

21st Century Network Solutions Ltd (21CNS) Airtime and Devices Contracts Terms and Conditions

1 DEFINITIONS

1.1 In this Contract: "Airtime"	means wireless airtime and network capacity procured from the Network.
"Airtime Account"	means a notional account set up by 21st Century Network Solutions Ltd to accrue credits owing to you from which Airtime can be purchased from 21st Century Network Solutions Ltd by you.
"AIT"	means Artificially Inflated Traffic and occurs where the flow of calls to any particular revenue share service is, as a result of any activity on or on behalf of the party operating that revenue share service, disproportionate to the flow of calls which would be expected from good faith commercial practice and usage of the Network.
"Associates"	means in relation to a party to this Contract (at the relevant time), any company which is a Subsidiary or a Holding Company or which is a Subsidiary of any such Holding Company from time to time (where "Subsidiary" and "Holding Company" have the meanings given in section 1159 and Schedule 6 of the Companies Act 2006).
"Call Charge"	means a charge for units of time costed at the rates set out in the Tariff.
"Charges"	means Call Charges, Connection Charges, Line Rental Charges and any other charges of any nature invoiced by 21st Century Network Solutions Ltd to you pursuant to this Contract.
"Committed Period"	means in respect of each item of Equipment or SIM Card supplied the Committed Period of twenty four (24) calendar months (or if different the number of calendar months specified in the contract document that you sign or agree over the telephone) for which the Contract will run commencing on the Connection Date.
"Committed Spend"	means the level of Spend (net of any discount) to which you commit over the Committed Period as specified in the contract document that you sign or agree over the telephone).
"Connection"	means the connection of the SIM Card to the Network.
"Connection Charge"	means the sum to be charged for connection to the Services set out in the Tariff.
"Connection Date"	means the date of the Connection.
"Contract"	means the terms and conditions in this document, the Other Legal Terms, together with the details set out in the contract document that you sign or agree over the telephone.
"Cooling Off Period"	means the period ten (10) Working Days from the Start Date of the Contract during which you may cancel this Contract in accordance with clause 3.1.
"Credit Limit"	means a monthly financial limit applied for Charges incurred under this Contract.
"Customer Services"	means the customer services facility provided by 21st Century Network Solutions Ltd for you to report any faults with the Services or make general or account enquiries, details of which are set out on the 21st Century Network Solutions Ltd
"Device"	means a wireless device, or Equipment incorporating a SIM Card.
"Equipment"	means any equipment used by you with a SIM Card, including for the avoidance of doubt any handset or any Mobile Phone or Device acquired from someone else and used for obtaining the Service from us by obtaining a SIM Card only.
"Equipment Account"	means a notional account set up by 21st Century Network Solutions Ltd to accrue credits owing to you from which Equipment can be purchased from 21st Century Network Solutions Ltd by you.
"Equipment Price"	means the standard replacement price for the Equipment as detailed on the Price List.
"GSM"	means the globally accepted standard for second generation digital cellular communication.
"GSM Gateway"	means a device containing one or more subscriber identity modules for one or more mobile networks, which enable calls from fixed phones to mobile networks to be routed directly via a GSM link into the relevant mobile network.
"Handset"	means the Mobile Phone and/or Device supplied to you by 21st Century Network Solutions Ltd. It does not include any mobile device acquired from someone else and used for obtaining the Service from us by obtaining a SIM Card only.
"Hardware Fund"	means a fixed credit amount as stated overleaf for the Committed Period or any Subsequent Contract Period (or, if different and if specifically stated overleaf, the fixed credit amount in respect of each Connection made under this Contract during the Committed Period or any Subsequent Contract Period).
"Invoice Date"	means the date appearing on any invoice raised by 21st Century Network Solutions Ltd.
"Line Rental Charges"	means the monthly subscription charge for your Tariff per SIM Card.
"Minimum Holding"	means the number of Connections to which you commit to hold over the Committed Period as specified overleaf.
"Mobile Phone"	means a cellular telephone and ancillary equipment (except the SIM Card).
"Network"	means any mobile telecommunications network made available from 21st Century Network Solutions Ltd or a Third Party Operator.
"Other Legal Terms"	means in addition to the terms set out in this document other terms and conditions that apply to your use of the Services and the Equipment and which are published on Our Website. If there is ever any inconsistency between the Other Legal Terms and the terms in this document, the Other Legal Terms will apply.
"21st Century Network Solutions Ltd"	means 21st Century Network Solutions Ltd or its lawful successors and assigns.
"21st Century Network Solutions Ltd Website"	means the website located at www.adaptivecomms.co.uk or such other website as may be notified by us.
"Porting Fee"	means the porting fee which may be charged in accordance with clause 13.7(a) below.
"Price List"	means a list of our current prices for Equipment which is available on request.
"Reconciliation Charge"	means the charge payable by you in accordance with clause 9.9 being 100% of the difference between the Committed Spend and your actual Spend.

