.

5 Customer Apparatus

- 5.1 Where Customer Apparatus is provided to the Customer by FCC, then notwithstanding delivery and acceptance of the Customer Apparatus, title in the Customer Apparatus shall not pass to the Customer until completion of the contract, including any notice period. If the contract is terminated before the Minimum Term is completed, for whatever reason, the Customer Apparatus remains the property of FCC.
- 5.2 In the event this Agreement is terminated before the completion of the Minimum Term as required in clause 2, FCC reserves the right to request the safe return of such Customer Apparatus undamaged and in good repair (except for reasonable wear and tear) from the Customer to FCC at the Customer's expense. Failure to comply with such request shall incur a full replacement charge plus VAT as quoted in FCC's published SIM free price list for any mobile device, data-card or modem, of up to £300 + VAT, unless the equipment is a BlackBerry, PDA or Smart phone, in which case the charge is higher. The replacement charge for a BlackBerry, PDA or Smart phone will be dependent on make, model and memory size. There will also be a charge for any SIM card of £15.00 + VAT.
- 5.3 Equipment to be returned under clause 5.2 must be returned to FCC, within 14 days of any disconnection, porting or migration.
- 5.4 Risk of damage to or loss of the Customer Apparatus shall pass to the Customer upon receipt of the Customer Apparatus by the Customer.
- 5.5 Should the Customer's desired equipment be unavailable for whatever reason FCC reserves the right to substitute the equipment for something comparable of equal or greater value. FCC will normally hold the Customer's order until the desired equipment is available. Should the Customer require quicker delivery FCC will exercise its right to substitute. FCC will not be held liable for any perceived loss due to delivery times. FCC do not guarantee any specific colour of phone stated on the order but will endeavour to provide the colour requested. FCC will fulfil the order immediately upon a specific model becoming available rather than wait on colour.
- 5.6 The Customer shall be liable for the repair of Customer Equipment connected under this Agreement which becomes faulty or damaged and is outside the manufacturer's warranty. All Customer obligations under this Agreement shall remain in force during any period where Customer Equipment is undergoing repair.
- 5.7 All SIM Cards supplied to the Customer, for use on the Service Operators Systems, shall at all times remain the property of the Service Operator, and shall be returned to FCC upon termination of the Agreement. Failure to return any SIM card shall incur a charge of £15.00 + VAT for each card.
- 5.8 FCC shall not be liable for any loss or costs suffered by the Customer:

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- 5.8.1 following any loss by the Customer of Customer Apparatus and/or unlawful use thereof by a third party; or
- 5.8.2 resulting from loss of network service or other network issues (including the porting of numbers).
- 5.9 The Customer shall be liable for the costs incurred by FCC of obtaining PAC, MAC or similar codes required for the transfer of the Services.
- 5.10 Where a specific time and date for installation of a car kit is arranged and the Customer is unavailable for whatever reason and the Customer does not notify FCC 48 hours beforehand FCC shall charge the Customer to a cancellation charge of £85.00 plus VAT per arranged installation.
- 5.11 A car kit standard installation is qualified as a Bluetooth kit installation but not including a dedicated power supply, dash mount or a tele/mute switch unless specified.
- 5.12 Where FCC supply and arrange installation of car kits this is done on behalf of the Customer. If a fault develops with this equipment the warranty given or implied is limited to the manufacturer's warranty. If there is a fault with the installation the warranty is limited to that supplied by the installer. FCC accept no responsibility for the product or installation. Our service is limited to ordering the equipment and arranging installation on your behalf.

6 Credit Account

- 6.1 An account will be opened and a credit limit inclusive of VAT will be notified to the Customer and this credit limit should not be exceeded. Any increase in the credit limit must be requested in writing and will be subject to approval by FCC, which may entail further credit checks. FCC cannot accept responsibility for Customer overspends due to any reason including but not limited to billing cycles or delays in the availability of call data. Customers who anticipate exceeding their credit limit should contact FCC to avoid the Services being suspended.
- 6.2 Credit limits are subject to periodic review at FCC's discretion. FCC may require that a deposit be placed with FCC in cases where the Customer incurs monthly charges in excess of the credit limit and the Customer authorises FCC to debit their credit card, where details provided, at FCC's discretion for this excess amount overdue, or any amount over the credit limit set. Where the Customer refuses to make payment or the credit card debit is refused, FCC shall be entitled to suspend all or any of the Services until payment of the excess amount is made in full.

