

NETWORK SERVICE AGREEMENT TERMS & CONDITIONS

1. INTERPRETATION

- 1.1. In these Conditions:
The Act: Refers to the Telecommunications Act 1984
Contract: is the contract for the supply of the Service
Customer: is the person cited in the Network Service Agreement for whom the Supplier has agreed to provide the Service in line with these Terms.
Equipment: is the equipment detailed in the Network Service Agreement
Input Material: this includes any documents and other materials and all required data and all other information provided by the Customer in relation to the service.
Network Service Agreement: refers to the Network Service Agreement described overleaf.
Supplier: Modutel Telecom Limited, trading as Modutel, a limited company incorporated and registered in England and Wales with company number 11872942 whose registered office is at Eastleigh Business Centre, Upper Market Street, Eastleigh, SO50 9FD.
Service: this is the telecommunications service detailed as outlined in the Network Service Agreement to be supplied to the Customers telephone lines by the Seller.
References to legislative provisions are to be understood as a reference to that provision as amended, re-enacted or extended at the relevant time.
Headings do not affect interpretation and are provided for convenience only.

2. SUPPLY OF THE SERVICE

- 2.1. The Service and Equipment shall be supplied by the Supplier to the Customer subject to these Terms.
- 2.2. Variations to these terms will only be binding when agreed in writing by the Supplier.
- 2.3. It is the Customer, who at its own expense will supply the Supplier with all necessary documents and other materials as well as all necessary data and other information connected to the Service and the Equipment within sufficient time to enable the Supplier to make available the Service and the Equipment in line with the contract. The Customer has the responsibility to ensure all Input Material is accurate.
- 2.4. Duplicate copies of all Input Material will be received by the Customer at its own expense in order to insure against accidental loss or damage. The Supplier shall have no liability for any such loss or damage, however caused.
- 2.5. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.
- 2.6. Where the service has been superseded with a similar or improved product, the Supplier reserves the right to alter the specifications of the Service and/or the Equipment after acceptance by the Customer.
- 2.7. The Supplier reserves the right to change the specification of the Service and/or the Equipment so that the Service conforms to any applicable safety or other statutory requirements.

3. PRICE OF THE SERVICE

- 3.1. The price of the Service shall be the relevant price at the time the Service is in use as determined by the tariff stated in the Network Service Agreement.
- 3.2. Any applicable value added tax, import or export duties or other taxes or duties are payable by the Customer in addition.
- 3.3. The Supplier shall be entitled to vary the tariff stated in the Network Service Agreement from time to time by giving not less than three months written notice to the Customer.

4. TERMS OF PAYMENT

- 4.1. In terms of payment, the Customer will be invoiced by the Supplier for outstanding monies on a monthly basis.
- 4.2. Outstanding sums are payable in full in line with the date detailed on the invoice. Payments must be made by Direct Debit.
- 4.3. The Supplier has the discretion to submit invoices to the Customer via email.
- 4.4. Where payment is outstanding on the due date the Supplier may:
4.4.1. cancel the Contract;
4.4.2. stop providing the Service;
4.4.3. charge the Customer interest (both before and after any judgement) on the amount unpaid, at the rate of 2 per cent per month (or part of a month) until payment in full is made;
4.4.4. demand immediate payment of all outstanding sums due;
4.4.5. render the Equipment non-functional until such time as all outstanding invoices and interest are settled in full.
- 4.5. Where the Customer requests that the Supplier change the network telecommunications supplier used in connection with the Service, the Supplier shall be entitled to be reimbursed by the Customer for all and any reasonable charges, expenses or other costs incurred by the company in this respect.

5. DELIVERY OF EQUIPMENT

- 5.1. The location detailed in the Network Service Agreement is where it is agreed the Supplier will deliver the equipment.
- 5.2. Dates for equipment delivery are not absolute and instead approximate only and the Supplier shall not be liable for any delay in delivery of the Equipment however caused. Time for delivery shall not be of the essence. The Equipment may be delivered by the Supplier in advance of the quoted delivery date upon giving reasonable notice to the Customer.

6. RISK AND PROPERTY

- 6.1. The Supplier retains the Equipment as the Supplier's property.
- 6.2. The Customer shall keep the Equipment separate from that of the Customer and third parties and properly stored, protected and fully insured and identified as the Supplier's property. The Customer shall, if so requested by the Supplier, produce within 7 days evidence of such insurance to the Supplier.
- 6.3. The Customer shall deliver up the Equipment to the Supplier on demand and, if the Customer fails to do so immediately, the Supplier may enter any premises of the Customer or any third party where the Equipment is stored and repossess the Equipment.
- 6.4. The Customer may not pledge or in any way charge the Equipment by way of security for any indebtedness of the Customer.
- 6.5. The Customer shall keep the Equipment in good condition and not alter or modify it in any way.

