

The Cellphone Store Ltd t/a Comms Connect Terms and Conditions

1. INTRODUCTION

1.1 These standard terms and conditions apply to this Agreement between the Company and the Customer (as defined in clause 2.1 below) and in order to receive the Equipment/Services and the Airtime Supply (as defined in clause 2.1 below) the Customer agrees to enter into this Agreement with the Company governing the supply of Equipment and or Service and the Airtime Contract with the relevant network.

2. DEFINITIONS

2.1 In these conditions the following expressions shall have the following meanings; "Airtime Contract" means the Agreement between the Customer and the relevant network. A copy of the Airtime Contract will be given to the Customer with this Agreement; "Airtime Supply" means cellular mobile telecommunications airtime and network capacity procured from network; "Company" means The Cellphone Store Limited t/a Comms Connect whose registered office is at 1st Floor, 507 Centennial Park, Elstree, Herts, WD6 3FG, the Company registration No.3323451;"Connection" means the connection of the Customer's end user(s) to a network such that the end user(s) is(are) capable of accessing the Airtime Supply; "Contract Term" means the 12, 24 or 36 month Contract Term for which the Customer has agreed to maintain the network connection(s) as set out in the Airtime Contract and this Agreement; "Customer" means any person, firm, company, unincorporated association or other body at whose request or on whose behalf the Company undertakes to provide the Equipment/Services and/or the Airtime Supply whose full details are set out in the Company's proposal form overleaf; "Downward Migrate" means a change of tariff, on the same network, at the request of the Customer which results in the Customer paying a lower monthly line rental. "Equipment" means any mobile hardware or associated Equipment; "Funding" means the amount payable by the Company to the Customer as is determined by the Company in its sole discretion. This amount will take into consideration the number of connections, the applicable tariffs and the Contract Term, the Customer agrees to take under the Airtime Contract. "Monthly Funding" means the amount of Funding payable per connection divided by the Contract Term. "Services" means any Service ordered by the Customer and provided by the Company. "SIM" means the Subscriber Identity Module provided by the Company. "Network" means the EE network. "Service provider" means networks other than EE and/or other resellers of products sold by the Company.

3. APPLICABLE TERMS

3.1 The Customer acknowledges that the supply of Equipment and/or Airtime Supply of Services or any other business undertaken by the Company is transacted subject to these terms and conditions and each condition shall be deemed to be incorporated in and to be a condition of any Agreement between the Company and the Customer. Save for the Company's proposal form overleaf, no other terms or conditions stipulated, or referred to, in any documentation (for example a purchase order issued by the Customer) passing between the Customer and the Company or the Company and the Customer, shall be incorporated at any time into this Agreement between the Company and the Customer.

4. SUPPLY OF CUSTOMER EQUIPMENT AND AIRTIME SUPPLY

4.1 The Company will use its reasonable endeavours to deliver the Equipment and Airtime Supply ordered by the Customer on the date agreed by the parties.

4.2 Title of the Equipment will not pass to the Customer until the Company has received payment in full, including any relevant VAT. The risk in the Equipment will pass to the Customer upon delivery and the Customer is responsible for any loss or damage after the Equipment has been delivered to the address, nominated by the Customer.

4.3 The Company is entitled to connect the Customer immediately on temporary numbers and it is the Customer's responsibility to obtain the porting Authorisation Code(s). By signing this Agreement the Customer gives the Company express authorisation to obtain the porting Authorisation Code(s) on their behalf. If the Company does not receive the porting Authorisation Code(s) within 30 days of signing this Agreement, the Customer agrees that the Company is authorised to connect the Customer on new mobile phone numbers.

4.4 The Customer acknowledges that the Company may suffer financially if the Customer does not regularly use all the connections on their account. In the event that the Company reports inactive connections to the Customer and the connections do not subsequently become active, the Company has the right to charge the Customer for the handsets provided for these numbers or invoice for any Funding paid to these numbers.

4.5 Where Equipment has been given to the Customer as Funding, the Customer acknowledges that property in this Equipment never passes to the Customer and it is a condition of this Agreement that such Equipment is returned to the Company if the Customer disconnects or Downward Migrates during the Contract Term. After the Contract Term the Customer has an opportunity to purchase the Equipment from the Company at the original cost price, less 50%, or return the Equipment in working order (fair wear and tear excepted). If the Equipment is not in working order (fair wear and tear excepted) the Customer agrees to pay the original cost price, less 50%. This will be invoiced by the Company and the Customer agrees this invoice is payable on presentation.