"Services"	means the telecommunications Services provided by means of the Network.
"SIM Card"	means the card which you need to use the Services supplied to you by 21st Century Network Solutions Ltd.
"SMS"	means Short Messaging Service.
"Spend"	means the level of spend (net of discount) incurred by you.
"Start Date"	means the date upon which you either sign the contract documentation or if you have ordered the Service(s) over the telephone or via the internet, the date upon which you agree to the terms of the Contract.
"Subsequent Contract Period"	means successive periods each of 12 calendar months beginning on the expiry of the Committed Period.
"Tariff"	means the list of fixed access charges for monthly access and related services and calls which is available on the 21st Century Network Solutions Ltd Website.
"Tariff Review"	means a review which subject to clause 2.4 you can request 21st Century Network Solutions Ltd to carry out on your Tariff at any time after the third month following the Start Date.
"Term"	means the Committed Period and each Subsequent Contract Period.
"Termination Fee"	means (as applicable) the standard Line Rental Charges, Equipment Price, Reconciliation Charges and Porting Fee (as stated in the Price List as at the date of disconnection which are applicable to the Tariff to which the SIM Card was connected prior to disconnection) for the period from the date of disconnection of a SIM Card to the end of the Committed Period in respect of the SIM Card.
"Third Party Operator"	means the operator of any electronic communications network or service over which we provide our Services.
"Us" or "We"	means 21st Century Network Solutions Ltd.
"Working Day"	means any day other than a Saturday or Sunday or a bank holiday in England or Wales.
"You" or "Your"	means the customer named overleaf.

2 WHEN THIS CONTRACT BEGINS AND HOW LONG IT LASTS

- 2.1 Your obligations under this Contract will commence on the Start Date and will continue for the Term. Upon expiry of the Committed Period this Contract will automatically continue for the Subsequent Contract Period unless and until terminated under clause 11 or 13.
- 2.2 Our obligations under this Contract will commence on the Connection Date.
- 2.3 Any dates given in this Contract regarding our provision of the Services to you are estimates and are provided for planning purposes only. We will have no liability for any failure to meet any date as time is not of the essence in relation to our provision of the Services to you.
- 2.4 Where you request a Tariff Review and we agree to amend your Tariff, a new Committed Period will be deemed to start from the date upon which the Tariff is amended. Any charges arising as a result of us agreeing to amend your Tariff are set out in clause 9.9.

3 YOUR RIGHT TO CANCEL THE CONTRACT

- 3.1 If you have ordered the Services over the telephone or internet, you may cancel your Contract for the Services or any part of it during the Cooling Off Period.
- 3.2 If you want to cancel in accordance with clause 3.1, you must call Customer Services to confirm cancellation before the Cooling Off Period expires. We will then arrange for your Equipment to be collected and you must return all SIM Cards to the 21st Century Network Solutions Ltd, Customer Services, 11b Houghton Street, Southport, Merseyside, PR9 0NS. If you do not call our Customer Services to confirm your cancellation, we may not be able to process or return your cancellation and we may not be able to process any refund that you would otherwise have been entitled to.
- 3.3 If you cancel your Contract during the Cooling Off Period, you must pay any Charges that you or we have incurred including the costs of administration, of delivery and collection of your Equipment and additional items. If your Tariff had inclusive minutes and/or SMS messages, these will be charged at our normal rates, as per our Price List. We may send you a bill for any outstanding Charges up to 120 days after you cancel your Contract.
- 3.4 You will not be entitled to a refund unless your Equipment and any additional items are, when collected, in "as new" condition and in the original packaging. If you do not return the Equipment and any additional items in "as new" condition, we may charge you an additional fee to cover the actual cost that we must pay for the Equipment and additional items.
- 3.5 You do not have the right to return any Equipment and/or SIM Card outside of the Cooling Off Period. If you cancel otherwise than in accordance with clause 3.1 you must pay the Termination Fee.

4 WHAT SERVICES WE WILL PROVIDE TO YOU

- 4.1 Whilst we provide the Services to you, you authorise us to act on your behalf in all dealings with any Third Party Operator in connection with any matter that enables us to provide or to continue to provide you with the Services.
- 4.2 Calls to international, premium rate and other higher rate numbers are not barred from the Equipment and/or SIM Card and you will be responsible for the Charges in respect of calls to such numbers. You may request that we bar such numbers if you wish to do so.
- 4.3 We may select and at any time change any Third Party Operator, carrier or other service provider for the purposes of providing the Service(s), and you authorise us to give all notices, nominations and other authorisations that are necessary for us to provide, the Service(s) to you.
- 4.4 The Service(s) are provided for use by you in the course of your business and on the condition that you do not resell or otherwise make the Service(s) available to any other person.

5 CONNECTION TO THE NETWORK AND PROVISION OF THE SERVICES

- 5.1 Subject to these terms and conditions 21st Century Network Solutions Ltd will procure the Connection of the SIM Card to the Network and 21st Century Network Solutions Ltd will use its reasonable endeavours to make the Services available to you throughout the Term.
- 5.2 You recognise that the Services may from time to time be adversely affected by local geography, topography and/or atmospheric conditions and other causes of interference and may fail or require maintenance without notice. You further acknowledge that 21st Century Network Solutions Ltd shall have no liability for failure of the Service or the Equipment unless and to the extent caused by 21st Century Network Solutions Ltd's negligence or fraudulent misrepresentation.

6 WARRANTIES AND LIABILITY

- 6.1 Subject to the clauses set out below, if you buy new Handset(s) through us, each such Handset is sold with the benefit of and subject to the terms applicable to such warranty or guarantee as is given by the manufacturer of the Handset. Handset(s) that are not new are provided without any warranty or guarantee whatsoever.
- 6.2 If you wish to use Equipment acquired from someone else to receive any Services rather than that supplied by us, we cannot guarantee compatibility with the Services nor will we provide any ongoing support. We will have no liability for a failure to provide the Services resulting from use by you of such Equipment.
- 6.3 Handset(s) supplied by us will be at your risk immediately on delivery to your premises (or into custody on your behalf, if sooner) and should be insured accordingly. Delivery will be evidenced by signature by you or an authorised person. The Handset(s) will be deemed to have been checked and accepted by you on the date of such signature. You must inspect and inform us of any damaged or missing items within seven (7) days by telephoning Customer Services. You are responsible for ensuring that an authorised person is available to accept delivery. We are not responsible for any delay in performing the Services and reserve the right to charge carriage if an authorised signatory is not available, or you refuse to accept delivery of Handset(s). We accept no liability for any late delivery or deliveries that are lost in the post.
- 6.4 You may request an exchange or upgrade of any Handset within seven (7) days following delivery subject to (i) return to us of the original Handsets in their original packaging and unused, (ii) payment by you of the costs of delivery and (iii) payment of our standard charge.
- 6.5 Handset(s) will remain our property until paid for in full by you. Until such time as the ownership of the Handset(s) has passed to you, you will hold it on our behalf and keep it safe, insured and identified as our property and we will be entitled to ask you to return the Handset(s). During this time you will notify us immediately of any loss, theft or damage of any Handset.