7 Payment

- 7.1 Unless otherwise agreed in writing by FCC, the Customer agrees to pay all of FCC's charges monthly by Direct Debit, the first payment to be made at the discretion of FCC within 30 days of the start of the provision of the Services and in accordance with the applicable tariffs.
- 7.2 The monthly direct debit will be paid on the Payment Date.
- 7.3 Charges the Customer will pay include any agreed initial charges, the monthly access charge any other fixed monthly charges (as detailed in Appendix A), and all call charges (used in excess of any call charges that may be comprised in the minimum airtime charge but without rebate for any unused element of call charges in such Charge) including charges incurred from other networks, virtual networks, premium rate and overseas cellular and network operators (without discount) and also any handling charges set out in the schedule of tariffs, monthly in arrears, on or before the Payment Date. UK calls are billed per second and rounded up to the nearest penny. The networks may apply a minimum call charge, details of which can be found in the tariff terms and conditions on their websites.

- 7.4 FCC may at its discretion allow the Customer to make payment by such other method on or prior to the Payment Date. The acceptance of payment by any method other than Direct Debit by FCC may incur a monthly administration fee of £3.00 + VAT. All payments other than by Direct Debit must be received within fourteen (14) days of FCC's invoice date.
- 7.5 The Customer will pay the cost of any subsequent reconnection made necessary by suspension of the Services carried out by FCC due to non-payment. Such payment must be made prior to reconnection of the Services.
- 7.6 The Customer may be required to pay a fee of £20.00 + VAT per incident for cancelled, dishonoured or failed Direct Debits or cheques.
- 7.7 Any sums due to FCC from the Customer which are unpaid for more than fourteen (14) days after the Payment Date shall bear interest at the rate of three per cent (3%) above the base rate of Lloyds Bank PLC calculated from the date payment was due to the date of actual payment becoming cleared funds.
- 7.8 Value Added Tax (VAT) and other taxes from time to time in force where appropriate shall be payable on all Charges referred to under this Clause 7.
- 7.9 The Customer will promptly advise FCC in writing of any change of address or bank details.
- 7.10 The Customer authorises FCC to charge the Debit/Credit Card, where details provided, with an amount equal to the outstanding balance on the Customer's credit account, where the Customer has failed to pay FCC by the Payment Date.
- 7.11 The Customer authorises FCC to levy a service charge of three percent (3%) where FCC is debiting the Customer's credit card account with any outstanding balance.
- 7.12 The Customer is solely responsible for the Customer Apparatus and/or SIM Card and shall remain liable for all call charges including any incurred during a period of theft, damage or loss until such theft, damage or loss is reported to the Service Operator and FCC, and will remain liable for the monthly access charge until the Agreement has ended.
- 7.13 FCC will only consider billing queries from the Customer if made within twenty-eight (28) days of the date of invoice. Raising such queries does not relieve the Customer of the obligation to pay all invoices in full when due without deduction or set off, but if an amount is subsequently found to be not payable, FCC shall agree to refund the Customer for the overpaid charges.
- 7.14 With effect from 01 April each year, FCC will increase the Access Fee. Such increase will be in line with the Retail Price Index rate published in January of the relevant year. The rate increase will be published on FCC's website and FCC shall provide the Customer with not less than 30 Business Days' notice in writing of the proposed increase.
- 7.15 The Customer agrees to give FCC access to third party suppliers billing portal, by means of providing relevant credentials, for FCC to obtain raw usage data for each billing period.

8 Public Emergency Calls

- 8.1 No charge will be made for emergency calls similar to British Telecom's 999 service made on the Customer Apparatus.

