

# Terms and Conditions for the Supply of Telecommunications Services

The following terms and conditions apply to the provision by us, Telcomm Limited to you (the customer) of telecommunication services and, together with your separate Customer Order Form ("Request") constitute the entire agreement between us in respect of our supply and your use of such services ("the Agreement"). The following terms shall have the following meaning when used in this Agreement:

**"Charges"** The charges associated with the Services as applicable from time to time, are available from us on request

**"Services"** The telephone fixed line rental and call routing services identified on the Request together with telephone support between 9.00am and 5.30pm Monday to Friday (except UK Bank and public holidays), more details are available from us on request.

**"Set-Up Period"** The period of 15 working days leading up to the Start Date

**"Start Date"** The date on which we start to provide the Services, as agreed with you under Section 1.1(a)

**"Term"** This Agreement applies to line rental and calls, or calls only, and will continue for 24 months from the Start Date. If you want to terminate the Agreement, you must do so in accordance with the provisions of Section 4.1 below. If no such notice is received by us, the Agreement will automatically renew for a further term of 24 months and will continue to do so on each anniversary date until the Agreement is terminated.

## Section 1: Services

- 1.1 Once we have accepted your Request for the provision by us of the Services, we will:
  - (a) confirm acceptance of your Request within seven working days and agree the Start Date;
  - (b) confirm that all fixed lines have been set up, transferred or changed (as appropriate) on or before the end of the Set-Up Period; and
  - (c) use our reasonable endeavours to provide the Services with effect from the Start Date.
- 1.2 We may vary how the Services are provided if we need to maintain or improve their quality or to comply with any law or regulation.
- 1.3 You acknowledge and accept that the provision of the Services by us is subject to the following:
  - (a) you must ensure that you have correctly installed the Equipment (if any is required) and/or complied with such other reasonable instructions that we may give from time to time, and thereafter ensure that such Equipment remains correctly installed;
  - (b) we may from time to time suspend provision of the Services because of repair (whether scheduled or due to emergency), maintenance or improvement, in which case we will endeavour to provide you with at least five days notice and then restore Services to you as soon as possible;
  - (c) there may from time to time occur "leakage" of traffic to a third party carrier;
  - (d) you must comply with all your obligations described in Section 2; and
  - (e) you must pay all Charges described in Section 3, and that we are not responsible for any loss or deterioration of Services attributable wholly or partly to any of the matters listed in paragraphs (a) to (e).

## Section 2: Use of Services

- 2.1 You agree to use the Services in accordance with (a) this Agreement (b) any instructions given by us from time to time and (c) any laws, regulations and licenses which apply to the use by you of the Services; and you agree to ensure that any Equipment used by you to obtain access to the Services conforms with these laws, regulations and licenses.
- 2.2 You agree not to use the Services for any purpose that may be abusive, offensive, obscene, indecent, menacing, defamatory or which might cause annoyance, inconvenience or needless anxiety to anyone or to commit a fraud or other criminal offence.
- 2.3 You are only entitled to use the Services for your own use and, without limitation, you will not re-sell or otherwise make the Services available to any person on a commercial basis or use the Services in connection with telemarketing or any call centre.
- 2.4 If you use the Services in any way that, in our reasonable opinion, is or is likely to be detrimental to the provision of Services to you or any other of our customers then you will take such corrective and immediate action as we may require. If, in our reasonable opinion, you fail to take such corrective action within a period of 3 days, we shall be entitled to suspend the Services without notice. In all circumstances, you will indemnify us against any claims, actions or legal proceedings (including reasonable related costs and expenses, legal or otherwise) which are brought or threatened against us by a third party as a direct result of your failure to comply with your obligations under this Section 2.
- 2.5 Although the Services are self-install and we do not anticipate having to visit you for any reason you will, if reasonably required by us, provide us or our authorised subcontractors with access to your premises for the purpose of installation and/or activation, repair, maintenance, upgrades or recovery of Equipment (whether belonging to us or to a third party).