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6.6 All SIM Cards supplied to you for use on the Network will at all times remain the property of the Third Party Operator and in the event of termination of the Contract must be returned to your Third Party Operator in good condition. You agree to notify the Third Party Operator immediately of any loss, theft or damage of to any SIM Card.

6.7 If it is necessary for a Third Party Operator to supply you with Equipment in order to access the Services then you agree that such Equipment will remain the sole property of that Third Party Operator and you will comply with all request and instructions of that Third Party Operator in relation to provision, installation, storage, maintenance and care of that Equipment.

6.8 You will comply with any reasonable instructions issued by us or the Third Party Operator which concern your use of the Services or SIM Card including, without limitation, any codes of conduct which apply in relation to the Equipment and Services (as amended from time to time).

6.9 You will ensure that the Equipment and any other equipment and/or hardware connected to or used with any Services is connected and used in accordance with any applicable instructions, safety or security procedures.

6.10 Other than as expressly provided in this Contract all warranties, conditions, terms, representations or other terms (whether express or implied by statute or common law or otherwise) as to the Services and the Equipment hereby excluded to the fullest extent permitted by law.

7 EVENTS OUTSIDE OUR REASONABLE CONTROL

7.1 Neither party shall be deemed in default or liable to the other for any delays or failure in performance or for any failure to comply with its obligations under this Contract (other than an obligation to pay moneys when due) arising from any cause beyond that party's reasonable control including (but not limited to) acts of God, theft, war or riot, civil disobedience, national emergency, strikes and other labour disputes, fire, flood, explosion, acts of terrorism, acts of government or other competent authority or acts of any electronic communications network or service provider, supplier, sub-contractor or other third party.

8 USE OF THE SERVICES

8.1 You undertake to 21st Century Network Solutions Ltd that throughout the Term you will and will take all reasonable steps to ensure that your employees will:

- provide 21st Century Network Solutions Ltd with such information as 21st Century Network Solutions Ltd reasonably request in connection with this Contract;
- notify 21st Century Network Solutions Ltd (or the relevant mobile operator) immediately (and to confirm in writing) on becoming aware that any Equipment or SIM Card has been lost or stolen or that any person is making improper or illegal use of any Equipment or SIM Card or that you will be responsible for any Charges incurred as a result of unauthorised use of any Equipment, or SIM Card, or the information contained within a SIM Card, until 21st Century Network Solutions Ltd has received a request from you to suspend the Services to that Equipment or SIM Card;
- pay the standard charges levied by 21st Century Network Solutions Ltd from time to time applicable to repair work on Equipment which is outside (in scope or time) warranty provided under this Contract;
- use the Equipment and any Software (including any End-User Licensed Software) in accordance with any user guide or other reasonable instruction of any manufacturer or supplier of the same or reasonable instruction of 21st Century Network Solutions Ltd and not to copy, reverse engineer or modify the Software or the End-User Licensed Software in any way save as permitted by law;
- generally observe the Wireless Telegraphy Acts 1949 to 1972, the Telecommunications Act 1984, the Communications Act 2003 and all other relevant legislation and statutory instruments ("**Relevant Legislation**") and comply with any directions made by any competent regulatory body, authority or officer;
- comply with any reasonable instructions issued by 21st Century Network Solutions Ltd which concern your use of the Services or SIM Card including, without limitation, any codes of conduct which apply in relation to the Equipment and Services (as amended from time to time) supplied under this Contract;
- only use Equipment under this Contract which is approved for use with the Network;
- only use the Services in good faith and not so as to artificially increase or create revenues for telecommunications services supplied by you or any person connected with it in any way; and notify 21st Century Network Solutions Ltd immediately of any loss, theft or damage of any Equipment or SIM Cards (and confirm such notification in writing within 48 hours).

8.2 You will not:

- use the SIM Card and/or Equipment and the Services for any purpose other than that for which it was designed or intended;
- use the Service in any way to generate AIT;
- without the prior written consent of 21st Century Network Solutions Ltd which may be withheld at 21st Century Network Solutions Ltd's absolute discretion, establish, install or use a GSM Gateway or any other device so that telecommunication services are provided via the GSM Gateway to third parties;
- use the Services in a manner which is inconsistent with a reasonable customer's good faith use of the Services or the 21st Century Network Solutions Ltd cellular telecommunications network;
- use the Services fraudulently or in connection with a criminal offence or for the purpose of sending unsolicited text messages or any material which is offensive, abusive, indecent, defamatory, obscene or menacing, a nuisance or a hoax or which breaches any person's intellectual property rights or rights of privacy or is otherwise unlawful;
- use the Services in any way which causes annoyance, inconvenience or needless anxiety as set out in the Communications Act 2003;
- use or allow others to use the Services for any improper immoral or unlawful purpose;
- act or omit to act in any way which may injure or damage any persons, property or the Network or howsoever cause the quality of the Services to be impaired;
- yourself nor authorise any other person to reverse engineer, decompile or modify the Equipment or SIM Card; and
- knowingly, recklessly or negligently act or omit to act in such a way that the operation of the Network may be jeopardised or impaired in 21st Century Network Solutions Ltd's reasonable opinion.