9 Customer Obligations

- 9.1 The Customer acknowledges that the System is operated under license and by agreement with the Service Operators and that the provisions of the said licenses and agreements apply to the use of the Service. The Customer hereby undertakes:
- 9.1.1 Not to use or permit the use of the System for any unlawful, immoral or improper purpose including the use of unlawful GSM SIM gateways or any purpose not recommended by the equipment manufacturer or the Service Operators or FCC;
 - 9.1.2 To comply with any reasonable instructions issued by FCC relating to the System, the equipment or the Service and to use only the Customer Apparatus approved by the Service Operators and the British Approvals Board of Telecommunications;
 - 9.1.3 Not to reverse, or permit anyone else to reverse, the charges on any telephone call;
 - 9.1.4 Not to act, or omit to act, in any way which may injure or damage any persons, property or the System or cause the quality of the Service to be impaired;
 - 9.1.5 Not to directly or indirectly be involved, or knowingly, recklessly or negligently permit any other person to be involved, in any fraud, illegal or immoral activity and shall notify FCC immediately upon becoming aware of any such activity;
 - 9.1.6 Not to contravene the Act or any other relevant regulations or licence; and
 - 9.1.7 Not to allow any unauthorised access to the Customer Apparatus or the Services.
- 9.2 Should FCC incur additional claims, damages, losses (including loss of profit, other economic loss or legal fees) due to the Customer's breach of this Agreement the Customer could be liable for these.
- 9.3 The Customer will promptly advise the Service Operator and FCC, by phone and in writing in the event of loss or theft of the Customer Apparatus and/or the SIM Card.
- 9.4 The tariff chosen at the acceptance of this Agreement will remain the minimum tariff selected for the initial contract term and the terms and conditions of the selected tariff apply.
- 9.5 The rates/tariffs/equipment subsidies that FCC makes available to the Customer are subject to the length of contract chosen and its terms and are based upon the predicted or anticipated revenue over the contract term including notice period. The Customer is therefore expected to honour the contract, revenue and its terms. In the event that the Customer fails to do so, FCC reserves the right to invoice the predicted or anticipated revenue, at full retail price without discount, over the full contract term including notice period and to recover any benefits received and losses incurred, and should the contract not proceed to full term a cancellation charge will be incurred.
- 9.6 The Customer acknowledges that FCC will accept, and act on behalf of, any instruction received from the Customer, and accept and act on behalf of any additional orders, regardless of authority and/or position, unless otherwise pre-advised to FCC in writing with the Customer's bespoke ordering procedures.
- 10 Limitation of Liability**
- 10.1 Nothing in this Agreement shall limit or restrict or be deemed or construed so as to limit or restrict the liability of FCC or the Customer for death or personal injury to any person caused by its negligence.
- 10.2 Subject always to the provisions of Clause 10.1 above, the total liability hereunder of FCC in contract, tort or otherwise (including negligence) shall, in respect of all claims under this Agreement, not exceed the total amounts paid to FCC by the Customer under this Agreement for the 12 months immediately prior to the period in which the claim or claims are made, or £5,000 whichever is the lower amount.

- 10.3 Subject to the provisions of clause 10.1 (above), FCC shall not be liable hereunder, in contract, tort or otherwise (including negligence) for any indirect or consequential losses whatsoever or otherwise howsoever arising including without limitation, loss of profits, revenues, business, contracts, anticipated savings or any other indirect or consequential losses whatsoever and in this Clause 10.3, "anticipated savings" means any saving that the Customer anticipated making as a consequence (whether directly or indirectly) of entering into this Agreement.
- 10.4 Where the Customer deals as a consumer, nothing in this Agreement shall affect the Customer's statutory rights.

