

## TERMS AND CONDITIONS FOR CALLS & LINES, BROADBAND AND ISDN SERVICES

### 1. DEFINITIONS AND INTERPRETATION

1.1. In these terms and conditions ("**Terms**") the following words shall have the following meanings:

<b>"Agreement"</b>	these Terms together with the Order;
<b>"Broadband Plan"</b>	the monthly tariff which the Customer selects at the time the Customer orders the Broadband Service;
<b>"Broadband Service"</b>	the direct high speed "always on" network access to the internet provided in accordance with the particular type of Broadband Plan chosen by the Customer and supplied to the Customer's Site via the Network at the best available Transmission Speed that the Supplier is reasonably able to make available to the Customer according to the Broadband Plan the Customer has selected and which is provided in accordance with the terms of the Agreement;
<b>"BT"</b>	British Telecommunications plc and its associated companies;
<b>"Call Charges"</b>	the Supplier's charges for calls made on the System (including reverse charge calls) as set out in the Order or as otherwise notified to the Customer by the Supplier from time to time;
<b>"Calls &amp; Lines Services"</b>	the services for calls & lines that the Supplier provides to the Customer (as set out in the Order) by means of the System;
<b>"Charges"</b>	all charges and fees payable by the Customer for the Services pursuant to this Agreement;
<b>"Confidential Information"</b>	any information, whether communicated orally or in documentary or other form, relating to the business of the Supplier including, without limitation, information relating to services, customers, pricing, policies, methods, business plans, technical processes and financial affairs, in all cases whether expressly stated to be confidential or not;
<b>"Connection Charge"</b>	the non-refundable charge (if any) payable by the Customer for installation and connection to the System as set out in the Order or as otherwise notified by the Supplier;
<b>"Connection Point"</b>	includes a terminal block, a socket for a removable plug, a distribution frame, or any other device which the Supplier fixes at any of the Sites to connect the Customer's equipment to an Exchange Line;
<b>"CPS"</b>	carrier pre-selection;
<b>"Customer"</b>	the party purchasing the Services, as named in the Order;
<b>"Customer's Website"</b>	any website provided and which the Customer uses in connection with the Website Services;

<b>“Domain Name”</b>	such domain name as the Supplier may allocate to the Customer;
<b>“Domain Name Price”</b>	the retail price from time to time for a Domain Name;
<b>“Domain Period”</b>	the period of 24 months from the date of allocation of a Domain Name;
<b>“Early Termination Fee”</b>	means: <ul style="list-style-type: none"> <li>(i) all Charges that are accrued up to and including the date of termination; plus</li> <li>(ii) an average per day value of the Call Charges accrued by the Customer in the three months prior to the date of termination chargeable each day from the date of termination until the date of expiry of the Minimum Term, Renewed Minimum Term or Subsequent Term (as the case may be); plus</li> <li>(iii) the total amounts of all Exchange Line Rental Charges still remaining on the Minimum Term, Renewed Term or Subsequent Term (as the case may be) from the date of termination until the date of expiry of the Minimum Term, Renewed Minimum Term or Subsequent Term (as the case may be);</li> </ul>
<b>“Equipment”</b>	any communications or other equipment recommended and approved by the Supplier and/or third party operator as an essential part of providing the Services. This may include (without limitation) modem and router cables. It does not include leads, batteries or other accessories or equipment the Customer might purchase from any supplier the Supplier recommends or any alternative supplier. This other equipment is <b>“Additional Equipment”</b> ;
<b>“Exchange Line”</b>	any apparatus forming part of the System used by the Supplier to connect the Site to a telephone exchange to provide the Services;
<b>“IPR”</b>	all intellectual property rights including, without limitation, copyright and related rights, patents, trade marks, design rights, know how, rights to inventions, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in computer software, database rights, rights in confidential information (including without limitation trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights and all similar or equivalent rights or forms of protection in any part of the world;
<b>“ISDN Services”</b>	the telephone services that the Supplier provides to the Customer (as specified in the Order) by means of the System;
<b>“Minimum Term”</b>	means twelve (12) months (or such other minimum period as is set out in the Order) from the date the Order is signed by the Customer;

<b>“Network”</b>	the fixed line telecommunications network operated by a Network Operator;
<b>“Network Operator”</b>	a network operator who operates a Network to which a line is connected in accordance with an agreement between the Network Operator and the Supplier;
<b>“OFCOM”</b>	the Office of Communications or other replacement authority;
<b>“Order”</b>	the service order agreement, the renewed term agreement or such other document that the Supplier deems to constitute the Order;
<b>“Our Website”</b>	the website located at <a href="http://www.southern-comms.co.uk">www.southern-comms.co.uk</a> , as amended from time to time.
<b>“Personal Data”</b>	any personal data, as defined in the Data Protection Act 1998, relating to the Customer which is held the Supplier;
<b>“Renewed Term”</b>	the renewed term agreed with the Supplier in writing in accordance with Clause 3.3;
<b>“Rental”</b>	the monthly fee (including line rental, equipment rental, and other rental) payable by the Customer for the Services, as set out in the Order or as otherwise notified by the Supplier;
<b>“Services”</b>	the ISDN Services and/or the Calls & Lines Services and/or the Broadband Service and/or the Website Service as the case may be that the Supplier has agreed to supply to the Customer (as set out in the Order);
<b>“Site”</b>	the site(s) at which the Supplier shall provide the Services;
<b>“Subsequent Term”</b>	a minimum of twelve (12) months (or such other period set out in the Order);
<b>“Supplier”</b>	means Southern Communications Ltd (Company Number: 1328040) whose Registered Office is at Glebe Farm, Down Street, Dummer, Hampshire, RG25 2AD;
<b>“Supplier’s Equipment”</b>	includes any equipment owned by the Supplier or its licensors that the Supplier uses to provide the Services;
<b>“System”</b>	the Network that the Supplier uses to provide the Services;
<b>“Transmission Speed”</b>	either the rate in Kbps or Mbps that data is transferred between the Equipment and the Broadband Service. The Transmission Speed available to the Customer will be affected by the operational and technical characteristics of the Customer’s telephone line, the Network and the Customer’s chosen Equipment;
<b>“Website Services”</b>	the provision of website hosting services in accordance with the particular type of Website Plan chosen by the Customer;
<b>“Website Plan”</b>	The monthly tariff which the Customer selects at the time the Customer contracts to receive Website Services;

**“Working Day”** means 09:00 to 17:00 Monday to Friday but excluding public holidays in the United Kingdom recognised by the Supplier.