4.6 Hardware funds must be redeemed within the Contract Term and the Customer will not be entitled to these funds once the Contract Term has elapsed. The Hardware fund is non transferrable. In the event that this Agreement is terminated for any reason, the hardware fund will be withdrawn and any residual credit balance of the hardware fund will be retained by the Company. For the avoidance of doubt, any residual credit balance of the hardware fund shall have no monetary value and the Customer shall have no right to any payment, future use or credit in relation to such residual balance.

The Company reserves the right to offset any credit amount of the hardware fund against any monies due and payable by the Customer to the Company. VAT is not applied to the hardware fund or any drawdown from the hardware fund and an invoice or credit note will not be issued by the Company in respect of any VAT in this regard.

5. CHARGES AND PAYMENT

5.1 The Customer agrees to pay the Company for each item of Equipment as and when it is ordered. The Company reserves the right to levy a reasonable surcharge for all credit card transactions in accordance with the Company's tariff applicable from time to time, a copy of which will be available at the Company's principal places of business.

5.2 At the discretion of the Company, credit may be extended to the Customer for an agreed period of time never more than 21 days. Credit terms are only valid if received in writing from a director of the Company. Where payment is not received within the agreed term and after a written request from the Company reserves the right to impose a surcharge on all outstanding balances at the rate 5% per month or £20.00 per month, whichever is the greater. The surcharge shall be payable in respect of a period of less than one month as if such period were in fact one month.

5.3 Payment is conditional on the Customer's Network Contract continuing for the Contract Term with no changes to the Tariff and if the Network Contract ends or the Customer downgrades its Tariff before the end of the Contract Term, the Company will require the Customer to repay the amount of the hardware fund as may have been received by the Customer in full.

6. PAYMENT AND RECOVERY OF FUNDING

6.1 The Company may, at its sole discretion and subject to the remaining provisions of this clause 6, provide the Customer with Funding as a consequence of the Customer entering into the Airtime Contract with the network. Funding will only be provided to the Customer subject to the following conditions:

6.1.1 The Customer presents an invoice to the Company for the Funding and the invoice has been raised in accordance with the provisions of this Agreement (no invoice will be necessary where the Funding is being

deducted from the value of Equipment);

6.1.2 the connection(s) is (are) active on the network on the Funding payments (or instalment payment) date;

6.1.3 an appropriate reference date has passed where the invoice is payable in instalments;

6.1.4 where the Funding is to be deducted from the value of Equipment or Services ordered by the Customer as set out in clause 6.3.1 below, the Funding is claimed during the Contract Term;

6.1.5 where the invoice is for the payment of monies as outlined in clause 6.3.2 the Funding is invoiced by the Customer and received by the Company within 4 months from the connection date for the first instalment and within 14 months from the connection date for the second instalment;

6.1.6 where the invoices for termination charges as outlined in clause 6.3.3 the Funding is invoiced by the Customer and received by the Company within 1 month of the connection date;

6.1.7 where the conditions and timescales set out in clauses 6.1.1 to 6.1.6 are not met (other than as a result of any act or omission by or on behalf of the Company) then the Customer's right to Funding shall cease.

6.2 The Customer's invoice for Funding will be payable to the Customer within 30 days from the date of presentation to the Company.

6.3 At the sole discretion of the Company, any Funding provided to the Customer may be provisioned in the following manner or a mixture of them, subject always to conditions, timescales and payment dates set out in this clause 6:

6.3.1. Set off against the value of any Equipment or Services the Customer orders from the Company; or

6.3.2. The amount of Funding may be paid to the Customer by cheque or other method in 2 equal instalments, the first instalment being due 3 months from the connection date and the second instalment being due 13 months from the connection date; or

6.3.3. Used to discharge any termination charges the Customer owes the network for terminating their previous Airtime Contract subject to the Company being provided with a copy of the relevant invoice from such network.

