

The Cellphone Store Ltd t/a Comms Connect

Voice Services Terms & Conditions.

1. DEFINITIONS

“Act” means the Telecommunications Act 1984 and amendments to the Act that may be made from time to time.

“Agreement” means the agreement between the Service Provider and the Subscriber for the provision of Network Services incorporating these terms and conditions and the Contract.

“Connection Date” or “live date” means the date when the Service Provider is in a position to and has agreed to commence provision of the Network Service to the Subscriber.

“Number Translation Service” means any telecommunications service provided by The Service Provider which commences with a non-geographic code requiring translations for onward routing to the Subscriber and including services such as 0800 freephone, 0845 local rate, 0870 and 0871 national rate and premium rate telephone call facilities.

“Network Services” means the provision and/or rental of PSTN or ISDN lines or per minute access to network capacity including Hosted/Cloud Services or direct internet access, as is required to complete voice telephone calls and data transmission domestically or internationally via the public switched telephone network, by the Service Provider to the Subscriber.

“Contract” means the Network Services – Hosted and System Agreement which sets out details of the Service Provider, the Subscriber and other particulars relating to the provision of Network Services.

“Service Provider” means The Cellphone Store Ltd t/a Comms Connect, by whom this Agreement is made and the expression “Service Provider” includes the Service Provider’s permitted assignees, employees and agents.

“Subscriber” means the person, firm or company specified on the Service Agreement with whom this agreement is made and includes where relevant the Subscriber’s permitted assignees, employees and agents.

“Subscriber Details” means the service numbers of lines to be connected to the Network Services. “System Installations” means all Comms Connect provided equipment.

“System Installations” means all the Service Provider’s equipment provided to the Subscriber.

2. SUPPLY OF NETWORK SERVICES

The Service Provider undertakes to use all reasonable endeavours to supply the Network Services to the Subscriber as and from the Connection Date subject to and on the terms of this Agreement.

3. DURATION/TERMINATION

This Agreement shall come into full force and effect from the date on the Service Agreement proposal form or the date the Network Service goes ‘live’ whichever is the later, and shall continue for the stated and agreed term by form of signature, the minimum period shall be a period of twelve months thereafter to a maximum of sixty months or such other period as set out in the proposal form or Contract, after which it may be terminated by either party by the service upon the other of no less than 90 days written notice. In the event of subscriber cancellation without the Service Provider’s prior agreement during the term of this agreement, the Service Provider will charge the Subscriber for the outstanding term using an average of the Subscriber’s monthly invoices to the date of cancellation to calculate the penalty, including all early termination charges made to the Service Provider and by any relevant supplier and or partner. This penalty applies only in cases of unilateral Subscriber cancellation and covers both call traffic and line rental. Throughout the term of the agreement cessation of traffic by the Subscriber or appointment of a new Service Provider for lines or to carry traffic on the telephone numbers covered by this agreement, will be viewed as de facto cancellation and will incur the penalties outlined above.

4. CONDITIONS OF USE OF NETWORK SERVICES

The Subscriber agrees and undertakes:

4.1 to use the Network Services in accordance with this Agreement and other reasonable and necessary conditions as may be notified to it in writing by the Service Provider from time to time;

4.2 not knowingly to contravene the Act or any other relevant regulations or licences granted thereunder;

4.3 not to use the Network Services to communicate any material which is intended to be a hoax call to emergency services or is of a criminal, defamatory, offensive, abusive, obscene or menacing character;

4.4 not to use the Network Services in a manner which knowingly constitutes a violation or infringement of the rights of any other party;

4.5 to provide the Service Provider with all such relevant information as it reasonably requests relating to the Subscriber's telecommunications apparatus;

4.6 The Subscriber shall indemnify the Service Provider against all liabilities, claims, damages, losses and expenses arising from the use by the Subscriber of the Network Services in breach of this Agreement.

4.7 This clause 4.7 shall apply to the Number Translation Service.

4.7.1 The Service Provider shall be entitled for operational or technical reasons or in order to comply with any numbering scheme or other obligation imposed on the Service Provider by the Network Services Licensors or by any other competent authority to withdraw or change any telephone or code (or group thereof) allocated to the Subscriber as part of the Number Translation Service PROVIDED THAT the Service Provider gives the Subscriber the maximum period of notice in writing thereof practicable in the circumstances, which in any event shall be not less than 30 days.