## Section 3: Charges

- 3.1 We or our invoicing agent will send you an invoice for the Charges (i) with respect to any one-off set up charges, recurring line rental fees and recurring service options fees, monthly in advance and (ii) with respect to all calls, monthly in arrears. We reserve the right to change the timing and/or frequency of our invoices; in particular, but without limitation, calls made during the Set-Up Period may be billed two months in arrears. Charges will be calculated using call records generated by us or British Telecommunications plc (including any of its group companies, together referred to as "BT"). If you make calls using the BT 1280 "breakout code", these will be charged at BT standard rates from time to time in force.
  - 3.2 We will not invoice you for certain services that are provided by BT or other third parties. These include, without limitation (i) BT Chargecards and (ii) customer premise equipment (CPE) and CPE maintenance.
  - 3.3 You will pay all Charges associated with your use of the Services together with VAT at the prevailing rate in accordance with the direct debit instruction provided as part of your Request or by such other means as we may agree in the event that there is a failure to collect amounts properly charged against the direct debit mandate we hold. In such event, we reserve the right to restrict the services until a valid direct debit is restored and charge an administration charge of £5.00 plus VAT per month until such time as the direct debit is restored.
  - 3.4 If we are unable to recover any payment due within 4 days of the due date we will:
    - (a) be entitled to restrict your access to the Services;
    - (b) send written notification giving you 7 days to pay all outstanding amounts in full; and
    - (c) charge you interest on the outstanding amount at a rate of 3% per annum above the base rate of Barclays Bank plc from time to time together with a reconnection administration fee of £25.00 plus VAT.
  - 3.5 If, in response to our notification, you provide us with a valid payment method (as described in Section 3.3 above) so as to enable us to collect all sums due on your account, we will re-apply for payment. If we are still unable to recover all payments due, or if your account remains wholly or partly outstanding for any other reason, 12 days after the original due date for payment we will:
    - (a) Suspend your access to the Services and send a further written notification requiring you to discharge your account in full within 7 days from the date of this notifications, failing which we reserve the right to refer your outstanding account to credit reference agencies and/or solicitors and/or other third party collection services (in which case you will be responsible for all costs that are incurred by us in taking such action); and
    - (b) charge you interest on the outstanding amount at a rate of 3% per annum above the base rate of Barclays Bank plc from time to time together with an administration fee for the submission of the further written notification
- 3.6 If your account remains unpaid for a period of 25 days after the original due date for payment, a security deposit of two times your average monthly invoice will be required before we reinstate your Services.

## Section 4: Cancellation and Termination

- 4.1 You may terminate the Services by giving 60 days written notice of termination not to expire before the end of your primary contract term. Any such notice must be sent by registered post or recorded delivery or by such other method that provides a proof of delivery. In the event of termination, you agree to pay for the services until such time as your lines are transferred to your new Communications Provider If you terminate the Services during the contract term starting on the

Start Date, you are liable to pay an early termination charge. This charge will comprise of an administration charge of £50.00 plus VAT per line, plus an amount equal to 35% of your average bill value plus VAT, calculated as an average over the previous three months bills, for calls and line rental for each month remaining of the primary term, or a total charge of £100.00 plus VAT per line, whichever is the greater.

- 4.2 We may terminate this Agreement at any time on giving 30 days' written notice. We may also (at our discretion) terminate this Agreement and/or suspend the Services without notice if:
  - (a) we are directed by a competent authority to cease the provision of Services; or
  - (b) we are unable to provide the Services generally for any other reason including, without limitation, technical failure and/or modification of the applicable public telecommunications system; or
  - (c) you have failed to comply with any provision of this Agreement or other reasonable direction or notice provided by us at any time; or
  - (d) you have stopped trading or you have or are likely to become subject of an insolvency event.
- 4.3 Either of us may terminate this Agreement immediately, on notice, if the other commits a material breach of this Agreement that is capable of remedy and fails to remedy the breach within 14 days of a written notice to do so.
- 4.4 On termination of this Agreement for any reason, we will discontinue the Services and you shall pay us all outstanding Charges until the date of such discontinuance.

## Section 5: Personal Data

- 5.1 We may contact you before, during and after the term of this Agreement in order to administer, evaluate, develop and maintain the Services. Please note that we may record your telephone calls to us and we will keep a record of personal information you provide to us in connection with the Services.
- 5.2 You agree and hereby give your authority for us to contact BT or your previous provider on your behalf from time to time to us information (including personal data) relating to or connected with (i) the transfer of your fixed line (including, if applicable, any associated services) from BT or your previous supplier to us (ii) any products or services provided from time to time by BT or your previous supplier to you and/or (iii) any other relevant information relating to your account with BT or your previous supplier..
- 5.3 We will comply with our obligations under all relevant Data Protection legislation. You are also required to comply with all data protection legislation, including the maintenance of registrations required to enable us to process your personal data in connection with our performance of our obligations under this Agreement.
- 5.4 You consent to our using and/or disclosing your personal information for the following purposes:
  - (a) processing your Request (which may involve credit checking by a licensed credit reference agency who may record that a credit check has been made and disclosing certain personal and account details to a bank for the purposes of setting up a direct debit account);
  - (b) providing or arranging for third parties to provide Customer Care/Help Desk facilities and/or billing you for the Services (which may involve disclosing your information to third parties solely for those purposes);
  - (c) to selected third parties for the purposes of, and in connection with, providing and operating the Services.
- 5.5 Unless you ask us not to, we may use your personal information for marketing purposes. We may release information about you to members of our group, to companies providing services to us, outsourcing agencies and to our sales agents and dealers. We may send you details of other services or special offers which we, or members of our group, think may be of interest to you or disclose your personal information to members of our group, our dealers or agents to allow them to contact you directly for marketing purposes.