11 Suspension and Termination of the Service

11.1 FCC may, without notice or liability on its part (notwithstanding the remaining provisions of this clause and at its absolute discretion), suspend, disconnect or terminate with immediate effect the Service in any of the following circumstances:

- 11.1.1 the Customer fails to comply with any of the terms contained herein;
- 11.1.2 the Customer does, or allows to be done, anything which in the Service Operator's or FCC's reasonable opinion may have the effect of jeopardising the operation of the Service;
- 11.1.3 the Customer permits the use of the Service or uses the Service for illegal purposes including the use of illegal GSM SIM Gateways (or the Service Operator or FCC believes the same), FCC, without any liability whatsoever, reserves the right at its absolute discretion to immediately suspend the Service. In such a case the Customer will be charged during the month in which such suspension of Service takes place at the FCC RRP Business Tariff rate, no bundled minutes being applied during that month. For the remainder of the contract term the Customer will be liable for the tariff initially agreed at full retail price without discount, subject to Clause 9.5 above; or
- 11.1.4 in FCC's or the Service Operator's absolute discretion, the call charges incurred in any given period show unreasonable or excessive usage of services or unusual calling patterns such as a disproportionate percentage of incoming calls or zero usage per number of 10 minutes or less of outbound voice calls or charges including data of less than £1.00 per month, or cause network congestion;
- 11.1.5 If FCC is unable, for whatever reason, to provide the Service or if FCC is required to terminate this Agreement by a competent regulatory authority and/or Service Operator; or
- 11.1.6 If the Customer exceeds the credit limits set (as per clause 6.2 above).

11.2 Should FCC elect to disconnect and/or reconnect the Customer Apparatus from or to the System pursuant to Clause 11.1 above, then FCC having regard to the circumstances at the time of disconnection or reconnection may elect to charge a fee of up to £30.00 + VAT for such disconnection or reconnection.

11.3 Should FCC elect to Bar and/or unbar the equipment from the System pursuant to Clause 11.1 above, FCC may, in its absolute discretion, charge an unbarring fee of up to £25.00 + VAT for such barring or unbarring.

11.4 Either party may, without prejudice to its other rights and remedies, by notice in writing to the other party, immediately terminate this Agreement if the other:

- 11.4.1 is in material or persistent breach of any of its obligations under this Agreement and if that breach is capable of remedy and the other has failed to remedy that breach within 7 days after receiving written notice requiring it to remedy that breach; or
- 11.4.2 is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) or becomes insolvent or an order is made or a resolution passed for the administration, winding-up or dissolution of the other (otherwise than for the purposes of a solvent

amalgamation or reconstruction) or an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or any substantial part of the assets of the other or the other enters into or proposes any composition or arrangement with its creditors generally or any analogous event occurs in any applicable jurisdiction.

- 11.5 FCC may without prejudice to its other rights and remedies, by notice in writing to Customer, immediately terminate this Agreement if the Customer fails to pay any sum due under the terms of this Agreement and such sum remains unpaid for 14 days after written notice from FCC that such sum has not been paid.
- 11.6 In the event of termination of this Agreement for any reason:
- 11.6.1 the Customer will immediately pay all monies then outstanding including, where applicable any additional charges levied in accordance Clause 2.2 and Clause 9.5;
 - 11.6.2 all losses suffered by FCC by way of third party claw-back where such claw back is due to the breach by the Customer of this Agreement or any Service Operator's terms and conditions;
 - 11.6.3 the Customer will immediately cease use of the Services;
 - 11.6.4 the Customer will return any Services Equipment where applicable in accordance with Clause 5.2;
 - 11.6.5 FCC will be entitled to recover from the Customer any charges incurred by FCC as a result of third party termination or disconnection costs, as applicable;
 - 11.6.6 each party shall within *seven* days of such termination return (or, at the other party's option, destroy) all the other party's Confidential Information in its possession or under its control and all copies of such information.
 - 11.6.7 the accrued rights and liabilities of the parties will not be affected; and
 - 11.6.8 clauses which expressly or by implication are to survive termination will do so.
- 11.7 In the event of termination of this Agreement and the Customer has paid a deposit, FCC will only return any surplus to the Customer after deduction of all unpaid charges. Any request for repayment must be made in writing.
- 11.8 After disconnection, suspension or barring of the equipment from the System and/or consequent upon the termination of this Agreement, the Customer shall pay on demand all Charges outstanding at the time of disconnection, suspension or barring including any reasonable disconnection or barring fee that FCC may wish to charge in its sole discretion.
- 11.9 The Customer will pay any costs, including legal fees, reasonably incurred by FCC on collecting any payments due.
- 11.10 Should termination take place part way through a month, no credit will be given for the post termination part of the month's access charge(s).
- 11.11 The Customer will remain liable for all call charges incurred prior to termination regardless of when they are invoiced.

