

Foehn Limited

Terms and Conditions

1. Service Agreement Terms & Conditions

- 1.1. Foehn limited ("Foehn") agrees to supply the telecommunications service or services indicated on the services order form ("the service"), and the authorised legal person named in section 1 of the services order form ("the customer") agrees to use the service in accordance with these terms and conditions. The completed services order form and these terms and conditions constitute the entire agreement between Foehn ("this agreement") and the customer and shall supersede any prior understandings, agreements and/or communications between the parties, including any earlier terms or agreement between the parties. In the event of any clash or inconsistency between the services order form and these terms and conditions, the services order form shall prevail.

2. Commencement and Duration

- 2.1. Foehn shall use its reasonable endeavours to process the Customer's completed Services Order Form within 24 hours of it being signed by the Customer or its receipt by Foehn (whichever shall be the later). This Agreement shall not commence until the Services Order Form has been processed. The Customer may at its option cancel this Agreement within 24 hours of completing and signing the Services Order Form at no cost to the Customer, provided that it has not used the account. In the event that the Customer has used the account within this period it shall not be entitled to cancel this Agreement, save in accordance with Condition 14 (Cancellation).
- 2.2. The Initial Period will commence from the date the customer is able to make telephone calls via the service or 30 days have elapsed from the date the Services Order Form was signed by the Customer, whichever is the sooner and will automatically continue unless terminated in accordance with the termination provisions of this Agreement.
- 2.3. This Agreement for any service shall remain in force for the Initial Period relevant to the Service(s) specified as the "Contract Term" in the Services Order Form and shall automatically continue thereafter for a period of 12 months or as specified in the relevant Services Order Form unless or until it is terminated by either the Customer or Foehn pursuant to Condition 13 (Termination).

3. Charges

- 3.1. Unless agreed in advance in writing with the Customer to the contrary, the prices which Foehn shall charge to the Customer for the Service shall be as set out in the Foehn published price list as is current from time to time, which Foehn may vary by giving the Customer not less than 30 (thirty) days notice. All quoted prices are exclusive of Value Added Tax which shall be added at the current rate.
- 3.2. Foehn shall calculate charges by reference to data recorded or logged by Foehn in relation to the total use of the Service through the Customer's telecommunications equipment in any given invoicing period and not by data recorded or logged by the Customer.
- 3.3. Foehn shall invoice the Customer on a monthly basis for all charges under this Agreement plus Value Added Tax at the required rate. All Foehn invoices are payable in full by the Customer within 14 days of the date shown on them without any set off or deduction.
- 3.4. All Foehn's charges pursuant to this agreement must be paid either by variable direct debit from a current account maintained by the Customer at a UK branch of a bank or building society. Payment by cheque or by being charged under a standing arrangement to the Customer's credit/charge/debit cards as accepted by Foehn are subject to prior formal agreement between Foehn and the Customer and in such case a £10 per month surcharge on all billable services shall apply.
- 3.5. If any credit/charge/debit card, direct debit or account payment collection by the Company is unsuccessful, the Customer will pay an administration charge of £25 and a late payment charge at a rate of 2% per month on any unpaid overdue balance.

- 3.6. In the event of any dispute as to charges Foehn's records shall, in the absence of manifest error, be conclusive evidence of the charges which are to be paid by the Customer hereunder.

4. Overage Charges

- 4.1. In addition to fees detailed on the Services Order Form, Foehn reserves the right to charge the following overage fees when the customer exceeds the usage limits on certain elements of the service:
- a) Call recording policy: The first gigabyte of storage is included per company tenant. Every additional gigabyte is charged at £6.50 per month per company. Monthly peaks will be rounded up to nearest gigabyte. By default Foehn will store recordings for 1 months and the Customer has the option of defining storage time in monthly increments. For archival and storage purposes, the Customer can collect call recordings via an API.
 - b) Customers are entitled to one SIP channel per extension. Every additional SIP channel required beyond this 1:1 ratio will be charged at £7.00 per channel per month.