8.3 You agree that you are procuring the SIM Cards, Equipment and Services solely for your own use and furthermore that you will not resell or otherwise act as any form of distributor in respect of the SIM Card, the Equipment, or the Services.

8.4 You recognise that the Services may be dependent upon End-User Licensed Software and if you do not accept the licence terms relating to any End-User Licensed Software, 21st Century Network Solutions Ltd shall have no liability whatsoever for any failure to provide the Services to you where the Services depend on the use of End-User Licensed Software.

8.5 Where you accept the terms of a licence in respect of any End-User Licensed Software, then those licence terms shall take precedence over any terms within this Contract relating to End-User Licensed Software and shall exclusively comprise your sole rights and remedies in respect of such End-User Licensed Software.

8.6 The terms of this Contract shall also apply to any Orders placed by any Associate. You agree that you will be liable to 21st Century Network Solutions Ltd for: all claims, losses and expenses arising out of the breach of the terms of this Contract by any of your Associates (including but not limited to the non-payment by the Associate of Charges and Termination Fees, which you agree to pay in full within 30 days of notice from 21st Century Network Solutions Ltd of the amount outstanding) related to an Associate's use of the Services; ensuring that your Associates are aware of and comply with the terms of this Contract; and, all losses, costs and expenses resulting from any claims against 21st Century Network Solutions Ltd made by any of your Associates or any other third party whom you have permitted to use or procure the Equipment or the Services, to the extent that such claims exceed the financial caps and other limitations on liability as set out in this Contract.

8.7 If it is necessary for a Third Party Operator to supply you with Equipment and/or Hardware in order to access the Services then:

- such Equipment will remain the sole property of that Third Party Operator;
- you will not alter or modify in any way any Third Party Operator's equipment and/or hardware and you agree to indemnify us for any losses or damages which we may suffer or incur as a result of any loss or damage affecting the Third Party Operator's equipment and/or hardware unless any such loss or damage is caused by fair wear and tear.

8.8 You agree that the details that you provide to us on your Contract shall be true, accurate and complete. You agree that you will manage your account online and it is a condition of this Contract that you provide us with a current e-mail address for billing purposes and that you maintain this address and advise us promptly of any changes to it. It is your responsibility to verify that your mailbox is in proper working order and you must assume the risk of all consequences for errors in sending and receiving e-mail, unless caused by our negligence. If you fail or cease to manage your account online, we will be entitled to charge you a monthly administration fee for each month in which your account is not managed online.

8.9 Where you have agreed to a Committed Spend you must meet this obligation over the Committed Period.

8.10 Where you have any been provided any services with an unlimited tariff you agree that this is provided under the 21st Century Network Solutions Ltd unlimited calls and texts fair use policy and agree unconditionally to accept this policy in full.

9 HOW WE CHARGE

9.1 You will pay us the Charges. Charges will be payable with effect from the date that a Service or any part of a Service is first made available to you for commercial use. The basis upon how we Charge you for the Services is set out in the Tariff and the Price List.

9.2 All Charges shall be based upon call and billing data recorded by 21st Century Network Solutions Ltd. You acknowledge that roaming calls may take longer to be billed than other types of calls.

9.3 We may vary our Charges at any time by posting the resulting changes on the 21st Century Network Solutions Ltd Website or otherwise giving you notice. The revised Charges will apply to all Services provided after the effective date of the notice of change.

9.4 All Charges are stated exclusive of value added tax (VAT) or other applicable taxes. You will be responsible for paying VAT and other applicable taxes which will be included in our invoices at the applicable rate(s).

9.5 Subject to clause 9.6 and 9.7 ordinarily 21st Century Network Solutions Ltd will invoice on a monthly basis, where possible on the same date. 21st Century Network Solutions Ltd reserves the right to bill you for any late charges.

9.6 You will, subject to clause 9.10 and unless otherwise agreed, pay invoices within 14 days of the date of the invoice.

9.7 Payments will be by Direct Debit only. If a direct debit is dishonoured or cancelled we shall be entitled to pass on to you any administration fee which may include third party charges. We shall also be entitled to charge you a monthly administration fee for each month in which your direct debit is dishonoured or not reinstated following cancellation. Details of applicable fees are available on request. We may charge interest on all overdue amounts from time to time on a daily basis at a rate of 8% above the base rate of the Barclays Bank PLC, to run from the due date of payment until receipt by us of the full amount (including any accrued interest) whether before or after judgement in respect of the overdue amount.

9.8 Any invoices which are disputed must be done so within 3 months of the Invoice Date otherwise the invoices will be deemed to be correct. If you wish to dispute an invoice you must write to us and provide us with: (i) nature and reason for dispute, (ii) amount in dispute, (iii) any evidence to support the disputed amount.

9.9 If your Spend is less than the Committed Spend at the end of the Committed Period or Subsequent Contract Period, then we reserve the right to charge you the Reconciliation Charge

9.10 If at the time after the first three months from the Connection Date the number of Connections you hold is less than the Minimum Holding then we reserve the right to review and/or vary the Tariff, Hardware Fund, Price List or the terms thereof on written notice to you.