11.12 Termination, porting, or migration of mobile numbers is subject to a charge of £30.00 + VAT per number.

11.13 If the Customer is unable to use all of the Services for a continuous period of more than three days due to any technical failure (including power cuts, improvement, modification or maintenance of the Service or the Systems) and if the Service Operator offers this to FCC, on application the Customer may receive a credit for their line rental which will represent that part of the line rental for the period of suspension.

12 Force Majeure

12.1 A party will not be liable if delayed in or prevented from performing its obligations hereunder due to Force Majeure, provided that it promptly notifies the other of the Force Majeure event and its expected duration, and uses reasonable endeavours to minimise the effects of that event.

12.2 If, due to Force Majeure, a party is unable to perform a material obligation, or is delayed in or prevented from performing its obligations for a continuous period of more than 90 days, the other party may, within a further ten days terminate this Agreement on notice, otherwise this Agreement shall continue in full force and effect.

13 Assignment

13.1 FCC may freely assign, delegate, sub-contract or otherwise transfer its rights and obligations under this Agreement or to any company with which it may merge or to any company to which it may transfer its assets and undertaking, provided that it gives prior written notice to the Customer. The Customer may not assign, subcontract or encumber any right or obligation under this Agreement without the prior written consent of FCC (such consent not to be unreasonably withheld or delayed).

14 Variation

14.1 FCC shall be entitled, from time to time and at its absolute discretion, to:

14.1.1 make such variations to the tariff as it deems appropriate, so long as such changes are not disadvantageous to the Customer;

14.1.2 make such modifications to the Service and make, or agree to, such changes to the System as it may reasonably consider necessary. Wherever practicable, fourteen (14) days written notice shall be given of such changes prior to the changes being made;

14.1.3 make such alterations to this Agreement and its terms and conditions as the Service Operators may reasonably require FCC to make or as are necessary as a result of changes to FCC's license from the Service Operators or otherwise as a consequence of any regulatory or legal requirement.

15 Data Processing Schedule

15.1 Each party shall comply with its respective obligations, and may exercise its respective rights and remedies, under the Data Processing Schedule.

16 Confidential Information

16.1 Each party shall maintain the confidentiality of the other party's Confidential Information and shall not without the prior written consent of the other use, disclose, copy or modify the other party's Confidential Information (or permit others to do so) other than as necessary for the performance of its rights and obligations under this Agreement.

16.2 Each party undertakes to:

16.2.1 disclose the other party's Confidential Information only to those of its officers, employees, agents and contractors (including FCC personnel) to whom and to the extent to

which such disclosure is necessary for the purposes contemplated under this Agreement;
and

- 16.2.2 to procure that such persons are made aware of and agree in writing to observe the obligations in this clause.
- 16.3 Each party shall give notice to the other of any unauthorised misuse, disclosure, theft or loss of the other party's Confidential Information immediately upon becoming aware of the same.
- 16.4 The provisions of this clause shall not apply to information which:
 - 16.4.1 is or comes into the public domain through no fault of the recipient, its officers, employees, agents or contractors;
 - 16.4.2 is lawfully received by the recipient from a third party free of any obligation of confidence at the time of its disclosure;
 - 16.4.3 is independently developed by the recipient, without access to or use of such information; or
 - 16.4.4 is required by law, by court or governmental or regulatory order to be disclosed provided that the relevant party, where possible, notifies the other party at the earliest opportunity before making any disclosure.
- 16.5 The obligations under this clause shall survive the variation, expiry or termination of this Agreement for a period of five years thereafter.