7. CUSTOMERS OBLIGATIONS

- 7.1. In this agreement, it is accepted by the Customer that the Customer will:
7.1.1. allow the Supplier, at its reasonable request, free and safe access to its premises and service connection points, access to information and assistance from the Customers employees;
7.1.2. use the Service and the Equipment in accordance with instructions given by the Supplier;
7.1.3. ensure that only attachments approved for connection under the Telecommunications Act 1984 be connected with the Service;
7.1.4. not to use the Service or the Equipment in a manner which constitutes a violation or infringement of the rights of any other party;
7.1.5. maintain the Equipment in good working order and in conformance with the relevant standard or approval for the time being designated under the Act or any other relevant regulations authorities or licences;
7.1.6. obtain and comply with any permission, licence, consent, registration and approval necessary for the use of the Service and/or the Equipment;
7.1.7. indemnify and keep indemnified the Supplier in full against all loss (including loss of profit), liabilities, damages, claims, charges, losses and expenses incurred by the Supplier as a result of any breach of the Customer's obligations under the Contract.

8. WARRANTIES AND LIABILITIES

- 8.1. The service provided by the Supplier is not warranted to be fault free.
- 8.2. Subject to the conditions set out below, the Supplier shall pass to the Customer (to the extent that the Supplier is legally entitled to do so) the benefit of any manufacturer's warranty.
- 8.3. Where a valid claim is made in writing by the Customer in respect of Equipment that is defective or does not meet the specifications detailed in the Network Service Agreement the Supplier shall repair the defect provided that the Customer is not in breach of any of the terms of the Contract but the Supplier shall have no further liability whatsoever.
- 8.4. Subject as expressly provided in these Terms, and except where the Equipment is sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all other warranties, terms or conditions implied by statute or common law arising out of or in connection with the supply of the Equipment or resale of the Equipment by the Customer are excluded to the fullest extent permitted by law. The Supplier's prices are determined on this basis.

- 8.5. The Supplier's employees or agents are not authorised to make any representations about the Service unless confirmed by the Supplier in writing. In entering into the Contract the Customer acknowledges that it does not rely on, and waives any claim it may have for damages for or right to rescind the Contract for any such representations which are not so confirmed (unless such representations were fraudulently made).
- 8.6. The Supplier shall not be liable for any advice or recommendation about the Contract given by the Supplier or its employees or agents to the Customer or its employees or agents that is not confirmed in writing by the Supplier. The Customer acts on such unconfirmed advice or recommendation entirely at the Customer's own risk. The Customer confirms that it has not been induced to enter into this Contract on the basis of any representations of the Supplier that have not been confirmed in writing.
- 8.7. The Supplier shall have no liability whatsoever.
8.7.1. in respect of any defect arising from fair wear and tear, wilful damage, negligence (including improper storage), improper installation, use or maintenance, abnormal working conditions, failure to follow the Supplier's instructions (whether oral or in writing), misuse or alteration or repair of the Equipment without the Supplier's approval;
8.7.2. if any sum owing by the Customer to the supplier has not been paid.
8.7.3. if loss is suffered by the Customer because the Equipment fails to perform to its specifications due to the default of the network provider or any other third party.
- 8.8. Save as otherwise expressly provided in these Conditions, the following provisions set out the Supplier's entire liability (including any liability for the acts and omissions of its employees, agents and sub-contractors) to the Customer in respect of:
8.8.1. any breach of the Supplier's contractual obligations arising under the Contract;
8.8.2. any representation (other than fraudulent misrepresentation) statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE FOLLOWING PROVISIONS OF THIS CLAUSE 8
8.9. Any act or omission on the part of the Supplier or its employees, agents or sub-contractors falling within clause 8.8 above is described as an 'Event of Default'.
8.10. That part of the Supplier's liability to the Customer for death or injury resulting from the Supplier's negligence, or the negligence of the Supplier's employees', agents' or sub-contractors that the law does not permit the Supplier to exclude shall be unlimited.
8.11. To the extent the law does not permit such liability to be excluded and save as otherwise expressly provided, the Supplier's entire liability in respect of any Event of Default shall be limited to damages of an amount equal to the price paid by the Customer for the Service and Equipment over the three month period preceding the Event of Default.
8.12. Subject to condition 9.9 above, the Supplier shall not be liable to the Customer in respect of any Event of Default for any increased costs, expenses, loss of profits, goodwill, business, contracts, revenues or anticipated savings or any type of special, indirect or consequential loss (including loss or damage suffered by the Customer as a result of an action brought by a third party) even if such loss was reasonably foreseeable or the Supplier had been advised of the possibility of the Customer incurring the same.
8.13. The Supplier shall not be liable to the Customer, or be deemed to be in breach of the Contract, by reason of any delay in performing, or any failure to perform, any of the Seller's obligations, if the delay or failure was due to any cause beyond the Seller's reasonable control including (without limitation) flood, fire, war or threat of war, sabotage, civil disturbance or governmental action, import or export regulations or embargoes.
8.14. The Customer shall fully indemnify the Supplier in respect of loss or damage to the Supplier's property or death of any of the Supplier's employees caused by the negligence or wilful misconduct of the Customer.
8.15. The Customer agrees that it shall be solely liable for and, if so required, indemnify the Company for any costs of or occasioned by any interference with and/or usurpation of and/or unauthorised access to the calls (whether incoming or outgoing) provided by the Telephone Call Service by any third party whether such interference or usurpation is a part of a fraud, attempted fraud or any course of action with fraudulent intent or otherwise. The Customer further agrees that it will pay any sum demanded in writing by the Company under this clause 8.15 forthwith to the Company.

