

Telecom Direct Limited: Terms and Conditions 03/10/2017

**1. DEFINITIONS**

1.1 The following words have the following meaning:

“**The Agreement**” means these terms and conditions and the Order Form.

“**BT**” means British Telecommunications Plc.

“**Customer**” means the company, partnership, sole trader or other legal entity named in the Order Form. Including any future assignments or legal change of name by those persons.

“**Order Form**” means the accompanying document titled Order Form containing details of the Customer and the Services.

“**Data Services**” means the Services relating to data as specified in the Order Form.

“**Equipment**” means any Equipment supplied by Telecom Direct Ltd to the Customer.

“**Line Rental**” means rental of the Customer’s ISDN, Analogue Line(s) or SIP Channels

“**Minimum Term**” means the term in the Order Form or where applicable, the term specified in a particular section of these terms and conditions.

“**MLU**” means the automatic insertion of the unique Telecom Direct access code.

“**Network Services**” means the Particular Network Services specified in the Order Form.

“**Preferred Commencement Date**” is the date as specified in the Order Form.

“**Services**” means the services requested by the customer as particularised in the Order Form.

“**Site**” means the place of business at which the Services and Equipment are to be provided as specified in the order form.

“**SME**” means small medium enterprise.

“**Software**” means any computer programme that was on the Equipment when supplied or that the Customer received separately.

1.2 Headings are inserted for the ease of reference only and do not affect the interpretation of this Agreement.

**2. NETWORK SERVICES (LINE RENTALS & CALLS)**

2.1 Telecom Direct shall provide the customer the service to make and receive Telephone calls from the Telephone numbers provided in the order form.

2.2 The Telephone number(s) are supplied to you by Telecom Direct must not be sold or transferred (including call traffic) to any other provider while in contract.

2.3 Telecom Direct will charge the Customer the prices set out in the Order Form. However, this could be amended by Telecom Direct from time to time by giving the Customer 30 days written notice or if less as much notice as reasonably possible in the circumstances.

2.4 The Customer agrees that by signing the order form it will terminate any previous Network Services/Line Rental & Call Agreements from the Customer’s existing Supplier(s).

2.5 Telecom Direct will not be responsible for any charges incurred from the Customers existing suppliers as a result of this agreement.

2.6 The Customer authorises Telecom Direct to use all information the Customer provides in order to liaise directly with another service provider, required to exercise the performance of this contract.

2.7 In signing this Agreement the Customer agrees to take the Network Services/Line Rental Services & Calls specified in the Order Form for a minimum term of 36 months or if different, specified in the Term on the order form.

2.8 Telecom Direct may at any time change the Carrier Network, the Services or any Equipment if it needs to do so to comply with any applicable safety or other statutory requirements; or where the change does not materially detract from the quality or performance of the Services.

Telecom Direct will not pay for any change to the designated Carrier Network, Services or Equipment made under this clause.

### **3. NETWORK SERVICES MOBILE**

3.1 Telecom Direct shall provide the customer with sim cards on the chosen network specified on the order form.

3.2 In signing this Agreement, the Customer agrees to take the Mobile Network & Calls specified in the Order Form for a minimum term of 24 months or if different, specified in the Term on the order form.

3.3 Under the Terms of the agreement the Customer may be supplied with a number of cellular connections ("Lines") at different times at the Customer's own request. The new Cellular connections will also be a new 24 month contract or if different specified in the Term on the order form.

3.4 Where Telecom Direct has provided further equipment in respect of any Line at a subsidised price (upgrade) of equipment then the minimum term that relates to that Line is extended by a further period equal to the minimum term from the date of supply of the upgrade.

3.5 If the network provider exercises any right against Telecom Direct to withhold or claw-back payments made by the network operator to Telecom Direct. Telecom Direct shall be entitled to charge, claw-back or adjust payments, tariffs or discounts made or given by Telecom Direct to the Customer to the extent that they are based upon payments from the network operator.

3.6 If any cellular connection is not being used for commercial purposes then Telecom Direct shall be entitled to charge, claw-back or adjust any payments, tariffs or discounts made or given in respect of that connection.