6.4. In relation to the Customer's entitlement to Funding, the Customer recognizes that it is always conditional upon the Customer using and maintaining the connection(s) for the Contract Term and not Downward Migrating the connections during the Contract Term and other such reasonable conditions notified by the Company to the Customer from the time to time

6.5. Save where the Company is in breach of this Agreement, the Customer is not entitled to cancel this Agreement without the permission of the Company. Where permission is given and the Customer withdraws from the Airtime Contract before connection or disconnects, Downward Migrates, or the network withholds or reclaims the connection commission due or paid to the Company or any part of it (for whatever reason other than where due to an act or omission by or on behalf of the Company) before the end of the Contract Term, the Company shall be entitled to recover the Funding (or a proportion part of it) paid to the Customer or withhold any further Funding to be paid to the Customer. The Customer agrees that the Company shall be entitled to charge the Customer and administration fee of £250 for each connection if the Customer withdraws, Downward Migrates or the network withholds or reclaims the connection commission due or paid to the Company post-connection, or £100 for each connection if the Customer withdraws pre-connection. The Customer accepts that this is a genuine estimate of the Company's loss.

6.5.1. Save where the Company is in breach of this Agreement, the Customer is not entitled to move their account directly to the network, to another service provider, from a business account to a domestic account or to a domestic tariff/plan during the Contract Term without prior permission and agreement from the Company. If the Customer moves the account without agreement the Customer agrees that the Company shall be entitled to collect all supplied handsets and Funding provided during the Contract Term, this involves all hardware funds/technology funds provided. The Customer agrees they can purchase the handsets from the Company in lieu of returning them at a discounted cost of 50% of market value when originally provided.

6.6. The Customer shall use reasonable endeavours to provide all required paperwork as requested by the Company, and specify the make and model of all Equipment required. If the Customer does not provide the required information within 15 days of signing the Agreement, the Company shall be entitled to charge the Customer the administration fee as outlined in clause 6.5, in the event that the proposal is cancelled for any reason.

6.7. The Company will be entitled to recover from Customer the monthly Funding amount for each connection for each month of the remaining unexpired months of the Contract Term; part months to be prorated.

6.8. The Company will invoice the Customer any amounts due or withheld as set out in this clause 6 and such amounts shall be payable by the Customer on presentation of a valid invoice from the Company.

7 WARRANTIES

7.1 The Customer accepts that the Company offers a limited warranty as it is not the manufacturer of the Equipment. The Customer will report, in writing, any alleged Equipment defect or fault within 10 working days after installation and setup or, where the defect or fault occurs after such time, as soon as it becomes aware of such defect or fault. The Company will, at its option, repair, replace or substitute the Equipment with substantially similar goods. Where Equipment is replaced or substituted the original Equipment will belong to the Company. The Company's responsibility to repair, replace or substitute the Equipment will cease where the Customer has altered, misused, improperly installed or connected, or subjected the Equipment to any unauthorized repair. Where the Customer fails to report the alleged fault or defect within the provisions of this clause 7, then the Customer will be deemed to have accepted the Equipment and the Company will have no liability in respect of the Equipment.

7.2. Where Equipment has been sold on a "no warranty" basis, the Company will have no liability in respect of it.

7.3. Equipment returned with an alleged defect or fault which is subsequently found to have no defect or fault will be returned to the Customer.

8. LIMITATION OF LIABILITY

8.1. Neither party shall be liable to the other party in respect of any matter arising out of or connection with this Agreement in contract or tort (including negligence) or otherwise for any loss of profit, loss of business contract, loss or corruption of data, or any indirect or consequential loss or damage whatsoever. The Customer's liability to the Company for loss or damage of any kind whatsoever to the Customer during performance of this Agreement in contract, tort or resulting from negligence or otherwise arising in connection with this Agreement shall in no circumstances exceed the sum paid by the Customer to the Company in respect of the Equipment or Services. Nothing in this Agreement shall exclude or restrict the liability of either party to the other for fraud, death or personal injury resulting from the negligence.

8.2. Save for death or personal injury resulting from the Company's negligence, the Company shall not be liable to the Customer for any loss as a result of electromagnetic frequencies or any similar result from the Equipment.