17 Notices

- 17.1 Notices under this Agreement must be in writing and sent to the other party's registered office (or such other applicable address for service agreed by the parties from time to time in writing). Notices may be given, and will be deemed received if correctly addressed:
 - 17.1.1 by first-class post: two Business Days after posting;
 - 17.1.2 by airmail: seven Business Days after posting;
 - 17.1.3 by hand: on delivery;
 - 17.1.4 by facsimile: on receipt of a successful transmission report from the correct number, and
 - 17.1.5 by email: on receipt of a read return mail from the correct address within 24 hours from delivery if no notice of delivery failure is received.

18 Miscellaneous

- 18.1 Additional services may be added to this Agreement subject to the Customer's written confirmation and acceptance by FCC.
- 18.2 The Customer shall not obtain any Intellectual Property Rights in relation to the System, the Service or the Customer Apparatus as a result of this Agreement or the use of the System, Service or Customer Apparatus.
- 18.3 Where there is a conflict between this Agreement and any other terms and/or conditions mentioned in or printed on any correspondence exchanged between the parties, this Agreement shall prevail unless expressly agreed otherwise and in writing.
- 18.4 If any clause in this Agreement (or part thereof) is or becomes illegal, invalid or unenforceable under applicable law, but would be legal, valid and enforceable if the clause or some part of it was deleted

or modified (or the duration of the relevant clause reduced), the relevant clause (or part thereof) will apply with such deletion or modification as may be required to make it legal, valid and enforceable, and the parties will promptly and in good faith seek to negotiate a replacement provision consistent with the original intent of this Agreement as soon as possible.

- 18.5 Unless otherwise expressly agreed, no delay, act or omission by either party in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy.
- 18.6 All payments under this Agreement will be made without set-off or counterclaim, free and clear of and without deduction of any taxes, levies, duties, charges and withholdings of any kind now or in future imposed in any jurisdiction.
- 18.7 Each party will, at its own cost, do all further acts and execute all further documents necessary to give effect to this Agreement.
- 18.8 Except for the payments specifically agreed in this Agreement, each party is responsible for its legal and other costs in relation to the preparation and performance of this Agreement.
- 18.9 Provisions which by their terms or intent are to survive termination of this Agreement will do so.
- 18.10 The parties are independent businesses and not partners, principal and agent, or employer and employee, or in any other relationship of trust to each other.
- 18.11 For the purposes of the Contracts (Rights of Third Parties) Act 1999, this Agreement is not intended to and does not give any person who is not a party to it any right to enforce any of its provisions. However, this does not affect any rights or remedy of such a person that exists or is available apart from that Act.
- 18.12 This Agreement and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 18.13 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this Agreement, its subject matter or formation (including non-contractual disputes or claims).

UK Out of Bundle Rates

	Call Destination	Pence Per Minute
	Calls to other mobiles	N/A - Inclusive
	Calls to UK landlines	N/A - Inclusive
	Calls to any Channel Islands and Isle of Man mobile and landline (starting 01481, 01534, or 01624)	30.00p
	Standard UK text message	N/A - Inclusive
	International Text Message	80.00p
	Standard UK picture message	64.18p
	Standard video message	64.18p
	Call Return (Voicemail Feature)	64.18p
	Video calling to any Vodafone UK mobile	64.18p
	Video calling to other UK mobile networks	64.18p
	Video call to international mobile networks	64.18p
	Call Return – Vodafone (up to 3600 seconds)	00.00p
	Call Return – Vodafone (over 3600 seconds)	64.18p
	Call Return – Vodafone (up to 3600 seconds)	64.18p
	Call Return – Vodafone (up to 3600 seconds)	64.18p
*	0843, 0844, 0871 or 0872 numbers	80.00p
*	0800, 0808 or 0500 numbers	80.00p
*	0845 or 0870 numbers	80.00p
	Radiopaging services (starting 076)	80.00p
	Personal numbering services (starting 070)	80.00p
	Call forwarding services (e.g. 07744, 07755)	80.00p
	Premium rate numbers (starting 09)	From 62.50p
	Call to Directory numbers (118)	From 72.00p

*Please note that the price displayed is only a part cost of the call known as an Access Charge, there is also a provider’s Service Charge which is variable dependent on the service. Please refer to provider for details.