4.7.2 The Subscriber acknowledges and agrees that any Number Translation Service including any telephone numbers provided as part of that service shall only be provided by the Service Provider and available for use by the Subscriber for the duration of this Agreement.

5. ACCESS TO PREMISES AND PROVISION OF INFORMATION

5.1 To enable the Service Provider to exercise its obligations under this Agreement:

5.1.1 The Subscriber shall permit or procure permission for the Service Provider and any other person(s) authorised by the Service Provider to have reasonable access during normal working hours to its business premises, its telephone system and other relevant equipment and shall provide such reasonable assistance as the Service Provider requests.

5.1.2 The Service Provider will normally carry out work, by appointment and during normal working hours but may request the Subscriber to provide access at other times but such requests shall not oblige the Subscriber to provide such access.

5.2 At the Subscriber's request, the Service Provider may agree to work outside normal working hours and the Subscriber shall pay the Service Provider's reasonable and necessary charges for complying with such a request.

5.3 If the Subscriber requests maintenance or repair work which is found to be unnecessary, the Subscriber may be charged for the work and the costs reasonably and necessarily incurred. The Service Provider will give notice in writing that work is considered unnecessary prior to completion and raising charges.

6. SUSPENSION OF SERVICE

6.1 The Service Provider may at its sole discretion elect to suspend forthwith provision of the Network Services until further notice without compensation having given the Subscriber as much notice as is reasonable under the circumstances either orally (confirming such notification in writing) or in writing in the event that:

6.1.1 The Subscriber is in breach of a material term of this Agreement (including for the purposes of this Agreement its failure to pay charges to the Service Provider by the due date of a valid invoice) provided that the Subscriber has failed to remedy such breach within 30 days of being given written notice of such breach.

6.1.2 The Service Provider is obliged to comply with an order, instruction or request of the UK Government, an emergency services organisation or other competent administrative authorities.

6.1.3 The Service Provider has reasonable grounds to suspect that the Network Services are being used fraudulently, or in a manner contrary to the conditions in clause 4.

6.2 The Subscriber shall reimburse the Service Provider for all reasonable costs and expenses necessarily incurred by the implementation of such suspension and/or the recommencement of the provision of the Network Services as appropriate, but only where the suspension is implemented as a consequence of a material breach of this Agreement by the Subscriber.

7. LIABILITY

7.1 Nothing in this Agreement shall exclude or restrict the Service Provider's liability for death or personal injury resulting from the negligence of the Service Provider or of its employees while acting in the course of their employment with the Service Provider.

7.2 Neither party shall be liable to the other in contract, tort or otherwise for any loss of business, contracts, anticipated savings or profits or for any other indirect or consequential loss whatsoever.

7.3 The Service Provider's liability in contract, tort or otherwise arising out of or in connection with the performance of its obligations under this Agreement shall be limited to £1 million for any one incident or series of incidents and £2 million in aggregate.

7.4 The Service Provider shall not be liable to the Subscriber for any breach of any provision of this Agreement caused by any reason outside the control or responsibility of the Service Provider including without limitation the failure of any third party public telecommunications operator or network carrier to provide network capacity (or any element thereof) to the Service Provider on which it was reliant for the purposes of this Agreement (whether in breach of contract or otherwise) any Act of God, inclement weather, failure or shortage of power supplies, flood, drought, lightening or fire, strike, lock-out, trade dispute or labour disturbance, any act or omission of the UK Government, highways authorities, or other competent authorities.

7.5 The Service Provider shall not in any event be liable to the Subscriber for any indirect, consequential or incidental loss or special damages howsoever arising or for any loss of revenue, business, anticipated savings or profits and the Subscriber shall indemnify and keep the Service Provider indemnified against any claims and expenses arising out of the foregoing.

7.6 For the avoidance of doubt, the Service Provider shall not in any event be liable to the Subscriber or any third party for any claims, liabilities, damages, costs or losses, whether direct or indirect, or for any loss of revenue, business, anticipated savings or profit arising in connection with the failure of the Subscriber to comply with any or all of its obligations under this Agreement.

8. CHARGES AND PAYMENTS

8.1 The Subscriber shall be invoiced monthly by the Service Provider and agrees to pay charges, by Direct Debit, within 10 days of receipt of invoice.