9.11 The Hardware Fund (where applicable) is offered on the following terms:

- We may vary the Hardware Fund or the terms of this clause 9.11 at any time by giving you notice. The variations will apply after the effective date of the notice of change.
- We reserve the right at any time during the Contract to withdraw the Hardware Fund including any remaining credit amount of the Hardware Fund and/or the right to any future credits against the Hardware Fund in respect of new Connections (if applicable).
- You may drawdown from the Hardware Fund by sending a Hardware order form (which are available through Customer Services) to us or by providing us with a pre-authorised (by a duly authorised representative) purchase order up to 123 days prior to the end of your contract after which the hardware fund will be withdrawn.
- On receipt of an order in accordance with clause 9.11 (c) above, the value of the order will be offset against the Hardware Fund (where applicable) and any amount over and above the available Hardware Fund shall be treated as a Charge payable in accordance with this clause 9.
- Unless otherwise agreed by 21st Century Network Solutions Ltd in writing, the Hardware Fund can be used solely for the purposes of offsetting Charges for Equipment and/or Airtime listed on the Price List.
- In the event that this Contract is suspended for any reason under clause 12 below, we reserve the right to suspend the Hardware Fund or any terms thereof.
- In the event that this Contract is terminated for any reason under clause 13 below, the Hardware Fund will be withdrawn and any residual credit balance of the Hardware Fund will be retained by us. For the avoidance of doubt, any residual credit balance of the Hardware Fund shall have no monetary value and you shall have no right to any payment, future use or credit in relation to such residual balance.
- We reserve the right to offset any credit amount of the Hardware Fund against any monies due and payable by you to us.
- No VAT is applied to the Hardware Fund or any drawdown from the Hardware Fund and no invoice or credit note will be issued by us in respect of any VAT in this regard.

9.12 Any credits (including the Hardware Fund) accrued in the Equipment Account and/or Airtime Account may be used solely for the purposes of offsetting Charges for Equipment and/or Airtime respectively, do not have any monetary value, and you are not entitled to:

- use any credits accrued in the Equipment Account to offset Airtime Charges or vice versa; or
- offset any credits accrued in the Equipment Account or the Airtime Account against any outstanding debt; or
- any payments from any credits accrued in the Equipment Account or the Airtime Account; or
- any future use of credits accrued in the Equipment Account or the Airtime Account upon termination of this Contract.

9.13 You will be responsible for any additional Charges arising as a result of your misuse of the Services and/or the Equipment including without limitation the use of the SIM Card otherwise than with Equipment supplied by 21st Century Network Solutions Ltd.

9.14 You shall indemnify 21st Century Network Solutions Ltd and Adaptive Communication Solutions Limited against all costs, damages, expenses and losses and reasonable professional costs and expenses suffered or incurred by 21st Century Network Solutions Ltd and Adaptive Communication Solutions Limited arising out of or in connection with breach by you or other act or omission by you under or in relation to this agreement.

10 CREDIT LIMIT/SECURITY PAYMENT

10.1 We may perform a credit check on you at any time during the Term. We may at our sole discretion and at any time during the lifetime of the Contract impose a Credit Limit on your account and/or require payment of a security deposit or interim payment by you.

10.2 Any Credit Limit imposed can be amended without prior notice. If you exceed such Credit Limit (i) we may demand immediate payment of the Charges and/or suspend the Services; and (ii) you will still be responsible for all Charges incurred including those exceeding the Credit Limit.

10.3 If at any time we require you to pay a security deposit under clause 10.1 above we may (i) suspend provision of the Service(s) until we receive payment of the security deposit. We may hold this deposit until you have paid all sums due to us from you under the Contract. If you owe us money we may set off the deposit against any amount due to us. We will refund any deposit we are still holding on request upon termination of this Agreement or at our discretion after three (3) months of continuous on time bill payments. No interest is payable on any deposit held by us.

11 CHANGING THE CONTRACT

11.1 This clause 11 applies to all changes to this Contract, except changes to Charges which are dealt with in clause 9.3 above.

11.2 Subject to clause 11.1 above, we may vary these terms and conditions at any time by posting the changes on the 21st Century Network Solutions Ltd Website and, where reasonably practicable, giving you prior notice. We will only do this if we have a valid reason, for example to reflect changing arrangements with any Third Party Operator or changing legal, regulatory or business requirements. If any variation of these terms and conditions is likely to cause material detriment to you: (i) we will also notify you of the variation in writing or, if you have provided us with your email address, by email; and (ii) you shall have the right to terminate this Contract with immediate effect by giving us written notice. You agree that, if you decide to use the Services after any variation(s) to these terms and conditions have been posted on the 21st Century Network Solutions Ltd Website or, in the case of a variation which is likely to cause material detriment, notified to you, you will be bound by the terms and conditions as varied.

12 SUSPENSION

12.1 21st Century Network Solutions Ltd may from time to time and without notice suspend the Services (and at 21st Century Network Solutions Ltd's discretion disconnect the SIM Card from the Network) in any of the following circumstances without prejudice to the liability of you to continue to pay Charges:

- if you fail to comply with any of these terms and conditions (including but not limited to failure to pay any Charges when due) until the failure to comply is remedied;
- if any direct debit is dishonoured or cancelled;
- if the Credit Limit for this Contract is exceeded;
- if you allow to be done anything which in 21st Century Network Solutions Ltd's opinion may have the effect of impairing the operation of the Services;
- during any period in which access to the Network is denied or restricted to 21st Century Network Solutions Ltd by the Third Party Operator;
- if 21st Century Network Solutions Ltd becomes aware or reasonably suspects or believes that the Equipment or SIM Card is being used for fraud or the use is fraudulent;
- in the event of notification of loss or theft of the Equipment or SIM Card;
- if 21st Century Network Solutions Ltd becomes aware or reasonably suspects or believes that the Equipment or SIM Card have been reverse engineered, decompiled or modified; or
- at the request of a representative of you appearing to 21st Century Network Solutions Ltd to have authority to make such request.
- You fail to comply with the 21st Century Network Solutions Limited unlimited calls and texts fair use policy available on request or from our website.