9. GENERAL

9.1. All notices given pursuant to any of these conditions must be given by email or letter. Where any such notice is given by email or letter it shall be deemed to be given at the time when it is received by the recipient and in the case of any notice given by letter, it shall be deemed to have been given at the time when it would have been delivered to the recipient in the ordinary course of post. All notices to the Company must be sent to its registered office specified in clause 2. Any notices to the Customer will be valid if sent to the Customer's last known place of home or business or to the Customer's registered office and if there is more than one such home or business to any one of such homes or places of business.

9.2. If any term or provision within these conditions shall in whole or in part be held to any extent to be illegal or unenforceable, then such term or provision or part shall to that extent be deemed not to form part of these conditions and the enforceability of the remainder of these conditions shall not be affected. Furthermore the Company and the Customer agree that substitute provisions will be used in a form as similar as possible to the offending provision without rendering them illegal or unenforceable.

9.3. No variation, extension, exclusion or cancellation of these conditions shall be binding upon the Company unless and until it is confirmed in writing by a director of the Company.

9.4. Neither party shall be permitted to assign or subcontract this Agreement or any part of it without the other party's prior written consent. The Company will be entitled to assign or sub-contract this Agreement or any part thereof.

9.5. If either party fails to enforce any of the provisions of this Agreement, this will not be construed as a waiver of any of its rights under this Agreement.

9.6. The Company shall be entitled to amend any of the terms of this Agreement upon the giving of 7 days' written notice to the Customer.

9.7. The time of performance is of the essence in relation to the obligations of each party under this Agreement.

9.8. Nothing in this Agreement shall create, or be deemed to create, a partnership or relationship of principal / agent or employer / employee.

9.9. The headings to the clauses of this Agreement and to the paragraphs of the schedules will not affect its construction.

9.10. These conditions shall be governed by English law and the English courts shall have jurisdiction in any dispute between the Company and the Customer.

10. DATA

10.1. The Company will use all reasonable endeavours to protect the Customer's personal data but as the transmission of data via the internet is not entirely secure the Company is not able to guarantee this. Once received by the Company, the Company will use strict procedures and security features to try to prevent unauthorised access. The Company's policies are compliant with Article 5(1) of GDPR.

10.2. Unless otherwise specified, the Company will only collect basic personal information about the Customer, which does not include any special categories of personal information.

10.3. The Company will be what is termed the "Controller" for GDPR purposes. The Company sends promotional/marketing information by consent but declining to give consent does not affect continued service or

the sending of necessary updates to customers to fulfill the Company's contractual obligations and duty of service. The Company may send promotional email through the Company's customer relationship management system The Layer (thelayer.com), termed a "data processor" for this purpose. Servers used for storing personal data by the Company are within the European Union.

10.4. The Company holds and manages data in accordance with the requirements of the GDPR May 25th 2018.

10.5. Further details regarding the use of personal data can be found on the Company's website www.commsconnect.co.uk

11. ESCALATION AND DISPUTE RESOLUTION

11.1. If a dispute arises between the parties to this Contract, the parties will use their reasonable endeavours to settle the dispute in accordance with the following procedures; (a) a dispute which has not been settled by the Customer's representative and the COMMS CONNECT representative within 7 days of the matter being raised, may be escalated by either party to the first level by written notice to the other party; (b) if the dispute is not resolved at the first level within 7 days of escalation either party may refer the dispute to the second level. The parties' representatives and the people to whom a dispute must be escalated at the first and second levels are as notified by either party to the other, from time to time. (c) the mediator will be appointed by agreement of the parties. In the event of a failure to agree within 3 days of a proposal by one party, the mediator will be appointed by the Centre for Dispute Resolution (CEDR); (d) within 14 days of the appointment of the mediator the parties will meet with the mediator in order to agree the procedure to be adopted for the negotiations; (e) all negotiations connected with the dispute will be conducted in confidence and without prejudice to the rights of the parties in any further proceedings; (f) if the parties reach agreement on the resolution of the dispute the agreement will be put in writing and once signed by the parties will be binding on them; (g) if the parties are not prepared to agree to the dispute being referred to a mediator, or fail to reach agreement within 2 months of the mediator being appointed then either party may exercise any remedy that it has under this contract.

11.2. If a dispute is not resolved after the procedures set out in paragraph 11.1 have been followed then, if the parties agree, the dispute will be referred to a mediator.

12. ANNUAL PRICE INCREASE (CPI)

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