8.2 Usage charges will be as detailed in the Service Provider's price list.

8.3 The Service Provider shall have the right to alter the charges in the Service Provider's price list from time to time by giving the Subscriber not less than 28 days' notice.

8.4 Usage charges payable shall be calculated by reference to data recorded or logged by or on behalf of the Service Provider and not by reference to any data recorded or logged by the Subscriber.

8.5 The Service Provider reserves the right to charge daily interest on amounts outstanding 14 days after invoice until payment in full is received, at a rate equal to 4% per annum above the NatWest Bank Plc Base Lending Rate as current from time to time, whether before or after judgement. Interest shall continue to accrue notwithstanding termination of this Agreement.

8.6 All sums referred to in this Agreement are exclusive of Value Added Tax and any taxes of a similar nature which may from time to time be introduced.

8.7 Payment of all sums due to the Service Provider shall be made without any set-off whatsoever.

8.8 All Payments regarding Service Charges and ONE OFF Payments are payable ONE month in advance by direct debit (if by invoice within 14 days of receipt).

8.9 Engineer charges apply where an appointment is agreed for work at an End User's Site and the engineer arrives within the appointment slot but is unable to carry out the work at, or gain access to, the End User Site.

The charge is applicable when the job has been appointed by the Service Provider who has given permission for Openreach to appoint and the engineer has arrived on site within the appointment slot and:

- Engineer is unable to gain access to the site or premises or
 - End User is not ready for the work to be completed i.e. building work or
 - Person who placed the order or their representative is not available to provide detailed work instruction i.e. socket location
- The Service Provider will also charge when:
- An engineer is unable to complete the job due to customer order quality issues i.e. incorrect address, incorrect order, order duplication etc.
 - A responsible adult is unavailable. Engineers cannot enter premises where they would be escorted solely by a person under the age of 18.

8.10 The Service Provider Engineer Call Out charges;

£150 ex vat (includes 1 hour) charge will apply if the Service Provider sends out an engineer to fix or diagnose a fault and the issue is found not to be caused by the Service Provider's equipment/service or for a standard call out.

8.11 Additional Hours will be charged at £70 ex VAT per hour.

9. EARLY TERMINATION

9.1 This Agreement may be terminated forthwith by the Service Provider either orally (confirming such notification in writing) or in writing if there is a material or persistent breach by the Subscriber of any of the Subscriber's obligations under this Agreement (including without limitation non-payment of charges due) and in the case of breaches which are capable of remedy the Subscriber fails to remedy the same within 7 days of such notice.

9.2 Notwithstanding anything to the contrary expressed or implied in this Agreement, either party (without prejudice to its own rights) may terminate this Agreement forthwith in the event that a liquidator (other than for the purpose of a bona fide amalgamation or reconstruction), trustee in bankruptcy, administrator or receiver and manager is appointed in respect of the whole or part of the assets of the Subscriber, or the Subscriber enters into an arrangement or composition with its creditors, or other circumstances arise which entitle a court or creditor to appoint a receiver or administrator or to make a winding up order.

9.3 If the Subscriber wishes to cancel this Agreement in whole or in part prior to the Connection Date the Service Provider will agree to accept such cancellation upon written notice on the basis that the Subscriber shall reimburse to the Service Provider any outstanding charges.

10. ASSIGNMENT

The Service Provider may, but the Subscriber shall not (without the prior written consent of the Service Provider such consent not to be unreasonably withheld or delayed), assign or delegate or otherwise deal with all or any of its rights or obligations under this Agreement.

11. GENERAL

11.1 This Agreement, the Contract and the proposal form represent the entire understanding between the parties in relation to the subject matter hereof and supersedes all other agreements and representations made by either party, whether oral or written. This Agreement may be modified upon the Service Provider giving to the Subscriber not less than 30 days prior written notice thereof.

11.2 Failure by either party to exercise or enforce any right conferred by this Agreement shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof or of any other right on any later occasion.

11.3 By signing the Agreement the Subscriber thereby agrees to the total exclusion of all its (the Subscriber's) terms and conditions of business from this Agreement.