12.2 If 21st Century Network Solutions Ltd in its sole discretion reinstates the Services following suspension you may be liable for an administration fee if suspension is due to the default of you.

13 TERMINATION

13.1 Without prejudice to any other claims or remedies which 21st Century Network Solutions Ltd may have against you, 21st Century Network Solutions Ltd may terminate this Contract by giving notice to you with immediate effect in any of the following circumstances:

- if you fail to comply with any of the terms of this Contract including but not limited to failure to pay any Charges when due; failure to meet the Committed Spend; or failure to maintain the Minimum Holding;
- if you make or offer to make any arrangements or composition with creditors or commits any act or acts which may render you liable to proceedings under the Insolvency Act 1986 or any statutory amendment or re-enactment thereof or where proceedings are commenced against you under that act or any similar act;
- if you do, or allow to be done, anything which in 21st Century Network Solutions Ltd's opinion will or may have the effect of impairing the operation of the Services; (d) if any licence to operate or use the Network under the relevant legislation is revoked or terminated for any reason; (e) if the operation of the Network is terminated or if the provision of the Services to 21st Century Network Solutions Ltd is discontinued for any reason; or (f) if information supplied to 21st Century Network Solutions Ltd by you is false or misleading.

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13.2 Either party may serve thirty (30) days' written notice to the other party to terminate this Contract, such notice to expire before the end of the Committed Period.

13.3 Upon the termination of this Contract 21st Century Network Solutions Ltd shall disconnect the Equipment and the SIM Card from the Network.

13.4 On termination of this Contract all outstanding Charges and other sums due to 21st Century Network Solutions Ltd shall be paid forthwith.

13.5 Termination of this Contract however arising shall be without prejudice to the rights, duties and liabilities of the parties accrued prior to termination. Those Clauses in this Contract which are intended (expressly or by implication) to have effect after termination shall remain binding on the parties notwithstanding termination.

13.6 If you seek to terminate this Contract prior to the expiry of the Committed Period, we shall be entitled to charge the Termination Fee.

13.7 If on termination you wish to port any telephone number to any other service provider 21st Century Network Solutions Ltd shall:

- (a) be entitled to charge a reasonable porting charge; and
- (b) shall not be obliged to comply with any porting request unless and until you have fully complied with all your obligations under this Contract (including the payment of all Charges due) which, in the event of termination within the Committed Period (if any) shall include all Line Rental Charges due during the Committed Period.

13.8 All SIM Cards supplied hereunder to you for use on the Network shall at all times remain the property of the Third Party Operator. If a replacement SIM Card is required, 21st Century Network Solutions Ltd may charge for such supply.

14 ASSIGNMENT

14.1 You may not assign or transfer the benefit or sub-contract or alienate your obligations under this Contract to any third party without the prior written consent of 21st Century Network Solutions Ltd.

14.2 21st Century Network Solutions Ltd may assign or transfer the benefit of this Contract to any third party and may sub-contract the performance of all or part of the same.

15 DELIVERY AND RISK OF AND EQUIPMENT

15.1 Equipment supplied by 21st Century Network Solutions Ltd shall be at your risk immediately on delivery into your premises (or into custody on your behalf, if sooner) and should be insured accordingly.

15.2 A delivery schedule should be agreed with 21st Century Network Solutions Ltd prior to placing the order. While 21st Century Network Solutions Ltd will endeavour to comply with the time(s) for delivery specified in such schedule or any other such agreed time(s) 21st Century Network Solutions Ltd shall not in any circumstances be liable for any failure to do so.

15.3 21st Century Network Solutions Ltd reserves the right to charge carriage if you refuse to accept delivery of Equipment supplied by 21st Century Network Solutions Ltd in response to a duly authorised order received from you.

15.4 Equipment shall be signed for on receipt and shall be deemed to have been checked and accepted by you on the date of such signature.

15.5 The Equipment shall remain the property of 21st Century Network Solutions Ltd (or its third party suppliers) until paid for in full by you. Until such time as the ownership of the Equipment has passed to you, you shall hold it on 21st Century Network Solutions Ltd behalf and keep it safe, insured and identified as 21st Century Network Solutions Ltd property.

15.6 Until such time as the ownership of the Equipment passes to you, 21st Century Network Solutions Ltd shall (subject to clause 15.7) be entitled to ask you to return the Equipment to 21st Century Network Solutions Ltd. 15.7 21st Century Network Solutions Ltd agrees that it will not exercise its rights under clause 15.6 where you have entered into a nominated airtime contract and are duly performing your obligations as to payment under it and we have been paid all outstanding monies referred to at clause 9.

16 USE OF PERSONAL DATA AND DISCLOSURE OF INFORMATION

16.1 21st Century Network Solutions Ltd undertakes to comply with applicable Data Protection legislation in place from time to time. You further agree to the disclosure by 21st Century Network Solutions Ltd of any information which 21st Century Network Solutions Ltd is required to disclose by any order of any court of competent jurisdiction or by statutory authority and any information which is covered by 21st Century Network Solutions Ltd registration under the Data Protection Act 1998 as amended from time to time.