- 1.2. Any reference in this Agreement to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 1.3. Headings in the Agreement shall not affect interpretation.

## 2. **THE AGREEMENT**

- 2.1. Each order for the Services by the Customer to the Supplier shall be deemed to be an offer by the Customer to purchase the Services and these Terms shall apply. No order placed by the Customer shall be accepted by the Supplier until the Order is accepted by the Supplier or (if earlier) the Supplier provides the Services to the Customer.
- 2.2. These Terms shall prevail over any inconsistent terms or conditions contained in or referred to in the Customer's purchase order, confirmation of order, specification or other document or implied by law, trade custom, practice or course of dealing or simply as a result of such document being referred to in the Agreement.

## 3. **MINIMUM TERM, SUBSEQUENT TERM, RENEWED TERM AND EARLY TERMINATION FEE**

- 3.1. This Agreement shall commence on the date that the Order is signed (the **“Start Date”**) and will continue for the Minimum Term and any Renewed Term or Subsequent Term.
- 3.2. The Customer has limited rights to terminate the Agreement during the Minimum Term, Renewed Term or Subsequent Term (as the case may be). These rights are set out in Clause 10.1.
- 3.3. No later than 6 weeks before the end of the Minimum Term, Renewed Term or Subsequent Term (as the case may be) the Supplier will endeavour to contact the Customer to agree a Renewed Term. If upon the expiry of the Minimum Term, Renewed Term or Subsequent Term (as the case may be) the Customer has not;
  - 3.3.1. agreed a Renewed Term; or
  - 3.3.2. given notice to the Supplier in accordance with Clause 10.1

the Supplier will continue to supply the Services to the Customer for the Subsequent Term unless the Customer terminates the Agreement as set out in Clause 10.1.

If a Renewed Term has been agreed the Supplier will continue to supply the Services to the Customer for the Renewed Term unless the Customer terminates the Agreement as set out in Clause 10.1.

- 3.4. If the Customer terminates the Agreement before the expiry of the Minimum Term, Renewed Term or Subsequent Term, the Customer shall pay the Early Termination Fee.

## 4. **CONNECTION OF THE CUSTOMER'S EQUIPMENT**

### **CALLS AND LINES SERVICES ONLY**

- 4.1. The Calls & Lines Services are available only if the Customer has a valid contract for the use of an analogue Exchange Line (in the case of the wholesale access Service) or digital Exchange Line capable of supporting an existing ISDN30 service (in the case of wholesale ISDN30 Service) direct Exchange Line (for each Exchange Line being ordered) which terminates on a Connection Point. If such contract does not exist, the Customer must request

the Supplier to have an Exchange Line, Connection Point and/or ISDN30 bearer installed, as appropriate.

- 4.2. The Customer acknowledges that certain services are incompatible with the Calls & Lines Services available from BT, and such incompatible services are excluded from the Services. The Customer also acknowledges that some technical limitations within the System may not become apparent until after the Services have been working for some time. In such circumstances, the Services may need to be withdrawn in which case the Customer shall be entitled to a pro rata rebate of any relevant Charges paid in advance by the Customer.
- 4.3. The Customer agrees to route all of their calls to the Supplier for the duration of the Agreement. Should the customer fail to comply with this Clause 4.3, the charges as stated in Clause 8.6 will be applicable.

#### **CALLS & LINES SERVICE AND ISDN SERVICE**

- 4.4. The Customer understands and accepts that:
  - 4.4.1. the Supplier may rely upon BT's or other Network Operator's co-operation in providing the Services. The Supplier therefore gives no warranty, representation or undertaking as to the speed, quality or validity of the Services. No liability shall accrue to or be incurred by the Supplier arising from any failure of or delay suffered by the Customer; and
  - 4.4.2. the provision of the Services requires that BT or other Network Operator undertakes programming at exchange level. Accordingly, it is agreed that any act, default or delay by BT or other Network Operator in carrying out such programming or otherwise relating to or affecting the Services shall not be the responsibility of the Supplier.
- 4.5. The Customer hereby agrees to the termination of its existing contract for equivalent services with the applicable communications service provider. The Customer shall provide the Supplier with any relevant account and calling line identification numbers that may be required by BT or other Network Operator. The Customer acknowledges that the Supplier cannot process the provisions of the Services until such information is provided by the Customer.
- 4.6. The Customer's equipment to be connected with the Services shall be connected by means of Connection Points and ancillary wiring both as installed and maintained by the Supplier. If the Customer wishes a Connection Point to be moved to another place within the Site, the Supplier may agree, subject to payment of the Supplier's applicable charges.
- 4.7. The Customer shall, at the Supplier's request, arrange for the Customer's equipment to be reprogrammed by its designated maintainer in accordance with instructions provided by the Supplier, to enable any indirect or other access. The Supplier will have no responsibility in respect of such reprogramming.
- 4.8. Following termination of the Agreement, if there is any programming on the Customer's equipment to route calls via the System the Customer shall be responsible for arranging for such programming to be removed and may be subject to payment of the Supplier's applicable charges. If the new supplier fails to successfully transfer the Services then the Customer shall remain liable for the Charges after the date of termination until transfer is complete.
- 4.9. The Customer shall provide a suitable and safe working environment for the Supplier, BT or Network Operator and anyone acting on their behalf, at the Site.