### **4. NETWORK SERVICES DATA SERVICES**

4.1 Telecom Direct may obtain Telecommunication services from a carrier in order to supply the Data Services to the Customer. Telecom Direct has the right to change the data provider at any time.

4.2 The Customer accepts that it is technically impracticable to provide telecommunications services which are entirely free of faults and Telecom Direct does not undertake to do so but will use its best endeavours to do so.

4.3 The Customer accepts that it may not be able to receive the Data Services due to certain technical restrictions. If such technical restrictions are discovered after the date of the Agreement, Telecom Direct shall have the right to immediately terminate the Agreement in whole or in part without prejudice to any of its rights under the Agreement.

4.4 Telecom Direct shall provide the Customer with the Data Services in exchange for the charges set out in this Agreement. The term shall be for 36 months.

4.5 Any installation fees associated with the Data Services shall be payable within 7 days of the date of which they are invoiced.

4.6 All fees are subject to change from time to time in the event that the carrier increases its fees to Telecom Direct. Details of any such increase shall be provided to the customer as soon as reasonably possible.

4.7 Nothing in the Data Services sections of the Agreement shall affect the parties' rights of termination or after termination in the general provisions of the Agreement.

4.8 Telecom Direct may at any time change the Data Services or any Equipment if it needs to do so to comply with any applicable safety or other statutory requirements; or where the change does not materially detract from the quality or performance of the Data Services. Telecom Direct will not pay for any change to the Network, Data Services or Equipment made under this clause.

4.9 If you are subject to a monthly data limit and you exceed this then you will be liable to pay for any usage above per excess Gb used.

## **5. SALES AND MAINTENANCE AGREEMENTS**

5.1 The customer shall pay 50% upfront in respect of cash orders on signing the Agreement and 50% on the installation date. Payment shall be due on receipt of the invoice.

5.2 The period of maintenance will start on the Preferred Commencement Date. It will continue for a minimum of 60 months, paid either annually or monthly. If the customer wishes to cancel the maintenance contract earlier than the minimum term the termination fees will be calculated at the monthly rate signed until the end of the minimum term.

5.3 Telecom Direct may from time to time increase the charge for maintenance to account for cost increases. If this increase exceeds 10% you will be notified.

5.4 Ownership of the Equipment shall remain with Telecom Direct unless it is paid for in full by the Customer. Until that time the Customer will hold it as Telecom Direct's fiduciary agent and Bailee. The Customer must keep the Equipment and it must be properly stored, protected, insured and identified as Telecom Direct's property. The Customer is not permitted to sell the Equipment and Telecom Direct can insist on its return.

5.5 On expiry of Telecom Direct associated lease agreements, the leased system(s) become(s) the property of Telecom Direct. An invoice will be raised for secondary rental or title of the Equipment unless the Equipment is returned to Telecom Direct Ltd Pacific House, Sovereign Harbour Innovation Park, Eastbourne, East Sussex, BN23 6FA in good working condition by the Customer within 30 days of the expiry of the lease.

5.6 If requested within the manufacturer's warranty period, Telecom Direct will replace faulty items free of charge with an identical model or one with similar capabilities. Telecom Direct will do this only if Telecom Direct supplied the Equipment to the Customer, the Equipment has been maintained only by Telecom Direct, the Customer is not responsible for the damage.

5.7 Throughout the term of the Agreement, Telecom Direct shall ensure that the performance of the Equipment and the servicing meet the approved standard of the manufacturer including telephone technical support for maintenance, an engineer's visit to Site when required, service of the central control unit and all components within it, service of keyphone instruments, service of Voicemail – Auto Attendant hardware's Telecom Direct will endeavour to respond to reported faults within the level of service taken by the Customer but at no time will a failure by Telecom Direct to do so be construed as a material breach of the Agreement. Maintenance will not cover failure due to changes to or disconnection from the approved system, failure of any supplies or connected services, changes in the environment, ancillary items including but not limited to answer phones, call loggers, payphones, public address systems, printers, external music on hold sources, system cabling and consumables unless otherwise agreed in writing and a force majeure event as defined in the Agreement. Damage to equipment caused by any liquid is not covered by this agreement. Normal wear and tear is not covered by this agreement.

