

## Communications Services Terms and Conditions Dated 1st June 2016

YOUR AGREEMENT WITH US (this "AGREEMENT") IS MADE UP OF THE FOLLOWING DOCUMENTS:

- (i) THESE CONDITIONS FOR COMMUNICATIONS SERVICES;
  - (ii) THE SERVICE AGREEMENT;
  - (iii) THE ORDER SCHEDULES;
  - (iv) THE RELEVANT TARIFF(S) FOR THE SERVICES WE AGREE TO PROVIDE TO YOU; AND
  - (v) SUPPLEMENTARY CONDITIONS RELATING TO SPECIFIC SERVICES, WHERE APPLICABLE.
- THE SERVICES AND USE OF THE SERVICES

### 1. Provision of the Services

1.1 The Services we supply to you are those Services which (a) you have ordered by telephone and are set out in the Service Agreement and Order Schedules attached to these Conditions confirming your order, or (b) you have elected to receive as set out in the Service Agreement and Order Schedules, or (c) have been ordered via our website on your behalf by a third party (details of such Services will be set out in a letter to you from us) and which you have subsequently confirmed that you wish to receive, or (d) which you have subsequently ordered in writing, by fax, by email or by telephone, and in each case which we have agreed in writing or by email to supply to you. These may include (but are not limited to):

- The ability to make or receive a Call (telephone service);
- The provision of a Line or Lines for a rental charge (line rental service);
- The provision of Broadband internet access (Broadband service);
- The provision of Inbound telephony services (Inbound service);
- The provision of Mobile telephony services (Mobile service);
- The provision of IP telephony services (IPT service);
- The provision of Data services (Data service);
- Any other Services which we may offer for sale from time to time.

For the avoidance of doubt, you may not resell the Services although they may be utilised by an Associated Company of yours for which use you shall remain fully liable.

1.1.1 Your agreement with us starts on the date on the signed Service Agreement and your contract commencement date (the "Contract Commencement Date") will be the date on the signed Service Agreement or the date each Service is first made available to you for use, whichever is the latest. You accept that this may mean you will have multiple Contract Commencement Dates however each Contract Commencement Date will be subject to the Minimum Term. Where you are not currently in a contract we may notify you of a change to these Conditions, by giving you at least 30 days notice in accordance with 19.2, then your new Contract Commencement Date will be the date the new Conditions came into effect. Where there may be any conflict regarding your Contract Commencement Date, then you agree the actual Contract Commencement Date will be the date you first used the Service(s) other than where we have given notice of a change to these Conditions.

1.1.2 All Services allow access to UK emergency services and caller location information (when based in the UK) unless specifically advised otherwise within this Agreement. Such access may be subject to the availability of a power supply to the line and alternative arrangements are your responsibility in the event of a power failure.

1.2 We will use reasonable endeavours to provide you with the Services by the date(s) we agree with you and to continue to provide the Services until this Agreement is terminated. However we will not be liable for any loss or damages should the Services not commence or restart on the agreed date. All Services will be provided in accordance with our Customer Service Plan.

1.3 In providing the Services we shall use the reasonable skill and care that may be expected from a competent communications service provider.

1.4 Broadband service: (a) If we consider that your bandwidth usage profile is abnormal or out of the ordinary (including without limitation extremely high levels of bandwidth use in a given period), we have the right to take such action as we deem appropriate which may include, without limitation, restricting or suspending your use of the broadband service, or increasing the charges you pay for the broadband service in accordance with paragraph 19.2. (b) We will make reasonable endeavours to inform you in advance if we impose any restrictions on your use of the broadband service. (c) Your use of the broadband service is entirely at your own risk. We will not be liable for any loss or damage arising from any virus, Trojan horse, spam or other malicious content that you may receive while using the broadband service notwithstanding that there may be a firewall contained in equipment supplied in connection with the broadband service. (d) To ensure the quality of our broadband service we have a traffic prioritisation process to prioritise business critical applications in the event of exceptional demand, and normally only during business hours 08.00 to 18.00 Monday to Friday. However, it is unlikely that this will impact the quality of your broadband service.