#### **BROADBAND AND WEBSITE SERVICES**

- 4.10. In order for the Supplier to enable the Customer to use the Broadband Service and/or Website Services the Customer agrees to comply with the following:

- 4.10.1. the Customer must have an existing BT or any other non-cable network telephone line;
- 4.10.2. the Customer must have a personal computer of minimum specification;
- 4.10.3. the Customer must have compatible cables and extension leads between any communications equipment and telephone socket;
- 4.10.4. the Supplier's provision of the Broadband Service is subject to testing to the Supplier's satisfaction of the Customer's telephone line to ensure that broadband is available in the Customer's area and can be activated. If any installation work is needed at the Customer's Site before the Supplier is able to provide the Broadband Service, the Customer must arrange this through an authorised third party or by the Supplier at the Customer's own cost; and
- 4.10.5. the Customer must cancel any other broadband access service.
- 4.11. In certain limited circumstances, the Supplier may not be able to set up the Broadband Service and/or Website Services for technical reasons beyond the Customer's or the Supplier's control. If this happens the Supplier will notify the Customer as soon as possible and the Agreement between the Supplier and the Customer for Broadband service and /or Website Services will end. In such circumstances, the Supplier will provide the Customer with a full refund for any Charges the Customer has already paid to the Supplier for Broadband Services and/or Website Services.
- 4.12. Upon activation of the Customer's Broadband Service the Customer accepts that the Customer may experience a temporary loss of the Customer's existing line.
- 4.13. The Customer will be allocated a username and password in order to access the Broadband Service. The Customer will be responsible for keeping this username and password confidential and agrees to take all necessary steps to ensure their confidentiality and that they are not disclosed to any unauthorised third parties. The Customer will inform the Supplier if the Customer becomes aware of or suspects any unauthorised use of the Customer's username and password and agrees to take all necessary steps (or such steps as may be requested by the Supplier) to prevent such use.
- 4.14. To ensure that the Broadband Service remains secure, the Customer must not change or attempt to change a username without the Supplier's written permission.
- 4.15. If the Customer moves and wants to access the Broadband Service at their new address the Customer will need to set up a new account for that location by contacting the Supplier. The Customer will have to provide the Supplier with proof of its new address. If the Customer does not, its existing account will not be terminated and the Customer will be liable for any Charges that remain due relating to that account. The Customer will also have to pay an administration fee for setting up a new account when the Customer moves and if the Customer has purchased Equipment from the Supplier and such Equipment is lost or damaged when the Customer moves address the Customer will have to purchase new Equipment.
- 4.16. When the Customer has moved address, a telephone line test will need to be carried out. If it is not possible to connect the Customer, the Customer may terminate the Agreement provided:
  - 4.16.1. it is no earlier than the date the Customer actually moves;
  - 4.16.2. the Customer gives the Supplier ten (10) days' notice; and
  - 4.16.3. the Customer sends to the Supplier proof of the Customer's change of address.

Any Charges due in respect of the Customer's existing account to the date of cancellation will remain payable. If it is possible to connect the Customer at the Customer's new address, the Supplier will try to ensure that the Customer's connection is at the same Transmission Speed as that at the Customer's old address prior to the Customer's move. However, if it is not possible, the Supplier will connect the Customer at the Transmission Speed the Supplier determines is available and possible.

- 4.17. As part of the Broadband Service or Website Services the Customer may set up the Customer's Website(s). Domain Names are subject to availability and the Supplier cannot guarantee the availability of any specific domain name. The number of e-mail addresses and the amount of e-mail storage and website that the Supplier provides to the Customer depends on the Customer's Broadband Plan or Website Plan. The Customer agrees to ensure that the Customer saves the Customer's e-mails in the event that the Customer's e-mail storage is approaching its limit. Only one free Domain Name may be allocated to the Customer during the term of the Agreement at no additional cost; any additional Domain Names will be charged at the Domain Price.
- 4.18. Where the Supplier provides the Customer with one or more e-mail addresses and storage as part of providing the Broadband Service and/or Website Services the Customer acknowledge that such e-mail addresses are not the Customer's property and that the Supplier is entitled to alter them in its sole discretion. The Supplier will only change the Customer's e-mail addresses where reasonably necessary after providing the Customer with reasonable notice of such change. The number of e-mail addresses and the amount of e-mail storage that the Supplier provides to the Customer will depend on the Broadband Plan/Website Plan the Customer subscribes to.
- 4.19. The Customer acknowledges that the Customer has no right to sell (or to agree to transfer) or dispose of in any way, any e-mail addresses or Domain Name provided to the Customer by the Supplier.
- 4.20. If the Supplier receives a complaint about the Customer's Website the Supplier may suspend it immediately without notifying the Customer beforehand. The Supplier may ask the Customer to either agree with the person making the complaint that the material can remain or can be altered or ask the Customer to agree to remove it permanently. However, if the Supplier believes that the material on the Customer's Website is sufficiently harmful, unlawful or offensive, is illegal or the Supplier receives further complaints about the Customer's Website after the Supplier has already issued the Customer with a warning, the Supplier may end the Agreement without further notice to the Customer. In such circumstances the Supplier will be under no obligation to provide the Customer with any refund.
- 4.21. The Customer agrees that the Customer will enter into any licence or agreement reasonably required by the owner of any intellectual property rights in any software supplied to the Customer for the purpose of accessing the Broadband Service or the Website Services. The Customer also agrees that all intellectual property rights in the Broadband Service or the Website Services (including the Equipment and any related software) are and will remain vested in the Supplier, the Supplier's agents, the Equipment manufacturer or their licensors as applicable.
- 4.22. The Customer acknowledges that as part of the Customer's wish to receive and enjoy the full benefits of the Broadband Service or the Website Service some minor modifications may need to be made to the Customer's computer. It is the Customer's responsibility to ensure that such modifications do not invalidate the terms of any warranty that the Customer may have concerning the Customer's computer. The Supplier will not be liable for any claim that the Customer's warranty has been invalidated (if applicable) as a result of work carried out by the Customer, the Supplier, or the Supplier's agents in order to make the Customer's computer operate with the Broadband Service.
- 4.23. It is the Customer's responsibility to ensure the compatibility of the Broadband Service and Website Services with the Customer's personal computer; any hardware, software or any other equipment or services.