5. Customer Responsibilities

- 5.1. The Customer undertakes to use the Service in accordance with these terms and conditions, such conditions as may be notified in writing to the Customer by Foehn from time to time and at all times in accordance with the relevant provisions of the Telecommunications Act 1984, the Communications Act 2003 and any rule or regulation made under them, any other applicable laws and regulations, directions given by the Secretary of State, the Director General, Ofcom or any other competent person or authority and any licence which governs the operation or use by the Customer of a telecommunications system ("the Rules").
- 5.2. The Customer will ensure that the Service is not used:
- a) for a purpose other than that for which the Service is provided; or
 - b) for the transmission of any material which is intended to be a hoax call to emergency services or is of a defamatory, offensive, abusive, obscene or menacing character or otherwise illegal; or
 - c) in a manner which constitutes a violation or infringement of the rights of any other party.
- 5.3. The Customer is responsible for ensuring that any transfer, migration or porting from Foehn to another service provider is effected by such service provider on the correct date.
- 5.4. The Customer hereby indemnifies Foehn against all liabilities, claims, damages, losses and expenses arising from any breach of its obligations as prescribed in this Condition 5.
- 5.5. The Customer shall obtain all third party consents, licenses and rights reasonably required in order to allow Foehn or its sub- contractors to provide the Service and be responsible for complying with any applicable law, statute, regulation or code of practice in relation to the Service.
- 5.6. To the extent reasonably necessary to allow Foehn to provide the Services, the Customer shall reasonably co-operate with Foehn and give full access to its premises and reasonable facilities in order for the Services to be carried out.

6. Customer's Equipment

- 6.1. The Customer undertakes that any Customer telecommunications apparatus shall be in good working order and conforms at all times to the relevant standard or approval under the Rules and the Customer shall at all times comply with the conditions of such standard and approval. Foehn will not be under any obligation to connect or keep connected any such equipment which they reasonably believe does not conform to the provisions of any applicable requirements. The Customer is responsible at all times for the safety and safe custody of such equipment and for the safe use of it and the Service.
- 6.2. To enable Foehn to fulfil its obligations under this Agreement the Customer shall permit or procure the permission for Foehn and its authorised representatives to have access to the Customer's premises and shall provide Foehn with such reasonable access as the Foehn shall request. Foehn will normally require access only during Foehn's normal working hours but may, on reasonable notice, require access at other times in order to ensure the provision of the Service. At the Customer's request, Foehn may agree to work outside its normal working hours provided that the Customer reimburses Foehn its reasonable charges for complying with such request.

- 6.3. The Customer duly authorises Foehn, its dealers, agents or personnel to reprogram and/or remove existing access equipment as may be necessary in order to provide the Service. It is the Customer's obligation to follow Foehn's recommendation or its authorised representative's specifications regarding any construction work at the Premises necessary for the installation of the equipment or reprogramming of the Customer's telephone system for the Customer's use of the Service. The Customer shall provide such reasonable assistance as Foehn shall request.
- 6.4. Foehn reserves the right to charge the Customer for all costs incurred as a result of carrying out maintenance or repair work, which in Foehn's reasonable opinion, is considered necessary.
- 6.5. The Customer MUST ensure all equipment connected to or used in conjunction with the Service remains secure, and is fully responsible and liable for any unauthorised or fraudulent use of the Service howsoever that use may occur, including but not limited to fraudulent or unauthorised use of the Service by third parties as a result of the Customer not complying with this term. In particular, the Customer shall ensure that it follows best security practice so that unauthorised or fraudulent use of the Service by third parties cannot take place. The Customer hereby defends and indemnifies Foehn against all costs, expenses and loss arising from any such unauthorised or fraudulent use of the Service.

7. Equipment Supplied

- 7.1. All Equipment Supplied by Foehn not purchased outright by the Customer or included in the service fee, which has been provided to the Customer for use on the Customer's premises on a rental basis as indicated on the Services Order Form, or provided free of charge shall at all times remain the property of Foehn.
- 7.2. Subject to written agreement with Foehn, the Customer shall have the right to transfer the ownership of the equipment to the Customer upon termination of the Rental period.
- 7.3. Telephone handsets supplied inclusive of a monthly service fee shall become the property of the Customer and any warranty associated with the handset remains the responsibility of the original manufacturer only. In the event of a faulty handset, if the visit of an engineer is requested, this will be a chargeable service and the charge will be communicated at the time of request and the visit will take place during normal working hours unless specifically agreed otherwise. Foehn accept NO liability in respect of any defect or breakdown of a handset or any losses, direct or indirect as a result of such defect or breakdown.
- 7.4. Foehn do not give any warranty condition or undertaking as to the state of any Equipment Supplied other than the work to configure the Equipment Supplied to provide the Services unless specifically itemised on the Services Order Form.
- 7.5. The only warranties in relation to Equipment are those given by the manufacturer of the Equipment.
- 7.6. In respect of defective Equipment, Foehn shall, at its option, repair or replace such Equipment or refund the price of the defective Equipment. Foehn shall have no obligation to do so where the defect is caused by the Customer altering or repairing the Equipment without Foehn's consent or arises as a result of fair wear and tear.
- 7.7. The risk in the Equipment shall pass to the Customer on delivery. Title to the Equipment shall not pass to the Customer until Foehn has received payment in full for the Equipment.
- 7.8. Any dates given for delivery of Equipment are approximate only and time is not of the essence in relation to any obligations under this Agreement.