1.5 Outbound service: (a) All calls are to be routed over our chosen network. Should any calls be routed over any other network with or without your knowledge, other than during a service failure

or network outage that we have notified you of or for any other reason we may agree with you, then we reserve the right to bill you at our standard tariff which at the time of application will mean the latest version available on [www.telecomscloud.com/legal](http://www.telecomscloud.com/legal). (b) Where you use a call forwarding feature on any of our Services, you agree and accept that such forwarded calls will be chargeable at the rate applicable on your tariff at the time.

1.6 Inbound service: (a) We reserve the right to apply a monthly charge for each inbound number which does not carry any traffic for any period of 3 consecutive months. Where this charge has been applied and a number subsequently carries traffic in any month then this charge will not apply to the months where there is traffic. (b) We reserve the right to apply a nominal monthly charge for each inbound number where the only Service you take from us is the Inbound Service. (c) If an inbound number is withdrawn by Ofcom or PhonepayPlus or any of our suppliers for reasons beyond our control we reserve the right to recover the number(s) from you immediately. We will use our reasonable endeavours to supply you with another number which is acceptable to you. (d) Where you take an international number as part of the Inbound Service, in addition to the above, the following shall apply: (i) we cannot guarantee call quality and shall not be liable for service incompatibility. It is recommended that you perform full compatibility tests prior to publishing any international number(s) provided by us; (ii) we cannot guarantee support for calls from mobile numbers unless otherwise specified and in these cases there will be an additional charge; (iii) you accept that restrictions to the service may apply in certain countries; (iii) we are reliant on third parties for delivery of your billable call records so there may be a delay in us billing you for your international inbound calls, there will be no time limit on us billing you for these calls. In some cases calls will be logged in two parts and we may bill these parts in different months, but endeavor to do this within two concurrent months.

1.7 IPT Service: If you have an IPT Service and move location, it is your responsibility to update your address details either using the portal or by notifying us of any change in address where the relevant equipment will be housed so that the correct information can be supplied for Emergency Authority purposes. We are not liable for any consequences of your failure to do this.

#### 1.8 All Services:

1.8.1 All Services may be subject to Acceptable Use Policies and Fair Use Policies which at the time of application will be the latest version on [www.telecomscloud.com/legal](http://www.telecomscloud.com/legal). Where any fair usage is exceeded, additional charges will apply.

1.8.2 You agree and acknowledge that your use of a Service must comply with all relevant legislation, regulations, guidelines and codes of practice and that Telecoms Cloud will not be liable where your use of this Service fails to comply. Should we reasonably suspect that your use of a Service is in breach of any applicable legislation, regulation, guidelines or codes of practice or any

other reasonably suspected abuse or bad practice then we reserve the right to suspend or terminate such Service with immediate effect.

1.8.3 You agree that some Services variants may be subject to availability and where an ordered Service is not available for any reason we reserve the right to provide an alternative Service variant for which you may incur different charges. Where a Service variant is not available we will make best endeavours to advise you of this before progressing with your order.

1.9 Services with Call Recording: Where you take a service which includes call recording of inbound and/or outbound calls you confirm that you have received and read our Call Recording Legal Requirements Guidance document and acknowledge that the information should not be relied upon in isolation and hereby accept that it is your responsibility to obtain legal advice to ensure you are fully compliant before recording any calls. You further confirm that you will comply with all legal requirements when using any call recording product and agree that Telecoms Cloud shall have no liability for any costs or claims which may be incurred as a result of any failure by you to comply with any legal requirements whether or not you were aware of the requirement.

1.10 Services with Music On Hold: Where you take a service which permits you to upload music files for a music on hold feature. You agree to obtain any necessary licences and consents as may be required and agree to indemnify us from any direct or indirect claims where you fail to do so.