11.4 Any notice, invoice or other document which may be given by either party under this Agreement shall be in writing (except as provided otherwise) and shall be deemed to have been duly given if addressed to the party to which it is to be given and if left at or delivered by pre-paid recorded delivery mail to that party's address as shown on the Service Agreement proposal form or in either case at such other address as has been notified by one party to the other.

11.5 This Agreement shall be governed by and construed and interpreted in accordance with English law, and the parties hereby submit to the jurisdiction of the English courts.

11.6 Any director or representative of a limited company who signs on behalf of the Subscriber will be deemed an authorised signatory and thereby confirms the Subscriber's acceptance of its obligations under this Agreement.

11.7 Any terms that would be implied herein by statute or common law shall be excluded to the fullest extent permitted by the law.

11.8 System Installations are based on a minimum 1 year lease rental and includes remote support for the duration of the term of this Agreement. At the end of the term, the Subscriber shall have the option to transfer title for the equivalent of 1 quarter's payments.

11.9 If any contract is not renewed after the initial contract period, rental payments will continue and will revert to our standard pricing.

11.10 If any broadband service that has been terminated, the Service Provider will request that the Router is returned to them. If the Router is not received by the Service Provider within 30 days from the date that the broadband service was terminated or the Router is returned damaged (fair wear and tear excepted), a reasonable charge will be incurred to replace the Router.

11.11 Any handsets that are provided free of charge are subject to a minimum 36 month term and are to be used with the Service Provider's broadband service only. Any additional handsets ordered during the contract term must be ordered within 12 months of the contract date and are also subject to a minimum 36 month term. The total number of handsets ordered must also not exceed the number of active licences.

11.12 Unlimited Free VoIP calls to 01, 02, 03 and UK mobiles*

*VoIP user licenses are subject to a fair use policy - Up to 2,000 minutes per user license per month of calls to 01, 02 and 03 are free. The number of calls to 03 must not exceed 15% of the total number of calls made by the user.

Up to 2,000 minutes per user license per month of calls to UK mobiles (all FM) are free.

The threshold is applied at company level, not at the level of the individual user licenses. For example, if a company has 4 User Licenses, it will get up to 8,000 free minutes which can be pooled across any of the individual user licenses. Where the fair use policy is exceeded, all usage during the month for the company will be rated at your standard call rates.

12. ANNUAL PRICE INCREASE (CPI)

12.1 The Service Provider: (a) will, in April of each year, apply an increase to all or any relevant charges by a percentage equal to: the UK Consumer Price Index ("CPI") rate published by the Office for National Statistics (or any other body to which the functions of that office may be transferred) in January of that year ("CPI Rate"); and an additional 3.9% of all or any relevant charges on top of the CPI Rate, in the event that the CPI Rate is negative, this shall be ignored and the additional 3.9% shall still apply. If the CPI Rate is not published for the given month, the Service Provider may use a substituted index or index figures published by that office for that month; and (b) may change this Agreement (including changing or introducing new charges or changing or withdrawing Services): (i) where required to comply with applicable law or regulation; (ii) due to a change in the Company's or a third party provider's charges, out payments, operations or services; or (iii) where the Company reasonably determines the change is needed to maintain or improve the quality of the Service.

13. CHANGING THE TERMS AND CHARGES

13.1 The Service Provider may decide to change its terms and conditions or the Services provided. If the Service Provider decides to make such changes, it will give written notice to the Subscriber as soon as possible (but in any event not less than 28 days' notice) before the change takes effect. The Service Provider may also decide to increase or decrease its prices. The Subscriber agrees that the Service Provider may change its terms and charges without obtaining its express consent to vary this Agreement providing that the Service Provider complies fully with the following procedure.

13.2 The Service Provider will make a copy of its current version of these terms and conditions available on its website. The Service Provider can decide to change this Agreement where it is necessary to make administrative changes to its registered name, address or customer service contact details or if it wants all its customers on the same conditions.

14. FRAUDULENT USE

14.1 The Subscriber will be responsible for all reasonable charges necessarily incurred in respect of the Service(s) even if such charges were incurred through, or as a result of, fraudulent or unauthorised use of the Service(s). The Service Provider may, but is not obliged to, detect unauthorised or fraudulent use of the Service(s).

This Agreement/Contract is subject to these Terms and Conditions, by signing any the Agreement/Contract the Subscriber accepts all these Terms and Conditions.