8. Fees and Payment

- 8.1. All prices are as indicated in the Services Order Form. Confirmation will be provided after relevant site surveys are complete. Additional charges and/or excess construction charges maybe applicable resulting from site survey. Quoted prices are valid for 30 days only. Payment is due within 30 days of receipt of an invoice or as stated in the Services Order Form. In the event of late payment, Foehn can charge interest as permitted by UK legislation on Late Payment.
- 8.2. At the end of the Initial Period specified on the Services Order Form, Foehn reserve the right to vary services charges to reflect our current standard rates. Foehn will provide the customer 14 days' notice of a revision to service charges.

8.3. Foehn may require the Customer to pay a deposit and/or require the Customer to procure a parent or associated company guarantees payment of any fees under this agreement.

8.4. In addition to any other remedies it might have, Foehn may suspend the Services without liability to the Customer in the event of late payment.

9. Suspension of Service

9.1. By giving reasonable notice to the Customer, or if this is not possible such notice as is reasonable in the circumstances, Foehn may suspend the Service, or any part of the Service for reasons including but not limited to:

- a) operational reasons in accordance with normal service levels
- b) obligation to comply with regulatory change
- c) obligation to comply with order, instruction or request of a court, government, agency, emergency service or other authority requiring the suspension of the Service
- d) Foehn's reasonable belief that the Customer's use of the Service has the potential to damage or disrupt the proper function of Foehn's infrastructure/equipment used to provide service to other customers.
- e) Customer in breach of its obligations under this agreement
- f) An undisputed invoice (or undisputed part of an invoice) is not paid in full within agreed terms, provided that Foehn has provided 5 working days' notice of such non-payment.
- g) Any suspected fraudulent or unauthorised use of the Service.

9.2. Any such suspension will exempt Foehn from complying with any agreed SLA during the period of suspension.

9.3. Foehn reserves the right to charge a reasonable Service restoration fee resulting from a Service suspension arising under Condition 8. Such fee to be notified to and agreed with the customer prior to restoring Service.

10. Provision of Information

10.1. The Customer must provide Foehn with all information and co-operation which Foehn may reasonably require enabling it to carry out its obligations.

11. Intellectual Property Rights

11.1. All Intellectual property rights arising out of or in connection with the Service shall be owned by Foehn unless stated expressly to the contrary in a Services Order Form.

11.2. To the extent that the Customer requires a licence to make use of the Service, Foehn (or its licensor) grants a non-exclusive, revocable licence to the Customer to use the relevant intellectual property. The Customer shall not be entitled to sub-licence, assign or otherwise transfer any intellectual property rights licensed to it without the prior written consent of Foehn.

12. Liability

12.1. Foehn shall accept liability for physical damage caused to the property of the Customer caused by any negligent act or omission of Foehn, its employees or agents. Foehn's liability for physical damage shall be limited to £10,000 for any one incident or £25,000 for any series of incidents arising from a common cause in any twelve month period.

12.2. Subject to condition 11.5, Foehn shall in no circumstances, in relation to any direct loss or damages suffered by the Customer arising under or in connection with this Agreement during the period which it shall be in force, be liable to the Customer for more than the lesser of: (i) £100,000 or (2) the total fees payable by the Customer to Foehn in the 12 months preceding the date of the claim.

12.3. Subject to Condition 11.5, Foehn shall not accept any other liability to the Customer for any special, indirect or consequential damages, including but not limited to loss of revenue, business, anticipated savings or profit, loss of goodwill, loss of or corruption to data or for any other economic loss or for any indirect or consequential loss whatsoever and howsoever arising and even if the Customer has notified Foehn that any of the above may occur.