## Section 6: Equipment

- 6.1 If the Services incorporate Carrier Pre-Selection, you are responsible for ensuring that any least cost call routing programming is removed from your pbx by your switch maintainer and that you disconnect any least cost routing equipment installed which may affect the services. Telcomm Limited will not accept any liability for any loss or damage caused by the failure to remove such programming or equipment or as a result of such reprogramming or disconnection of any least cost routing equipment..
- 6.2 If the Services require us to provide you with Least Cost Routing Equipment, we will do so at no charge to you. You are required to install any such Equipment. If any Equipment provided by us is faulty, you are responsible for returning it to us at your own cost and, once we are satisfied that such Equipment is faulty through no fault of your own, we will provide you with a replacement at no charge to you.
- 6.3 On termination of this Agreement for whatever reason, you will within 14 days return to us any Equipment that we have provided under this Agreement.

## Section 7: Warranty and Limitation of Liability

- 7.1 We warrant that we will use our reasonable endeavours to provide the Services in all material respects in accordance with our obligations under this Agreement.
- 7.2 Except as stated in Section 7.1, and subject to Section 7.3, we make no warranty or representation with respect to the Services and the Equipment and, to the greatest extent permitted by law, we exclude all implied warranties relating to merchantability, satisfactory quality or fitness for a particular purpose.
- 7.3 Nothing in this Agreement excludes each party's liability with respect to death and personal injury resulting from the negligence of that party, its employees, agents or subcontractors or for fraudulent misrepresentation or under the tort of deceit.
- 7.4 Neither party shall be liable to the other, either in contract, tort (including negligence) or otherwise for direct or indirect loss of profits, business or anticipated savings, nor for any indirect or consequential loss or damage or for any destruction of data. In particular, but without limitation, we shall under no circumstances be liable to you in any way in respect of any fraudulent use of the Services by your staff or other third parties.
- 7.5 Subject to Sections 7.3 and 7.4, our liability to you in contract, tort, negligence or otherwise arising out of or in connection with this Agreement shall for any one incident of series of related incidents be limited to an amount equal to the annual fees paid by you to us in the year in which the liability first arose or, if greater, £1,000.

## Section 8: General

- 8.1 Force Majeure: Neither party will be liable to the other for any breach by it of this Agreement (including failure to deliver the Services), where such failure or breach is due to a reason outside the reasonable control of such party.
- 8.2 Variation of terms: We may change the provisions of this Agreement (including the Charges) at any time, provided that we will give you notice of the changes at least 14 days before the change is to take effect at which time you may terminate this Agreement if the change materially affects the Services.
- 8.3 Third party rights: This Agreement does not create any rights under the Contracts (Rights of Third Parties) Act 1999 that are enforceable by any person who is not a party to it but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 8.4 Notices and invoices: Notices given and invoices submitted under this Agreement must be in writing and shall be delivered:
  - (a) in the case of notices and invoices from us to you, by post or email to the postal address and/or email address (in each case as provided by you as part of the Request or subsequently notified to us in writing); and (b) in the case of notices from you to us, by post to Telcomm Limited, 40 Marsh Wall, Docklands, London E14 9TP or by email to customer.services@telcomm.co.uk. Notice of termination must be sent in accordance with Section 4.1 above.
- 8.5 Transfer of rights: You may not assign sub-contract or transfer any of your rights or obligations under this Agreement without our prior written consent. We may assign or transfer our rights and/or obligations to any third party from time to time without your consent.
- 8.6 Severability: If any part, term or provision of this Agreement is held to be illegal or unenforceable the validity or enforceability of the remainder of this Agreement will not be affected.
- 8.7 Waiver: If either party delays in acting upon a breach of this Agreement that delay will not be regarded as a waiver of that breach. If either party waives a breach of this Agreement that waiver is limited to that particular breach.
- 8.8 Law: This Agreement will be governed by and construed and interpreted in accordance with the law of England and Wales and the parties submit to the exclusive jurisdiction of the English Courts.