5.8 If the Equipment is to be connected to the BT Network or other outside services, it is the Customer's responsibility to arrange for provision of any required circuits. The Customer must pay all costs for circuit rentals, connection charges, inspections, commissioning and any other costs necessary to provide the services. Telecom Direct



shall not be responsible for any delays in the provision of services. Any such delay will not give the Customer the right to refuse installation of the Equipment or payment due to us.

5.9 After Telecom Direct has installed the Equipment at the Site, our engineer will confirm to the Customer that the Equipment is working satisfactorily. When this is confirmed the Customer will be taken to have accepted the Equipment. Any warranties for the Equipment from the manufacturer will be passed to the Customer for 30 days, as long as that warranty is still in force.

5.10 The Customer must prepare the Site(s) in accordance with Telecom Direct instructions so that any necessary Equipment can be installed. The Customer will meet the costs of preparing the Site(s). The Customer must provide adequate electricity supply and suitable earth connection for the operation of any Equipment to be installed at the Site(s) and, in the case of MLU Access, a designated carrier network test and termination point. The Customer must assist and co-operate with Telecom Direct to enable Telecom Direct to carry out its obligations under the Agreement including giving access to the Site(s) to install and maintain the Equipment. Telecom Direct will normally carry out installation and maintenance work during normal working hours but may, on reasonable notice; require the Customer to provide access at other times. At the Customer's request Telecom Direct may agree to work outside normal working hours but the Customer shall be liable for paying to Telecom Direct any related costs.

5.11 Telecom Direct shall attempt to install the Equipment at the Premises so that the Service can be provided on or before the Preferred Commencement Date agreed by Telecom Direct and the Customer. Telecom Direct shall not be liable for any failure to meet such installation dates. Should the Customer prevent Telecom Direct from delivering or installing the Equipment, including where the Site(s) is unprepared, Telecom Direct reserves the right to charge its costs to the Customer. Telecom Direct shall attempt to comply with the Customer's reasonable requests in respect of installation but Telecom Direct decision on the routing of cables and wires and the positioning of outlets and Equipment shall be final. Telecom Direct accepts no liability whatsoever for any loss the Customer or any third party may suffer as a result of installation of the Service.

5.12 Telecom Direct may, without terminating this Agreement, suspend the Services if any of the following apply. Telecom Direct believes or is advised it is necessary because of technical problems or work on the network or for reasons of safety. Telecom Direct believes it is necessary to prevent fraud taking place. Telecom Direct is obliged to comply with an order, instruction or request of Government or persons purporting to act with Governmental authority, an emergency service organisation, or other competent administrative authority. Telecom Direct needs to maintain or upgrade the Telecom Direct Designated Carrier Network at the Site. The Customer's total charges incurred are more than the Customer's credit limit. The Customer acknowledges and agrees that in certain circumstances it may not be possible for Telecom Direct to provide notice of the suspension. Telecom Direct will use reasonable endeavours taking account of the circumstances to provide the Customer with as much notice of the suspension and to maintain the suspension for as short a period as is reasonably possible. If suspension occurs for technical reasons or to prevent fraud and that suspension lasts for more than 24 hours, the Customer will receive a pro-rata credit against the monthly access charge for the period of the suspension. If the Customer fails to pay a sum due under the terms of the Agreement, then Telecom Direct reserves the right to suspend the Service and levy an administration fee of £50 for lifting such a suspension. This provision also applies to Network Services.

5.13 Maintenance is invalidated if any part of the Equipment is serviced, maintained or worked on for whatever reason or purpose by any party other than Telecom Direct or a party authorised by Telecom Direct.

5.14 Service Level Agreement Bronze provides complete hardware cover available Monday to Friday (excluding bank holidays) between the hours of 09:00 and 17:30. Faults that result in 50% system crash will receive a response within 4 working hours, all other system faults will receive a response within 8 working hours.