12.4. In the event of any failure in the Service, Foehn shall not be liable to the Customer for any charges incurred by the Customer should the Customer divert its traffic to another carrier. Foehn shall not be liable to the Customer where

any interruption in or failure of the Service occurs due to a line or network failure or is otherwise due to the actions or omissions of the line or network provider or any of their employees, agents or sub-contractors.

12.5. Nothing in this Condition 11 or elsewhere in this Agreement shall act so as to exclude or restrict any liability which Foehn may have to the Customer for any death or personal injury resulting from the negligence of Foehn, its employees or agents or arising from any fraud.

12.6. The provisions of this Condition 11 shall continue to apply even after this Agreement has ended.

13. Availability

13.1. The Service is provided with no warranty whatsoever save as set out in this Condition 12. All other warranties, conditions and guarantees are excluded to the fullest extent permitted by law, unless expressly provided for elsewhere in this Agreement.

13.2. In the unlikely event of any fault with the Service, Foehn will endeavour to fix the fault as soon as reasonably possible.

13.3. Foehn agrees to supply the Service to the Customer using the reasonable skill and care of a competent telecommunications service provider.

13.4. Foehn reserves the right to vary the Service for technical, operational and other valid reasons and shall give as much notice as it reasonably can in relation to such variation. In the event that there is a material, significant change in the Service, the Customer shall be entitled to terminate this Agreement, without liability, if it notifies Foehn in writing within 7 days of receiving notice of the variation.

13.5. Foehn shall use reasonable endeavours to ensure that the Service is available for use by the Customer in accordance with the Service standards for the time being set out in Foehn's Service literature.

14. Termination

14.1. Without prejudice to their rights under this Agreement, Foehn and the Customer shall have the right to terminate this Agreement immediately on written notice to the other party in the event that:

- a) the other party is in breach of this Agreement and if the breach can be remedied, fails to remedy it within 30 days specified by the non defaulting party in its written notice to do so; or
- b) an interim order is applied for or made, a voluntary arrangement approved, a petition for a bankruptcy order is presented, or a bankruptcy order is made, against the other party; or a receiver or trustee in bankruptcy is appointed over the other party's estate; or a voluntary arrangement is proposed or approved in relation to the other party; or a receiver or administrative receiver is appointed over the other party's assets or undertaking or an order is made for the appointment of an administrator to manage the affairs, business or property of the other party; or a winding-up resolution or petition is passed or presented (otherwise than for the purpose of reconstruction or amalgamation) to the other party; or a notice of intention to make any such appointment shall be served on the other party or any circumstances shall arise which entitle the court, a creditor or any other person to appoint a receiver, administrative receiver or administrator or to present a winding-up petition or to make a winding-up order, in relation to the other party.

14.2. Without prejudice to its other rights, Foehn shall have the right forthwith to terminate this Agreement by notice in writing to the Customer in the event that:

- a) Foehn's licence expires or is revoked; or
- b) a licence under which the Customer has the right to run its telecommunications system and connect it to Foehn's system is revoked, amended or otherwise ceases to be valid and is not immediately replaced by another valid licence.

14.3. Either party shall be entitled to terminate this Agreement immediately on notice to the other in the event that a Force Majeure Event shall have continued for a period of three months or more.

14.4. If Foehn terminates this Agreement under Condition 13.1 or 13.2, Foehn shall be entitled to recover from the Customer all costs, losses and expenses reasonably incurred by Foehn arising from or in connection with the

termination, including the cost of any handsets provided as part of a “Handset Included” service specified on the Services Order Form.

- 14.5. Unless otherwise stated in the relevant Services Order Form, the Customer must give Foehn 90 days’ prior written notice to terminate the Agreement at the end of the Initial Period. If no such notice is given, the Agreement shall automatically continue for a further 12 months.
- 14.6. Upon termination of this Agreement for any reason, the Customer shall within one calendar month deliver all property and possessions belonging to Foehn under the terms of this agreement to Foehn at its operating address.
- 14.7. If the Customer fails to fulfil its obligations under clauses 13.4 and 13.5, then Foehn may enter the Customer’s premises and take possession of any items which should have been returned under it.
- 14.8. The provisions of this Condition 13 shall continue to apply even after this Agreement has ended.