- 4.24. The Customer recognises that the Broadband Service and Website Services may from time to time be adversely affected by failure of a server or other external causes and may fail or require maintenance without notice. The Customer further acknowledges that the Supplier will have no liability for failure of the Broadband Service and Website Services unless and to the extent caused by the Supplier's negligence or fraudulent misrepresentation.

## **ROUTER**

- 4.25. The Customer acknowledges that the Supplier is not responsible for any broadband router that has not been provided by the Supplier, or the configuration of that device and that any fault diagnosis on the broadband circuit will only be carried out with the test router supplied by the Supplier for that purpose. The Customer also acknowledges that it is the Customer's responsibility to provide full assistance during that testing and that failure to provide such assistance that results in an inability for the Supplier to correctly troubleshoot the fault will be the sole responsibility of the Customer and the Supplier will not be liable for any claim resulting due to loss of, or a poor speed broadband service.

## **5. THE SUPPLIER'S GENERAL OBLIGATIONS**

- 5.1. The provision of the Services is subject to all relevant licences, infrastructure (or interconnect arrangements) and consents being in place. The Customer shall obtain any consent or facility that is necessary or desirable for the Supplier to provide the Services at the Site.
- 5.2. The Supplier may:
- 5.2.1. change or withdraw some, or part, of the Services from time to time. This may be because of changing technologies, obsolescence, new or different product features, changing content providers or the need to remove, replace or modify content; and
  - 5.2.2. determine how the Services are presented and delivered or are otherwise made available to the Customer. The Supplier can change the way they are presented, delivered or otherwise made available to the Customer at any time.
- 5.3. The Services will be provided within the Supplier's Network Operator's network area but it's always possible that the quality or coverage may be affected at times.
- 5.4. The Supplier shall exercise the reasonable care and skill of a competent telecommunications operator. The Customer acknowledges that:
- 5.4.1. the Supplier cannot guarantee that the Services will be available without interruption or will be free from error;
  - 5.4.2. the Services have not been developed to meet their individual requirements and that it is therefore the Customer's responsibility to ensure that the facilities and functions of the Services meets their requirements;
  - 5.4.3. the operability, quality and availability of the Services may sometimes be affected by factors outside the Supplier's, BT's or Network Operator's control such as physical obstructions, atmospheric conditions and other causes of radio interference, faults in other telecommunication networks or other events;
  - 5.4.4. the existence of any minor errors in the Services shall not constitute a breach of the Agreement; and
  - 5.4.5. the Supplier, BT or other Network Operator may at any time and without liability modify, expand, improve, maintain or repair the Services and this may require suspension of the operation or provision of the Services

The Supplier shall have no liability to the Customer in connection with any such adverse effect on the quality and availability of the Services.

- 5.5. The Supplier shall use reasonable endeavours to meet any agreed dates but shall not be liable for failure to meet them. Time shall not be of the essence of the Agreement.
- 5.6. The Customer shall report any fault to the Supplier's Customer Services Department, where it will be dealt with in accordance with the agreed fault repair service. The Supplier shall not be obliged to fix any fault if:
- 5.6.1. the defect arises because the Customer failed to follow any user manual or other documentation available from the manufacturer or the Supplier's oral or written instructions as to the use or maintenance of the Services or (if there are none) good trade practice;
- 5.6.2. the defect is caused by improper use of the Services or use outside its normal application;
- If the Supplier agrees to fix a fault:
- 5.6.3. caused by the circumstances set out in this Clause 5.6; or
- 5.6.4. caused by the Customer; or
- 5.6.5. that otherwise falls outside the responsibility of the Supplier; or
- 5.6.6. where no fault is subsequently found
- the Supplier may charge the Customer for such work at its applicable man-hour rate.
- 5.7. The Supplier shall not be liable for any fault whether under Clause 5.6 or otherwise unless the Customer gives written notice of the defect to the Supplier within seven (7) days of the time when the Customer discovers or ought to have discovered the defect.

## **THE CUSTOMER'S OBLIGATIONS WHEN USING THE BROADBAND SERVICE AND THE WEBSITE SERVICE**

### **BROADBAND SERVICE**

- 5.8. To prevent spam from entering and affecting the operation of the Supplier's systems and the Broadband Service, the Supplier may take any reasonable measures or actions necessary to block access to or delivery of any e-mail which appears to be of an unsolicited nature and/or part of a bulk e-mail transmission. The Supplier may also use within its systems virus screening technology that may result in the deletion or alteration of e-mail and or e-mail attachments. However, the Supplier does not warrant that such technology will be effective against all virus attacks or unsolicited e-mails.
- 5.9. The Customer acknowledges that the Broadband Service is provided to other users and the Supplier owes a duty to them as a whole to preserve Network integrity and to avoid Network degradation. If, in the Supplier's reasonable opinion, the Supplier believes that the Customer's use of the Broadband Service has or may adversely affect such network integrity or may cause network degradation the Supplier may change the Customer's Transmission Speed or manage the Customer's use of our Broadband Service as the Supplier see fit in the circumstances. This includes, but is not limited to, any circumstances where the Customer is running an application or program that places excessive bandwidth demands on the Broadband Service for continued periods. The Supplier may also impose a limit on the Customer's usage capacity at any time at our sole discretion if the Customer's usage is affecting or may affect other users' enjoyment of the Broadband Service.
- 5.10. During the term of the Agreement the Customer may request a change to the Customer's Broadband Plan at any time provided that it is only once in every thirty (30) days. Changes to the Customer's Broadband Plan are subject to availability and payment of any applicable Charges for details please see our website. The Supplier will use reasonable endeavours to complete the change as soon as possible but cannot guarantee how quickly this will be done.