International calls (calls made from the UK to destinations outside the UK)

	Call Destination	Pence Per Minute
	Europe	125.00p
	North USA/Canada	167.00p
	Rest of the World	250.00p

UK Data

	Data Usage	PPMB
	Browsing mobile internet and data usage	4.0p per MB
	Data usage for mobile broadband only	4.0p per MB

FCC World Roaming Rates (mobile phones only)

	Making Calls (In Country, In Zone & UK)	Receiving Calls	Sending Texts	Sending Picture Messages
Europe Zone 1*	0.00p per minute	0.0p per minute	0.0p per text	45.00p per picture message

Mobile Service Agreement & Pricing Schedule

Europe Zone 2*	0.00p per minute	0.00p Per minute	0.00p Per text	50.00p per Picture message
Rest of the World Zone 1	£1.65 per minute	£1.30 Per minute	80p Per text plus your UK text message rate	
Rest of the World Zone 2	£1.65 per minute	£1.30 Per minute		
Rest of the World Zone 3	£2.00 per minute	£1.30 Per minute	80p Per text plus your UK text message rate	
Rest of the World Zone 4	£2.00 per minute	£1.30 Per minute		

*Calls made from Europe Zone 1 to Europe Zone 2 and vice versa are chargeable at £2.50 per minute.

Roaming Data (mobile phone only) Out of Bundle

	Data Usage	Pence per MB*
	Roamed Data Per MB in EU Regulated (Zone 1)	4.00p per MB
	Roamed Data Per MB in EU Unregulated (Zone 2)	45.90p per MB
	Roamed Data ROW Zone 1	18.00 per MB
	Roamed Data ROW Zone 2	90.00 per MB
	Roamed Data ROW Zone 3	270.00 per MB
	Roamed Data ROW Zone 4	1080.00 per MB

International Call Saver at £5.00 Extra per user -Optional

Included/ Excluded	Call Destination	Cost Per Minute
	Discounted Calls to the EU	36.00p
	Discounted Calls to the USA & Canada	36.00p
	Discounted Calls to UAE	55.00p
	Discounted Calls to the Rest of the World	55.00p

World Traveller Select

Included/ Excluded	Call Destination	Cost
	World Traveller Select**	500.00p per day

**Included as standard at no extra monthly charge. FCC WorldTraveller Select gives you the freedom to use your UK minutes, texts and data in our WorldTraveller Zone for £5 extra a day (midnight to midnight, starting time is based upon the capital of the country you are visiting).

Claw- back

1. FCC will claw-back from the Customer any cash back or buyout payments already made or agreed to be made to the Customer if within the minimum contract period identified in Clause 2 of this Agreement the Customer for whatever reason:
 - a. terminates the Agreement;
 - b. is disconnected by the Service Operator for any reason including default by the Customer, their employees or agents;
 - c. disconnects before their 14 day cooling off period (Consumers Only);
 - d. payment to a Service Operator is required by direct debit and such direct debit is altered or cancelled without the written agreement of the Service Operator;
 - e. cancels any additional services to which the Customer has agreed to subscribe including but not limited to itemised billing and insurance products;
 - f. obligations under this agreement are bought out, assigned or transferred in any way to another provider with an intention that this provider provides an alternative service to the Customer.
 - g. does not use the supplied handsets and/or SIM cards to mark at least one chargeable call per mobile number within 21 days of delivery and at least one every month per mobile number for the duration of the contract.