9. TERMINATION BY THE SELLER

- 9.1. The Supplier, by giving written notice to the Customer, may terminate this Contract with immediate effect:
9.1.1. if the Customer breaches any term of the Contract and fails to rectify the breach within 14 days of being sent written notice by the Supplier requesting rectification;
9.1.2. if the Customer at any time does not have the necessary valid licence to run its telecommunications system;
9.1.3. the Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a limited company) goes into liquidation, or an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or the Customer ceases, or threatens to cease, to carry on business; or the Supplier reasonably apprehends that any of these events is about to occur in relation to the Customer and notifies the Customer accordingly;
9.2. The Supplier may terminate this Contract at any time by giving not less than 28 days prior written notice to the Customer.

10. TERMINATION BY THE CUSTOMER

- 10.1. To terminate this Contract, the Customer must provide the supplier with not less than 90 days prior written notice. Termination of this Agreement during the Contract Term will lead to charges equating to an average of 3 months revenue multiplied by the number of months remaining within the contract Term. Where this cancellation notification is not forthcoming, the cancellation fee will be equal to an average 3 months billing over the remaining contract term.
10.2. Where the Contract is subsidising the costs of installing the Equipment, the minimum term of the Contract will be as entered within the Agreement. If the Customer terminates the Contract before this term has expired the Customer will become liable to repay all equipment and installation subsidies given at the point of entering into this agreement.
10.3. This Network Agreement shall be automatically extended for a further period of 12 months after the end of the agreement term unless the customer serves notice to terminate this Network Agreement, such notice to be served is 90 days before the end of the agreement term. A notice given to a party under this clause 10.3 shall be:
(a) Sent to the party for the attention of the (Managing Director) at the Address specified overleaf;
and
(b) Sent by recorded delivery.
10.4. The customer is aware that upon signing this contract, Modutel will process the transfer for the calls immediately, the customer is also aware that there is no cooling off period.
10.5. The customer is aware that once the transfer is complete, the contract term agreed overleaf now forms a legally binding contract between the customer and the supplier. The customer may terminate this contract any time after completion but will be subject to the early termination charge 'clause' 10.1.

11. GENERAL

- 11.1. Rights and obligations under the Contract may be assigned by the Supplier. The Customer may not assign its rights and obligations under the Contract.
- 11.2. Any notice shall be in writing addressed to the addressee at its registered office or principal place of business or such other address as may at the relevant time have been notified to the party giving the notice.
- 11.3. No delay or failure by the Supplier in enforcing any provision of the Contract shall constitute a waiver of that provision or any other provision. No waiver by the Supplier of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision. No waiver by the Supplier shall be effective unless in writing.
- 11.4. If any provision of these Terms is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms and the remainder of the provision in question shall not be affected.
- 11.5. These Terms and the network Service Agreement overleaf constitute the entire agreement between the Supplier and the Customer concerning the supply of the Equipment and provision of the Service and replace and supersede any prior arrangement, understanding, warranty or representation (other than any fraudulent misrepresentation).
- 11.6. The Supplier's rights are cumulative and in addition to any rights available to it at common law.
- 11.7. The Contract shall be governed by the laws of England and the parties submit to the exclusive jurisdiction of the English courts.

The
Direct Debit
Guarantee



● This Guarantee is offered by all Banks and Building Societies that take part in the Direct Debit Scheme. The efficiency and security of the Scheme is monitored and protected by your own Bank or Building Society.

● If the amounts to be paid or the payment dates change Modutel will notify you 10 working days in advance of your account being debited or as otherwise agreed.

● If an error is made by Modutel or your Bank or Building Society, you are guaranteed a full and immediate refund from your bank of the amount paid.

● You can cancel a Direct Debit at any time by writing to your Bank or Building Society. Please also send a copy of your letter to us.