The Customer will be responsible for all Charges on the existing Broadband Plan until the change is completed.

## **WEBSITE SERVICES**

- 5.11. In the event that the Customer wishes to port an existing URL which the Customer wishes to use in connection with the Website Services, the Customer agrees and understands there may be downtime associated with this process and the Supplier is not responsible for any costs or consequence of delay arising in connection with any such downtime, provided always that the Supplier reserves the right to reject such porting request at its sole discretion.
- 5.12. The Supplier may reject or remove names that the Supplier believes may infringe someone else's trade mark or other intellectual property rights or which the Supplier considers is offensive, abusive, defamatory or obscene.

## **6. THE CUSTOMER'S OBLIGATIONS**

- 6.1. The Customer may only use Services:
  - 6.1.1. as laid out in the Agreement; and
  - 6.1.2. for their own use. The Customer may not resell or commercially exploit any of the Services or content without the prior written consent of the Company.
- 6.2. The Customer shall not utilise and shall ensure that no other person uses the Services or the telephone number(s) allocated to the Customer:
  - 6.2.1. for storing, reproducing, transmitting, communicating or receiving any material in breach of any law, regulation, code of practice or in breach of the Supplier's acceptable use policy; or
  - 6.2.2. fraudulently or for any criminal or illegal purpose or in a manner that is contrary to any regulatory or legal requirement; or
  - 6.2.3. to make offensive, obscene, indecent, menacing, abusive, nuisance or hoax calls; or
  - 6.2.4. to cause annoyance, inconvenience or needless anxiety to any person; or
  - 6.2.5. contrary to instructions that the Supplier may give to the Customer from time to time; or
  - 6.2.6. to copy, store, modify, publish or distribute services or content (including ringtones), except where the Supplier gives the Customer prior permission in writing; or
  - 6.2.7. to download, send or upload content of an excessive size, quantity or frequency. The Supplier will contact the Customer if the Customers use is excessive; or
  - 6.2.8. in a manner which infringes the rights of any person, including intellectual property rights and rights of confidentiality.
- 6.3. The Supplier may publish an acceptable use policy which provides more detail about the rules for use of certain Services in order to ensure that use of Services is not excessive, or to combat fraud and where Services the Supplier may introduce require certain rules to ensure they can be enjoyed by the Customer. If the Supplier publishes a policy, the Supplier will let the Customer know – such a policy may be amended from time to time.
- 6.4. The Customer must always co-operate with and follow the Supplier's reasonable instructions to ensure the proper use and security of the Services. The Customer must only use Supplier's Equipment authorised by the Supplier for Connection to the Network and also comply with all relevant legislation relating to their use.

- 6.5. The Customer will provide the Supplier with all information that the Supplier needs to provide the Services and allow the Supplier to use that information for credit checking and debt collection (including disclosure to and use by third parties acting for the Supplier) and any other uses and disclosures permitted under the Data Protection Act 1998 and will allow the Supplier to disclose such information to the extent that the Supplier is required to do so by PhonepayPlus, OFCOM, the law or any relevant authority.
- 6.6. The Customer shall keep all of the Supplier's Equipment at the Site safe and shall pay for the replacement and/or repair of any of the Supplier's Equipment which is lost, damaged (otherwise than by fair wear and tear) or destroyed by an act or omission of the Customer, its employees, agents or subcontractors. The Customer shall not alter or move any of the Supplier's Equipment, nor do anything that is likely to damage or adversely affect its performance, nor remove or deface any words or signs on it, nor permit anyone else to do so.
- 6.7. It is the Customer's responsibility to make sure that the Supplier's Equipment is only used to access Services as permitted.
- 6.8. The Customer shall not sell, let, mortgage, charge, pledge, dispose of or do anything that would prejudice the Supplier's Equipment in any way. The Customer will allow the Supplier to inspect, test, modify, change, add to, replace or remove any Supplier's Equipment, either remotely or via a designated maintainer. At the end of the term of the Agreement, the Customer will allow the Supplier access at all reasonable times to collect any of the Supplier's Equipment in the Customer's possession.
- 6.9. The Customer shall at its own cost arrange for the required Site specific conditions, as notified by the Supplier. This will include, without limitation, mains electricity supply, Connection Points and computer terminals. The Customer shall prepare the Sites in accordance with the Supplier's reasonable instructions and reinstate them at the Customer's expense after the Supplier has completed any work necessary for the Supplier to be able to provide the Services.
- 6.10. The Customer shall ensure that any equipment (excluding Supplier's Equipment) that it uses in connection with the Services meets any legal or regulatory requirements and is approved for connection to the System. If not, the Customer must immediately disconnect it or allow the Supplier to do so at the Customer's expense.
- 6.11. The Customer shall indemnify and keep indemnified the Supplier against all or any claims and associated costs, damages or expenses made by any third party as a consequence of any breach by or other act or omission of the Customer under or in relation to this Agreement.
- 6.12. Where the Supplier is providing Calls & Lines Service:
- 6.12.1. the Customer shall comply with any requirements notified by the Supplier relating to number portability; and
- 6.12.2. where the Customer's existing account with BT includes BT equipment which is not required for the provision of the Services, the Customer shall contact BT in order to remove the BT equipment or move such equipment to another BT account.