Eligibility

2. To be eligible for any cash-back or buyout payment the Customer must:
 - a. Be accepted by Service Operator for the supply of Services;
 - b. Entered into this Agreement for the minimum term; and
 - c. Shall provide at least one month's notice to the Service Operator to terminate any airtime service; and
 - d. Agree to be bound by the terms and conditions of the airtime of FCC's Service Operator.
3. Customers registered in the United Kingdom for the purposes of VAT shall provide an official VAT invoice to FCC for the agreed value of cash-back and/or buyout.
4. Upon approval and acceptance by FCC of the Customers claim for cash-back and/or buyout payment will be made within 120 days from the completion requirements being met with the agreed Service Operator and where such completion requirements have not been met FCC shall have absolute discretion to make payments at such reduced rate as to fairly reflect the part fulfilment or other change of the completion requirements

Warranties and Indemnities

5. FCC accepts no tax liability incurred by any individual or business in relation to this offer.
6. The Customer agrees that where they are approached within the minimum contract period of the airtime contract by another mobile telecom provider with an offer for the provision of an alternative service which they are considering accepting then the Customer shall provide FCC with details of such offer and give FCC an opportunity to make to the Customer an alternative offer to that of the provider here referred to.
7. FCC may advise the Customer on what FCC believe to be the cheapest way to terminate their existing agreement with their current supplier but it is the Customer's responsibility to make enquiries with their supplier as to the actual cost of termination and FCC shall not be liable for any costs whatsoever arising from the giving of such advice.
8. Where FCC agree to make a buyout payment, such payment shall be based upon FCC's estimate of the cheapest option available and FCC shall not be liable for costs incurred by the Customer where the Customer's existing supplier places on the customer costs of financial penalties more onerous than those which FCC have agreed to make as a buyout payment.
9. No agent of FCC has any authority to act on behalf of the Customer in relation to the termination of any existing contract or obtaining of PAC's unless otherwise agreed with the full written authority of the customer

General

10. Where the commercial arrangement invoices for you returning existing equipment to FCC you agree that this will be done by you sending this equipment to the current trading address of FCC within 14 days of your new connections becoming live and at your cost. Failure to comply with this will result in forfeiture of any cash back and buyout amounts if applicable and will not exonerate you from returning the equipment specified to FCC. You may choose where the equipment is a mobile phone or phones to substitute each item with the sum of £95.00 plus VAT and this is the amount you agree to pay if you are unable or refuse to return this equipment within 7 days of us applying in writing for its return.
11. When a tariff is selected that provides a specific promotion, should the third-party supplier decide that you do not qualify for that promotion or if the promotion is withdrawn before connection due to delay for any reason, for example stock availability the FCC will not be held responsible for any perceived loss.
12. Should the customer not use each supplied SIM card then FCC will claim the full cost of any subsidised equipment or the difference in price plus postage, packing and processing at £25.00 plus VAT. The customer agrees to pay FCC this money within 7 days of being invoiced.
13. In line with recent changes around Roam Like At Home legislation, we are introducing a new FUP (Fair Usage Policy) to ensure end user allowances are being used for purpose whilst roaming. Inclusive roaming services on FCC's mobile tariffs have been built for business users who travel periodically, and not those who roam across foreign networks on a semi-permanent or permanent basis. If a customer uses their mobile in destinations outside the UK that qualify for inclusive access to standard bundles (this includes those countries that qualify for daily roaming services such as World Travel Select and/or legislation such as Roam Like At Home), for more than 50% of the time in any four-month rolling period, they can expect to receive a communication requesting a moderation of roaming services.

If a customer's usage continues to exceed 50% as described above over the two-week period following the first notification, FCC reserves the right to either charge customers for this excessive usage or bar roaming services. Customers will be notified before any action is taken.

Annual Price Increase

14. All Your Charges (including the Price Plan Charge) include an annual price increase (rounded up to the nearest whole pence), which will be calculated by multiplying the Charges individually by a percentage comprised of (i) the Consumer Price Index (CPI) rate figure published by the Office for National Statistics in January of that year (ignoring any negative figure), plus (ii) 3.9%. The increase will take effect on bills dated on or after 31st March of each year and use the CPI figure published in January of that year. If the CPI figure is negative in the relevant year. We will only increase the Charges by 3.9%. The change to Your Charges as a result of this annual increase will not give You the right to terminate this Agreement without paying a Cancellation Charge.