16.2 21st Century Network Solutions Ltd may search the files of credit reference agencies which will keep a record of that search. 21st Century Network Solutions Ltd may also carry out identity and anti-fraud checks with fraud prevention agencies. If you give false or inaccurate information to 21st Century Network Solutions Ltd and 21st Century Network Solutions Ltd subjects fraud, 21st Century Network Solutions Ltd will record this. Details of how you conduct your account may also be disclosed to those agencies. The information may be used by 21st Century Network Solutions Ltd and other parties in assessing applications for and making decisions about credit, credit related services and insurance (including motor, household credit, life and other insurances and claims) from you and members of your household and for debt tracing, debt recovery, credit management and crime, fraud and money laundering detection and prevention. Information may be used by 21st Century Network Solutions Ltd and other parties for checking your identity, statistical analysis about credit, insurance, fraud and to manage your account and insurance policies. 21st Century Network Solutions Ltd may also perform subsequent searches for the purpose of risk assessment, debt collection and fraud prevention with one or more credit reference agencies and/or fraud prevention agencies whilst you remain a financial obligation to 21st Century Network Solutions Ltd.

16.3 You authorise 21st Century Network Solutions Ltd to use and disclose, in the UK and abroad, information about you and your use of the Services and how you conduct your account for the purposes of operating your account and providing you with the Services or as required under law to 21st Century Network Solutions Ltd associated companies, partners or agents, any telecommunications company, debt collection agency or credit reference agency and fraud prevention agency and other users of the agencies who may use this information for the same purpose as 21st Century Network Solutions Ltd. You agree to this information being used by 21st Century Network Solutions Ltd for credit control purposes and fraud and crime detection and prevention. You can obtain further details from the public registration held by the Information Commissioner. If you wish to have details of the credit reference or the fraud prevention agencies from whom 21st Century Network Solutions Ltd obtains and with whom 21st Century Network Solutions Ltd receives information about you or receive a copy (21st Century Network Solutions Ltd may charge a fee) of the information 21st Century Network Solutions Ltd holds about you, please contact 21st Century Network Solutions Ltd by writing to the Data Controller at 21st Century Network Solutions Ltd, 11b Hoghton Street, Southport, Merseyside, PR9 0NS.

16.4 You also agree to the information described in paragraph 16.3 being used, analysed and assessed by 21st Century Network Solutions Ltd and the other parties identified in paragraph 16.3 and selected third parties for marketing purposes including amongst other things to identify and offer you by phone, post, SIM Card or other means, any further products, services and offers which 21st Century Network Solutions Ltd think might interest it. If you do not wish its details to be used for marketing purposes, please write to The Data Controller, 21st Century Network Solutions Ltd, 11b Hoghton Street, Southport, Merseyside, PR9 0NS.

17 INTERNET ACCESS

17.1 If you have a Mobile Phone and/or Device which enables access to the internet the following terms and conditions also apply to you:

- (a) either ourselves or our contractual partners may provide links to other web sites or resources. We do not endorse, nor do we make any warranty as to the accuracy, completeness, reliability or continuous supply of the content or information contained on any third party sites or resources accessed via the Services;
- (b) all content made available on the internet (directly or indirectly) through using the Services, whether publicly posted or privately transmitted, is the sole responsibility of the party from which such information originated. You are entirely responsible for all information uploaded, emailed or otherwise transmitted via internet access;
- (c) we will not be responsible for any loss or damage you may suffer from any dealings with third parties. Any dealings with products or services provided by third parties which are located by using our Services or via the 21st Century Network Solutions Ltd Website, are solely between you and that third party, unless we specifically state otherwise; and
- (d) your ability to access a secure internet environment will be dependent on your Mobile Phone and/or Device and the third party supplier of content.

18 CONFIDENTIALITY

18.1 Neither party will disclose to any third party without the prior written consent of the other party any confidential information which is received from the other party as a result of this Contract. Both parties agree that any confidential information received from the other party will only be used for the purposes of providing or receiving services. These restrictions will not apply to any information which:

- (a) is or becomes generally available to the public other than as a result of a breach of an obligation under this clause 18; or
- (b) is acquired from a third party who owes no obligation of confidence in respect of the information; or
- (c) is or has been independently developed by the recipient.

18.2 Notwithstanding clause 18.1, we will be entitled to disclose your confidential information to a third party to the extent that this is required by any court of competent jurisdiction or by a governmental or regulatory authority, or where there is a legal right, duty or requirement to disclose such confidential information.

18.3 Non-Solicitation. During the term of this Agreement and for 36 months after any termination of this Agreement, the customer will not, without the prior written consent of the AdaptiveComms, either directly or indirectly, on the

customer's own behalf or in the service or on behalf of others, solicit or attempt to solicit, divert or hire away any person employed by the AdaptiveComms.

19 OUR LIABILITY TO YOU

19.1 Nothing in this agreement limits or excludes our liability:

- (a) for death or personal injury resulting from negligence; or
- (b) for any damage or liability incurred by you as a result of fraud or fraudulent misrepresentation by us; or
- (c) for any liability incurred by you as a result of any breach by us of the condition as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982.

19.2 Subject to clauses 19.1 and 19.3

- (a) we shall not be liable for:
 - (i) loss of profits; or
 - (ii) loss of business; or
 - (iii) depletion of goodwill and/or similar losses; or
 - (iv) loss of anticipated savings; or
 - (v) loss of goods; or
 - (vi) loss of contract; or
 - (vii) loss of use; or
 - (viii) loss of corruption of data or information; or
 - (ix) any charges levied by the network you are leaving to connect to 21st Century Network Solutions
 - (x) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and
 - (b) our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this Contract shall be limited to the total amount paid or payable by you under the Contract during the 12 months preceding the event giving rise to such liability.
- 19.3 We are not liable to you in contract or tort (including negligence) for any acts or omissions of you or any party other than us, including other providers of telecommunications, computers or other equipment and/or hardware or services including internet services.

19.4 You are responsible for the security of your use of the Services including, but not limited to, protecting all passwords, backing-up all data, employing appropriate security devices, including virus checking software, and having disaster recovery processes in place.

19.5 Where you are or become aware of any matters which you know or ought reasonably be expected to know constitute a threat to the security of the Services you will immediately advise us of such matters.