5.15 Service Level Agreement Silver provides complete hardware cover available Monday to Friday (excluding bank holidays) between the hours of 09:00 and 17:30. Faults that result in 50% system crash will receive a response within 4 hours all other system faults will receive a response within 8 working hours.

5.16 Service Level Agreement Gold provides complete hardware cover available Monday to Sunday (Including bank holidays) between the hours of 09:00 and 17:30. Faults that result in 50% system crash will receive a response within 4 hours all other system faults will receive a response within 8 working hours.

5.17 Handsets – All of the above services exclude support of handsets, which will be covered on a next working day post out service.

## 6. Term & Termination

The notice for Termination on all services is 90 days before the end of each minimum contract. term unless otherwise stated on the front of this contract.

The Minimum Terms for the contract are:

1. Network Services including Line Rental & Calls 36 Months. (Unless otherwise stated on the front of contract)
2. Mobile Connections Including Mobile Broadband 24 Months (Unless otherwise stated on the front of contract)
3. Data Services ADSL, Fibre, Lease Line & EFM 36 Months (Unless otherwise stated on the front of contract)
4. Telephone System Maintenance 36 Months (Unless otherwise stated on the front of contract)
5. Hosted VOIP Services 36 Months (Unless otherwise stated on the front of contract)

6.1 To Terminate this agreement written notice must be sent by recorded delivery from the customer to Telecom Direct no less than 90 days before the end of the term. If written notice is not provided before the 90 days prior to the end of the agreement, then the contract will automatically renew for another term.

6.2 If the customer migrates its call traffic from Telecom Direct's network before the expiry of the minimum term 36 months, Telecom Direct reserve its right to invoice an amount equal to the Customer's average monthly bill multiplied by the number of months remaining in the Minimum Term.

6.3 Should the customer move any of the following services while in contract or breach these terms/and conditions before the expiry of the Minimum Term for each service then Telecom Direct reserves the right to charge the customer the full amount for the remaining duration of the contract.

6.4 Without prejudice to any other rights or remedies under the Agreement or at law, Telecom Direct may terminate this Agreement or cancel the Services at any Site immediately by serving written notice on the customer if:

- a. The Customer becomes insolvent or is subject to a court winding up order; or
- b. The Customer commits a breach of any material obligation under this Agreement and (in the case of a remediable breach) fails to remedy the breach within 14 days of receiving written notice to do so from Telecom Direct.

6.5 The Customer may terminate this Agreement immediately by serving written notice on Telecom Direct if:

- a. Telecom Direct becomes insolvent; or
- b. Telecom Direct commits a breach of any material obligation under the Agreement and (in the case of a remedial breach) fails to remedy the breach within 14 days of receiving written notice to do so from the Customer.

6.6 Upon termination of any part of the Agreement, all amounts owed by the Customer to Telecom Direct shall become immediately due and payable in full on demand and the Customer must:

- a. Immediately stop using the Services that have terminated;
- b. Immediately stop using the Equipment, and

c. permit Telecom Direct to enter the site(s) during normal business hours to remove the Equipment. The Customer's obligations in respect of the Equipment will continue to apply until Telecom Direct has removed the Equipment.

6.7 Telecom Direct will not be liable for any further programming required by the Customer.

6.8 The provisions of this clause remain in force despite the termination of the Agreement.

6.9 You may cancel the agreement up to 7 days before the Preferred Commencement Date subject to a £500.00 arrangement and administration fee. If this agreement ends before the Minimum Period or subsequent fixed period ends (other than as a result of force majeure or any breach of this Agreement by us) you will pay us:

a) the full line rental in relation to any unexpired part of the then relevant term, and

b) as well as call charges based on the average calls invoiced during the previous 6 months, subject to a minimum of £500.00.

On termination of this Agreement for any reason you will:

a) pay us all outstanding charges due under this Agreement;

b) co-operate with us in the removal of any of our Equipment from your premises

6.10 In the event that the Customer wishes to change its mobile services supplier after the relevant minimum term has expired, Telecom Direct will arrange for the transfer of the telephone number to the new supplier providing that the customer has given the appropriate period of notice to terminate that supply and upon the payment of a reasonable administration fee of £100.00 and upon all sums due to Telecom Direct under this Agreement being paid up to date, together with the payment of a deposit in respect of unbilled calls.