## **7. TELEPHONE NUMBERS, CODES AND DIRECTORIES**

- 7.1. The Supplier will allocate a telephone number to the Customer in respect of the Exchange Line and, unless the Customer requests otherwise, will arrange for a free standard entry to be made in a telephone directory published by BT or any other operator (as appropriate). If the Supplier agrees to arrange a special entry (for which a charge would be made), this will be subject to additional terms and conditions.

- 7.2. The Supplier may alter the name or number of a telephone exchange serving the Exchange Line, the telephone number, or any other name, code or number whatsoever that the Supplier allocates to the Customer in instances where such alterations are required as a result of necessary operational or technical changes to the Network or changes in legal or regulatory requirements.
- 7.3. Where the Supplier allocates telephone numbers to the Customer, the Customer will not (subject to any statutory or licence provisions relating to number portability) acquire any rights whatsoever in such telephone numbers. The Customer will not apply for registration of the telephone numbers as part of a trademark.
- 7.4. If the Supplier has an agreement with the Customer's existing telecommunications service provider, the Supplier can, at the Customer's request, provide the Customer with a telephone line using the Customer's existing number subject to the following:
  - 7.4.1. there are no technical reasons preventing the use of the number;
  - 7.4.2. the existing telecommunications service provider agrees to release the relevant telephone number(s);
  - 7.4.3. the Customer agrees to cease service on the existing telecommunications service provider's telephone line using the telephone number and authorises the Supplier to arrange such cessation to take place;
  - 7.4.4. the Customer provides the Supplier with full details including (but not limited to) the account name, account number, service address and billing address;
  - 7.4.5. the Customer paying the Supplier's charges (if any) for number portability; and
  - 7.4.6. number portability is only available at the Site.
- 7.5. The Supplier does not accept any liability for claims relating to the Customer's ability to use or continue use of a particular telephone number.

## 8. **PAYMENTS**

- 8.1. The Supplier shall be entitled to send an invoice to the Customer for:
  - 8.1.1. the Connection Charge when the Services are made available to the Customer;
  - 8.1.2. the Rental monthly in advance and:
  - 8.1.3. the Call Charges after the end of the month in which the relevant calls were made.
- 8.2. The Call Charges will be calculated using the details recorded or logged at the Supplier's telephone exchange and not details recorded by the Customer.
- 8.3. The Customer shall pay all Rental and Call Charges whether the Customer or someone else uses the Services. The Supplier shall not and shall not be under any obligation (express or implied) to monitor the Customer's calls, call usage and/or patterns of usage.
- 8.4. Where the Supplier is providing Calls & Lines Services the Customer shall pay any cancellation charges, abortive visit charges, engineering visit or site survey charges, or maintenance service charges imposed on the Supplier by BT and relating to the Calls & Lines Service, save where such abortive visit or service maintenance charges arise through the Supplier's default.
- 8.5. For the Broadband Service we will invoice monthly in advance. If the Broadband Service is taken over mid month it will be invoiced in advance on a pro rata basis.

- 8.6. Where the Charges have been based upon Calls & Lines Service being provided as part of the Services or independently of other services the Customer acknowledges that:
- 8.6.1. if the majority of Exchange Line rental ceases to be provided, the Supplier shall be entitled to amend its Call Charges to its then higher standard charges;
- 8.6.2. if the majority of Call Charges ceases to be provided, the Supplier shall be entitled to amend its Exchange Line Rental charges to its then higher standard charges;
- 8.6.3. if the majority of Exchange Line Rental and Call Charges cease to be provided the agreement shall terminate and the Early Termination Fee will apply unless the business returns within 30 working days.
- 8.7. The Rental shall continue to be payable during any period of suspension or restriction requested by the Customer in addition to any Charges for such suspension or restriction.
- 8.8. The Customer shall (without set-off or deduction) pay in pounds sterling all invoices issued by the Supplier within fourteen (14) days of the invoice date. If the Customer's credit rating decreases at any time, the Supplier shall be entitled to revise the credit terms to require payment upon invoice or in less than fourteen (14) days.
- 8.9. The Charges are exclusive of Value Added Tax, which shall be payable by the Customer in addition to the Charges at the rate applicable from time to time. Time for payment of the Charges shall be of the essence of the Agreement.
- 8.10. If the Customer fails to make payment in full by the due date, in addition to the Supplier's right to suspend the Services as set out in Clause 9.1, the Supplier may charge interest at the rate of 4% per annum above the base rate of the National Westminster Bank plc on any amounts outstanding from the due date for payment until payment is made in full.
- 8.11. The Supplier may change the level of its Charges after giving the Customer four (4) weeks written notice of its intention to do so. This notice may be included in an invoice to the Customer. If the Supplier increases the Charges by more than the Retail Price Index during the Minimum Term, the Customer may terminate the Agreement in accordance with Clause 10.1 within ten (10) days of receipt of the notice of increase, without the obligation to pay the Early Termination Fee.
- 8.12. The Supplier may also change the level of its Charges during or after the Minimum Term as a consequence of:
- 8.12.1. any OFCOM direction, determination, order or similar decision; or
- 8.12.2. any notice issued by BT or other Network Operator correcting an error in the amount or application of a charge or payment under its interconnect agreement with the Supplier.
- In both cases, the Supplier shall only be entitled to change the level of its Charges where the foregoing impacts upon the basis upon which the Charges were calculated.
- 8.13. If the Supplier becomes liable to pay any additional fees, costs or charges to the Government, a regulatory authority or self-regulatory authority and such fees, costs or charges are directly attributable to the provision of Services to the Customer under the Agreement, the Supplier shall be entitled to pass through such fees, costs and charges to the Customer with immediate effect.
- 8.14. Where the Supplier agrees to do work outside a Working Day at the request of the Customer, the Supplier may charge the Customer in accordance with the Supplier's applicable man-hour rate.