19.6 If you have bought Equipment, where new, it is sold with the benefit of and subject to the terms applicable to such warranty or guarantee as is given by the manufacturer of the Equipment and/or Hardware but subject to clause 19.8.

19.7 In respect of any Equipment, no liability is accepted under any warranty or for any defect resulting from the following:

- (a) fair wear and tear;
- (b) rain, water or other liquid damage;
- (c) accidental or willful damage;
- (d) negligence;
- (e) abnormal working conditions;
- (f) failure to follow the manufacturer's instructions (whether oral or in writing); or
- (g) misuse or alteration or repair of the Equipment without the manufacturer's approval.

20 THIRD PARTY RIGHTS

20.1 Save as provided by the terms of this Contract a person who is not a party to this Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.

21 WAIVER

21.1 The failure or delay by 21st Century Network Solutions Ltd in exercising any right, power or remedy of 21st Century Network Solutions Ltd under this Contract shall not in any circumstances impair such right, power or remedy nor operate as a waiver of it. The single or partial exercise by 21st Century Network Solutions Ltd of any right, power or remedy under this Contract shall not in any circumstances preclude any other or further exercise of it or the exercise of any other right, power or remedy. Any waiver of a breach of, or default under, any of the terms of this Contract shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of this Contract.

21.2 The rights, powers and remedies provided in these terms and conditions are cumulative and not exclusive of any rights, powers and remedies provided by law.

21.3 Where you are more than one person, your obligations hereunder are joint and several. Where any liability of one or some but not all of them arising out of an obligation which is both joint and several is discharged, whether by release, accord and satisfaction or otherwise, the other persons who are subscribers shall continue to be jointly and severally liable on that obligation.

22 NOTICES

22.1 Notices must be in writing and shall be served by hand delivering it or sending it by pre-paid first class post, or registered post, or prepaid recorded delivery or prepaid international recorded airmail addressed to the other party at the address shown on the contract application or any other address as notified in accordance with this Clause or fax to the number notified by each party to the other or e-mail to the address notified by each party to the other.

22.2 Any such notice shall be deemed to have been received:

- (a) if hand delivered or sent by prepaid recorded or registered post or international recorded airmail at the time of delivery;
- (b) if sent by post (other than by recorded or registered post) two days from the date of posting;
- (c) if sent by airmail (other than prepaid recorded airmail) five days from the date of posting;
- (d) in the case of fax, at the time of receiving a successful transmission report; and
- (e) in the case of e-mail, a copy of the e-mail must also be sent by first class post.

23 ENTIRE CONTRACT

23.1 The Contract sets out the whole contract between you and us for the provision of the Service and supersedes all prior arrangements, understandings and Contracts between you and us.

24 ENFORCEABILITY

24.1 If any particular clause of the Contract shall be or be held to be invalid or unenforceable by any court or other competent body or authority, the enforceability of any other clauses in this Contract shall not be affected and they shall continue in full force and effect.

25 EXPORT CONTROL

25.1 Delivery of the Equipment or the End-User Licensed Software to you may be subject to export control law and regulations. 21st Century Network Solutions Ltd does not represent that any necessary approvals and licences have been obtained or will be granted.

25.2 You agree to comply with any applicable export or re-export laws, regulations, prohibitions or embargoes of any country, including obtaining written authority from any relevant licensing authority where necessary.

25.3 In the event that you procure Equipment, including smartphone Equipment or similar computer technology from 21st Century Network Solutions Ltd (including but not limited to devices operating on the Apple iOS, Android, BlackBerry and Windows Phone 7 platforms), you agree that in signing this Contract you accept the terms of the following end-user undertaking; you certify that you will be the end-user of the Equipment and further certify that you shall use the Equipment only for the purposes of allowing its employees to send, receive, store and process data and voice services in order to perform your every day contractual duties; that the Equipment will not be used for any purpose connected with chemical, biological or nuclear weapons, or missiles capable of delivering such weapons; that the Equipment will not be re-exported or otherwise re-sold or transferred if it is known or suspected that they are intended or likely to be used for such purposes; and that the Equipment, or any replica of them, will not be used in any nuclear explosive activity or unsafeguarded nuclear fuel cycle activity; and agree to sign a formal 'End-User Undertaking' in a format specified by the United Kingdom Department for Business, Enterprise & Regulatory Reform if required to do so by 21st Century Network Solutions Ltd.

26 LAW AND DISPUTE

26.1 This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the law of England and Wales.

26.2 The parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims)

26.3 If you have any dispute with us relating to or arising from this Contract, you must, in the first instance contact your 21st Century Network Solutions Ltd representative.

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PART OF ADAPTIVECOMMS



26.4 If you are still not satisfied with how your complaint has been handled you can contact the ombudsman at www.cicas.org.uk.

27 I/WE UNDERSTAND THIS AGREEMENT BETWEEN US IS SUBJECT TO STATUS, AND I/WE AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS. I/WE CONFIRM THAT I/WE ARE AUTHORIZED ON BEHALF OF THE COMPANY TO SIGN SUCH AN AGREEMENT. I/WE UNDERSTAND THAT THIS AGREEMENT CONTINUES FOR AN INITIAL PERIOD AS INDICATED IN THE TERM OF AGREEMENT SECTION AND THEREAFTER AND THAT I MAY END THE AGREEMENT BY GIVING 1 CALENDAR MONTHS' NOTICE TO EXPIRE ON OR ANY TIME AFTER THE EXPIRY OF THE MINIMUM PERIOD. I/WE CONFIRM THAT BY SIGNING THESE TERMS AND CONDITIONS I HAVE READ AND UNDERSTOOD THEM.