6.11 Broadband, ADSL and Fibre services have a transfer fee of £75.00 should you wish to move to a new provider at the end of the minimum contract or if in contract.

## **7. PAYMENTS**

7.1 Telecom Direct will invoice the Customer monthly for line rentals, data services and maintenance. The billing for the call traffic shall be billed a month in the rear.

7.2 The Customer must pay the charges 7 days after the date of invoice by Direct Debit.

7.3 Where the Customer fails to complete the direct debit form a monthly surcharge of £2.50 shall be added to the charges.

7.4 If payment is not received 7 days from the date of the invoice Telecom Direct shall charge £25.00 as a late payment fee and if payment is not received within 14 days of the date on the invoice Telecom Direct shall suspend all services and charge a £50.00 re-connection fee when the payment is received.

7.5 If a direct debit fails the cost of £25.00 for each failed direct debit shall be added to the payment.

7.6 If the Customer fails to make any payment within 30 days of the date of the invoice Telecom Direct may require the Customer to pay all sums due under this Agreement on demand. The provision for interest on late payment will apply.

7.7 If payment should not be received within 30 days from the date of the invoice, Telecom Direct will be entitled to charge (in addition to interest and any legal cost ordered by the court and without prejudice to any other rights or remedies available to Telecom Direct) the sum of £85 in administrative cost incurred by Telecom Direct in taking steps to secure payment.



7.8 The customer will pay interest at a rate of 3% over the Bank of England Base Lending Rate applicable at the time per month on all overdue amounts from the date payment is due until the Customer has paid in full.

## 8. GENERAL PROVISIONS

8.1 All sums due to Telecom Direct under the Agreement are exclusive of Value Added Tax and any other applicable taxes which may from time to time be introduced, which shall be charged in accordance with the relevant regulations in force at the time of making the taxable supply and must be paid by the Customer. Telecom Direct can add costs to invoices for new services and cancellation of services such as broadband, fibre, line services, mobile contracts, maintenance, lease agreements and any services that have been provided to the customer by Telecom direct for the customer to use.

8.2 This Agreement is the entire agreement between the Customer and Telecom Direct and Telecom Direct can charge for any failed direct debit fees an administration fee.

8.3 The agreement applies to all items of Equipment individually. If any item fails, it will not affect the rights and liabilities of either party for the other items.

8.4 The Customer's duties under the Agreement will continue and will not be affected by the breakdown, theft, loss, destruction of, or damage to any Equipment.

8.5 Notices under the Agreement must be made in writing and delivered by hand or sent by registered post, or by recorded post when specifically required by these terms to the other party's address. The address will be the one stated in the Agreement, the registered office (for a limited company) or the last known address of the other party. The notice will be taken to have been delivered two working days after posting.

8.6 Telecom Direct reserves the right to assign, sub-contract or otherwise deal with all or any of its rights and obligations arising under the Agreement. The customer may not assign this contract without having first received written authority from Telecom Direct, such authority not to be unreasonably withheld.

8.7 There can be no variation to the terms of the Agreement unless agreed in writing by both parties.

8.8 The unenforceability of any term of the Agreement will not affect the enforceability of any other terms.

8.9 No person or body who is not a party to the Agreement has any rights under the Contracts (Rights of Third Parties Act 1999) to enforce any of the Agreement.

8.10 The parties shall not be liable to the other except as expressly set out in the Agreement. Unless otherwise expressly stated, either party's liability in contract, tort or otherwise including any liability for negligence howsoever arising out of or in connection with the performance of either party's obligations under the Agreement is limited to £5,000 for one event or series of related events and £15,000 in total for all events arising in any twelve month period. Without prejudice to the Customer's obligations to pay Telecom Direct the charges for any Equipment, the parties shall not be liable to the other party under the Agreement in contract, tort (including negligence) or otherwise for any loss of revenue, business, contracts, anticipated savings or profits. Nothing in this Agreement excludes or restricts either party's liability for death or personal injury resulting from that party's negligence or its employee's negligence while acting in the course of their employment or for anything else for which the parties cannot at law limit or exclude their liability. The provisions of this clause continue to apply despite the termination or expiry of the Agreement.