## 9. **SUSPENSION AND VARIATION OF THE SERVICES**

- 9.1. The Supplier may, in its sole discretion suspend or vary the Services without compensation if:
  - 9.1.1. the Supplier is obliged or requested to comply with an order or instruction of, or a recommendation or request to take such action received from the Government, OFCOM, Radio Communications Agency, PhonepayPlus, an emergency services organisation or a competent administrative authority;
  - 9.1.2. the Supplier reasonably believe the Customer has provided false or misleading details about the Customer;
  - 9.1.3. the Supplier needs to modify, expand, improve, maintain or repair the Services or vary Network capacity;
  - 9.1.4. the Supplier needs to vary the technical specification of the Services in order to comply with any relevant law or regulation or direction from a competent authority;
  - 9.1.5. the Supplier advises the Customer that the Customers excessive use of Services is causing problems for other users, and the Customer is continuing to use the Services excessively;
  - 9.1.6. the Supplier receives a serious complaint against the Customer which the Supplier believes to be genuine;
  - 9.1.7. the Supplier reasonably believes that the Customer has used the Services or a telephone number for illegal or improper purposes in contravention of the Supplier's acceptable use policy or requirements;
  - 9.1.8. the Supplier reasonably suspects or believes that the Customer is in breach of Clause 8;
  - 9.1.9. the Customer's credit rating decreases at any time, and the Customer fails to supply reasonable security in response to a request from the Supplier; or
  - 9.1.10. the Supplier's contract with BT relating to the Calls & Lines Services is suspended, varied or terminated.
- 9.2. The Supplier shall have the right to deny access to the Network by any equipment:
  - 9.2.1. which will or may adversely affect the operation of the Network or provision of the Services; or
  - 9.2.2. if the Supplier suspects fraudulent, criminal or illegal activities are being carried out, or are likely to be carried out, via that equipment,  
  
whether or not such equipment has been approved or tested by the Supplier.
- 9.3. The Customer acknowledges that BT may make alterations to the Calls & Lines Services (including, without limitation, conversions, shifts, reconfigurations and renumbers) which may result in disruption.
- 9.4. The Customer shall reimburse the Supplier for all reasonable costs and expenses incurred as a result of the suspension and any recommencement or variation of the Services where suspension or variation is implemented as a result of any act or omission of the Customer.

## 10. **TERMINATION**

- 10.1. The Customer may:

- 10.1.1. terminate the Agreement (without incurring any Early Termination Fee) by giving a minimum of four (4) weeks prior written notice to the Supplier such notice to expire on the expiry date of the Minimum Term, the Renewed Term or Subsequent Term (as the case may be); or
- 10.1.2. terminate the Agreement before the Minimum Term, the Renewed Term or Subsequent Term (as the case may be) has expired but will have to pay the Early Termination Fee to the Supplier.
- 10.2. Either Party may serve written notice requiring the other Party to remedy within thirty (30) days of receipt of the notice a material breach of this Agreement that is capable of remedy. In the absence of a remedy in this period, the Party that served notice to remedy may immediately terminate this Agreement by written notice.
- 10.3. Either Party may immediately terminate this Agreement by written notice if the other Party:
  - 10.3.1. commits a material breach that is not capable of being remedied; or
  - 10.3.2. commits an act of bankruptcy or goes into or is put into liquidation (other than solely for the purposes of a reconstruction or amalgamation) or if a receiver or administrator is appointed over all or part of the other Party's assets or the other Party suffers seizure of any of its property for non-payment of monies owing.
- 10.4. The Supplier may, without prejudice to any of its other rights under the Agreement, terminate the Agreement with immediate effect by notice in writing in the event that:
  - 10.4.1. the Supplier is not, for whatever reason, permitted or authorised to provide the Services;
  - 10.4.2. the Supplier reasonably considers that the breach, act, omission or default of the Customer may result in the Supplier's failure to comply with any applicable legislation or may place the Supplier in breach of its agreement with the Network Operator;
  - 10.4.3. use by the Customer of the Network or the Services is, or is likely to cause damage to, interrupt or otherwise prevent the Supplier from supplying the Services to other customers or complying with obligations owed to other customers;
  - 10.4.4. such action is required in order to comply with any legislation;
  - 10.4.5. the Supplier has reasonable grounds to suspect that the Customer is involved in fraudulent or other unlawful activity.
- 10.5. If this Agreement is signed before the Supplier has completed its credit check of the Customer, the Supplier shall be permitted to terminate this Agreement immediately by written notice if the Customer fails to pass the Supplier's credit policy.
- 10.6. The rights to terminate this Agreement given by this Clause 10 shall be without prejudice to any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.
- 10.7. Following termination of the Calls & Lines Service, telephone service may be disconnected unless the Customer makes alternative arrangements with the Supplier or another communications service provider.

## 11. **LIMITATIONS AND EXCLUSIONS OF LIABILITY**

- 11.1. This Clause 11 sets out the Supplier's entire liability (including any liability for acts or omissions of the Supplier's employees, agents or subcontractors) in respect of any breach of the Agreement and any representation, statement or tortious act or omission arising out of or in connection with the Agreement.

- 11.2. Except as set out in these Terms, the Supplier provides no warranties, conditions or guarantees as to the description or quality of the Services, and all warranties, conditions or guarantees implied by or expressly incorporated as a result of custom and practice, statute, common law or otherwise are hereby expressly excluded so far as permitted by law.
- 11.3. Subject to Clause 11.5, the Supplier's aggregate 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 the Agreement shall not exceed £1,000,000 (one million pounds sterling).
- 11.4. Subject to Clause 11.5, the Supplier shall not be liable to the Customer whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise the Agreement, for:
- 11.4.1. loss of profits; or
  - 11.4.2. loss of revenue;
  - 11.4.3. loss of income or business;
  - 11.4.4. depletion or loss of goodwill, reputation or similar losses;
  - 11.4.5. loss of anticipated savings;
  - 11.4.6. loss of use;
  - 11.4.7. loss of contract;
  - 11.4.8. any indirect or consequential or special loss or damage or pure economic loss, costs, damages, charges or expenses whatsoever and howsoever caused.
- 11.5. Nothing in these Terms shall exclude or limit the liability of the Supplier for:
- 11.5.1. death or personal injury resulting from the Company's negligence; or
  - 11.5.2. for fraud or fraudulent misrepresentation; or
  - 11.5.3. for any matter which it would be illegal for the Supplier to exclude or attempt to exclude its liability.
- 11.6. The provisions of this Clause 11 shall survive termination or expiry of the Agreement.