15. Cancellation

- 15.1. In addition to the Customer’s right to cancel set out in Condition 2.1, the Customer may cancel this Agreement at any time by giving not less than 90 (Ninety) days’ notice in writing served by registered post to Foehn provided that:
 - a) if such cancellation is effected during the Initial Period, in addition to the Customer being liable to pay Foehn for all charges incurred by the Customer up to the effective date of cancellation (including all interest), the Customer must pay the cancellation charges set out below on or before the effective date of cancellation and it shall not be effective until the last day of the month in which the notice period shall have expired.
 - b) The Customer agrees to pay the cancellation charges as set out below:
 - (i) £100.00; and
 - (ii) an amount equivalent to the charges which the Customer would have been liable to pay for the remaining balance of the Initial Period, plus VAT at the required rate; and
 - (iii) an amount equal to the average call charges invoiced to the Customer each month over the lifetime of this Agreement, plus VAT at the required rate.
 - (iv) £100 for each handset supplied as part of a Handset Included service specified on the Service Order Form if cancelled within 12 months of the Customer’s first use of the Service, or £50 if cancelled after 12 months but before the completion of 24 months of the Customer’s first use of the Service. £0.00 per handset is due thereafter.

16. Foehn’s Rights Where No Notice Is Given By Customer

- 16.1. In the event that at any time the Customer transfers to another telecommunications services provider or otherwise, for whatever reason, ceases to use the account (“the Event”) without first notifying Foehn in accordance with the provisions of Condition 13 (Termination), the Customer will be in breach of the terms of this Agreement and Foehn shall be entitled (at its discretion) to terminate this Agreement in accordance with the provisions of Condition 13.1.
- 16.2. Until such time as Foehn shall exercise its right of termination provided for in Condition 13.1, the Customer shall remain liable to Foehn for all charges properly incurred hereunder. The Customer shall be liable to and shall pay Foehn for all costs, losses and expenses reasonably incurred by Foehn arising from or in connection with the Event or the termination of this Agreement made by Foehn following the occurrence of the Event.
- 16.3. Foehn shall in its discretion, having regard to the circumstances and the information available, determine when the Event shall have occurred. For termination by the Customer arising under clause 13.1, Foehn shall be entitled to retain any deposits and/ or advance payments received from the Customer.

17. Confidentiality, Data Protection and Data Storage

- 17.1. Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 16.2.
- 17.2. Each party may disclose the other party’s confidential information: (i) to its employees, officers, representatives or advisers who need to know such information and (ii) as may be required by law, a court of competent jurisdiction or any governmental authority.

17.3. Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under this Agreement.

17.4. Each party shall abide by all UK and EU data protection laws and regulations in performing its obligations under this Agreement.

17.5. Customer acknowledges that the Services are not intended and should not be used for long-term data storage. Customer is encouraged to back-up regularly any Customer Data that it wishes to retain and use other than in connection with the Services. Foehn shall not be responsible for any Customer Data exported from the Services, including without limitation via third-party integrations, or storage on devices or external media or accounts. Foehn reserves right to periodically purge Customer Data from its servers, subject to any data retention requirements under applicable Laws or the Customer Agreement.

18. Force Majeure

18.1. Neither party shall be in breach of this Agreement nor liable for any delay in performing or failing to perform any of its obligations under this Agreement if such delay or failure results from force majeure.

19. Assignment

19.1. Foehn may at any time assign, mortgage, charge, subcontract, dedicate or deal in any other manner with any or all of its rights and obligations under this Agreement.

19.2. The Customer shall not assign, transfer, mortgage, charge, subcontract or deal in any other manner with any of its rights and obligations under this Agreement without the prior written consent of Foehn.

20. Waiver

20.1. Any failure or delay by a party to exercise any right or remedy under this Agreement shall not constitute a waiver of that right or any other remedy. A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed to be a waiver of any subsequent breach or default.

21. Third Party Rights

21.1. This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties Act) 1999 to enforce any term of the Agreement.

22. Variation

22.1. Except as set out in this Agreement, no variation of the Agreement shall be effective unless it is agreed in writing and signed by the parties or their authorised representatives.

23. Governing Law and Jurisdiction

23.1. This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it shall be governed by and construed in accordance with the laws of England and Wales.

23.2. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle all disputes or claims (including non-contractual disputes or claims) arising out of or in connection with the Agreement.

24. Definitions

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| "Equipment Supplied" | any Router, PoE switch, server, rack, or handset Foehn may supply as part of the service |
| "Force Majeure" | any cause beyond a party's reasonable control |

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| “IDA” | Indirect access (manual dial via PIN) |
| “Initial Period” | The relevant initial period as described in Condition 2.2 |
| “Services Order Form” | Request for Services Order Form |