8.11 Neither party will be obliged to carry out any obligation under the Agreement where performance of such obligation is prevented due to any cause beyond the party's reasonable control, including but not limited to any act of God, severe weather, failure or shortage of power supplies, flood, drought, lightning or fire, labour shortage or labour dispute, the act or omission of Government, highways authorities, other telecommunications operators or administrations or other competent authority, war, military operations, or riot, or difficulty, delay or failure in manufacture, production or supply by third parties of either the Equipment or Services or both resulting from the

same or a similar type of force majeure event. If any force majeure event lasts for more than three months from the date of its commencement and that event prevents either party from performing all or a material part of its obligations during that period either party may by giving 14 days written notice to the other party terminate the Agreement.

8.12 The Customer will promptly provide Telecom Direct (free of charge) with any information Telecom Direct may reasonably require to enable it to proceed with the performance of its obligations under the Agreement including any information which Telecom Direct may reasonably request for the purposes of credit verification and debt collection and the Customer permits Telecom Direct to use such information and to provide it to third parties acting on behalf of Telecom Direct for such purposes. Unless expressly agreed in writing neither the Customer nor Telecom Direct will use, copy, adapt, alter or part with possession of any information that is disclosed or otherwise comes into its possession under or in relation to the Agreement and which is of a confidential nature unless required to do so by a court order or legislation. This obligation will not apply to information which the recipient can prove was in its possession at the date it was received or which the recipient obtains from some other person with good legal title to it or which is in the public domain otherwise than through the default or negligence of the recipient. The Customer acknowledges that Telecom Direct may use information regarding calls routed through the Equipment including but not limited to origin, destination, duration, route and time. Both parties must comply with the current Data Protection Legislation when dealing with information given to the other party under the Agreement.

8.13 Intellectual Property Rights in all documents, drawings and information including if applicable any access codes supplied to the Customer in connection with the Agreement remain vested in Telecom Direct or the intellectual property right owner. Such documents, drawings and information are confidential and will not be copied, disclosed or used (except for the purpose for which they were supplied) without Telecom Direct's prior written consent. Failure by either party to enforce any of its rights under the Agreement is not to be taken as or deemed to be a waiver of that right unless the waiving party acknowledges the waiver in writing. Part or all of any clause of the Agreement that is unenforceable or illegal will be severed from the Agreement and will not affect the enforceability of the remaining provisions of the Agreement.

8.14 Telecom Direct shall not be responsible for call charges resulting from fraudulent use of the Equipment or Services by the Customer or any third parties and the Customer agrees to pay all additional costs related to such fraud.

8.15 The Customer must not use or allow others to use the Equipment or Services provided for any improper, immoral or unlawful purpose. If Telecom Direct incurs any liability to any person or any expense arising from such use, the Customer will promptly reimburse such amounts to Telecom Direct. The Customer must report to Telecom Direct as soon as it becomes aware of any fraud, deception, or unauthorised or unlawful use relating to the Equipment or Services. The Customer must advise Telecom Direct in writing if it changes its address. The Customer must comply with all reasonable instructions given to it by Telecom Direct and provide Telecom Direct with all information relevant to the Services to be provided under the Agreement.

8.16 The GDPR (General Data Protection Regulation) is an EU-wide privacy and data protection law that gives individuals more control over their personal data. It places certain obligations on businesses that process information of individuals. By signing this contract, you consent to Telecom Direct Ltd holding your personal and business details.

8.17 The Agreement is governed by English law and disputes will be subject to the exclusive jurisdiction of the English Courts.

8.18 The Customer agrees to fully indemnify Telecom Direct for any costs, including legal costs, incurred in the pursuit of the enforcement of this agreement or in the contemplation of, or bringing of any Claim resultant from a breach of its terms.