## 12. **CONFIDENTIALITY AND DATA PROTECTION**

- 12.1. The Customer agrees to keep all Confidential Information confidential, to disclose it only to its employees that need to know it and to use it exclusively for the purposes contemplated by this Agreement. This Clause shall not apply to information that the Customer can prove:
- 12.1.1. is in the public domain otherwise than by the Customer's breach;
  - 12.1.2. it already had in its possession prior to obtaining the information directly or indirectly from the Supplier; or
  - 12.1.3. a third party subsequently disclosed to the Customer free of restrictions on disclosure and use.

This Clause shall survive for three (3) years from when the Customer acquired that Confidential Information from the Supplier.

12.2. The Customer agrees that the Supplier may provide its Personal Data to the Supplier's Network Operator to enable it to process the Customer's information and users personal data, which the Supplier collects or which the Customer submits to the Supplier during any sales or registration process, for a number of purposes, including to open and manage an account for Services, to deliver products and services ordered by the Customer, for security and emergency service support, for credit checking and fraud prevention, and for product analysis. The Customer further agrees that the Supplier may contact BT or previous communications service providers of the Customer to obtain information required to perform the Services.

### 13. **OWNERSHIP**

13.1. All IPR relating to the subject matter of this Agreement shall vest in, and ownership of the Supplier's Equipment and the System (including any works performed by the Supplier to connect the Site to the System) shall remain with the Supplier or its licensors, as appropriate. The Customer acknowledges that it shall have no licence, right, title or interest in or to any IPR of the Supplier or its licensors or the Supplier's Equipment or the System.

13.2. Risk in any rental equipment shall pass to the Customer on delivery. Ownership of rental equipment remains at all times with the Supplier or other third party owner. The Customer has no right, title or interest in the rental equipment except that it is provided to the Customer for the duration of and on the terms of the Agreement.

13.3. This Clause shall survive termination or expiry of the Agreement.

### 14. **CIRCUMSTANCES BEYOND REASONABLE CONTROL**

14.1. Neither Party shall be liable for any delay in performing its obligations under this Agreement caused by circumstances beyond its reasonable control. These are circumstances such as, but not limited to, Acts of God, insurrection or civil disorder or military operations, national or local emergency, acts or omissions of government or other competent authority or regulatory authority, fire, flood, lightning or other weather of exceptional severity, subsidence, explosion or industrial disputes. This Clause does not apply to the Customer's obligation to pay the Charges.

14.2. If either Party is affected by circumstances beyond its reasonable control, it shall notify the other Party and shall use reasonable endeavours to overcome the effects. If those effects continue for more than three (3) months, the Parties shall enter into a discussion to agree, in good faith, the best way forward.

### 15. **NOTICES**

15.1. Notices must be in writing. The address for service on the Supplier (subject to any change notified by the Supplier) is: Southern Communications Ltd, Glebe Farm, Down Street, Dummer, Hants, RG25 2AD. The address for service on the Customer is as set out in the most recent invoice.

15.2. Notices may be delivered by hand, sent by first-class mail, fax or e-mail. Correctly addressed notices if delivered by hand, shall be deemed to have been delivered at the time of delivery, if sent by first-class mail shall be deemed to have been delivered 72 hours after posting, correctly directed faxes shall be deemed to have been received instantaneously on transmission and in proving the service of any notice by e-mail, it will be sufficient to prove that such e-mail was sent to the specified e-mail address of the addressee.

### 16. **GENERAL**

16.1. Any failure by the Supplier to exercise or enforce its right under this Agreement shall not be a waiver of that right, nor prevent the Supplier from exercising or enforcing such right at a later time.

- 16.2. If any provisions of the Agreement (or part of a provision) are found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 16.3. It is acknowledged and agreed that the Agreement (including the documents and instruments referred to herein) ("the Documents") shall supersede all prior representations arrangements understandings and agreements between the parties relating to the subject matter hereof and shall constitute the entire complete and exclusive agreement and understanding between the parties hereto;
- 16.4. The parties irrevocably and unconditionally waive any right they may have to claim damages for any misrepresentation arrangement understanding or agreement not contained in the Documents or for any breach of any representation not contained in the Documents (unless such misrepresentation or representation was made fraudulently);
- 16.5. It is further acknowledged and agreed that no representations arrangements understandings or agreements (whether written or oral) made by or on behalf of any of the other parties have been relied upon other than those expressly set out or referred to in the Documents.
- 16.6. The Supplier shall be entitled to reasonably amend the Agreement at any time upon notice to the Customer if there is any amendment to the agreement between the Supplier and the network provider which directly or indirectly impacts upon the Agreement.
- 16.7. Nothing in this Agreement shall create, or be deemed to create, a partnership or the relationship of principal and agent or employer and employee between the parties.
- 16.8. This Agreement is not intended to be for the benefit of and shall not be exercisable by, any third party under the Contracts (Rights of Third Parties) Act 1999 or otherwise and neither Party can declare itself trustee of the rights under it for the benefit of any third party.
- 16.9. The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement. The Customer may not transfer, assign, sub-licence or subcontract any rights, licences or obligations under the Agreement without the prior written consent of the Supplier, which will not be unreasonably withheld or delayed.
- 16.10. English law shall govern the validity, construction and performance of this Agreement and the Parties submit to the exclusive jurisdiction of the English Courts.