## 2. Telephone numbers

2.1 You accept that you do not own the number(s) provided to you and that this agreement is personal to you. Therefore, you have no right to sell or to agree to transfer the number(s) provided to you for use with the Services and you must not do so or try to do so.

2.2 You also accept that we have the right to reallocate to a third party any numbers that are provided to you for use with the Services but that you do not use for a period of six (6) months. However, if you continue to pay any recurring rental charges for those numbers, we shall not exercise this right.

2.3 You do have the right to request to migrate numbers to another provider subject to your remaining contractual obligations contained within this Agreement.

### 3. Telephone books and directory enquiries

3.1 We will put your name, address and the telephone number(s) for the Services (subject to Paragraph 3.3.) in the telephone book published by BT for your area and make your phone number available to BT's directory enquiries database, as soon as we can. However, we will not do so if you ask us not to.

3.2 If you want a special entry in the telephone book you must let us know. Where we agree to a special entry you will be liable to pay an extra charge and sign a separate agreement for that special entry.

3.3 In relation to the IPT Service, arrangements in relation to inclusion in BT's telephone book and directory enquiries database are available on request from us.

3.4 It is your responsibility to verify that all directory entries are correct and remain correct. Other than where the error is as a result of our negligence, we accept no liability for any errors nor are we liable for any costs, financial losses or disputes that may arise from any omission or inaccuracy in the entry.

### 4. Changes and interruptions to the Services

4.1 We may have to do some things that could affect the Services. Some of these things are listed in paragraph 4.2. If we have to interrupt the Services we will restore them as quickly as we reasonably can.

4.2 Occasionally we may have to: (a) change the code or phone number or the technical specification of the Services for operational reasons; (b) interrupt the Services for operational reasons or because of an emergency; (c) give you instructions that we believe are necessary for health or safety or to maintain the quality of the Services that we supply to you or to our other customers.

4.3 Should the change we make have a material adverse effect on you or the Services we provide then you have the right to terminate the Agreement under the terms of paragraph 19.3.

4.4 We cannot guarantee and do not warrant that the Services will be free of interruptions or will be fault-free and we will not be liable for any loss or damages should the Services be interrupted from time to time. You accept that there may also be degradations of the quality of the Service from time to time due to matters beyond our control (see paragraph 14 below), and that we will not be liable for any loss or damages should the quality of the Service we provide be affected by such matters.

## 5. Equipment

To the extent possible, we shall use reasonable endeavors to pass on to you the benefit of any manufacturers' warranties in relation to equipment supplied by us in connection with the Services.

## 6. Sale Equipment

6.1 The quantity, quality and description of and any specification for the Sale Equipment shall be those set out in the Service Agreement, Order Form or product service descriptions as may be amended from time to time.

6.2 We shall deliver the Sale Equipment to your address as specified in the Service Agreement and Order Schedules, and time shall not be of the essence for delivery.

6.3 Risk in the Sale Equipment will pass to you on delivery of the Sale Equipment. Therefore, it is your responsibility to look after the Sale Equipment and you will have to pay if you wish to replace or repair the Sale Equipment if it is lost, stolen or damaged.

6.4 You will not own the Sale Equipment until you have paid us in full for the Sale Equipment and we reserve the right to require you to return to us, or for us to collect (at your cost), the Sale Equipment if you do not pay us in full for the Sale Equipment by the due date for payment (in accordance with paragraph 10 below). Subject to the foregoing, you will be entitled to continue to use the Sale Equipment after expiry or termination of this Agreement.

6.5 You will be responsible for installing the Sale Equipment. We will not be liable for any loss, costs, damages or faults caused by, or repairs required as a result of, installation or misuse of, or damage to, any Sale Equipment. You agree to indemnify us for all claims, losses, damages and expenses that are brought against us, incurred by us, or arising as a result of the same.

## 7. Rental Equipment

7.1 We will at all times own all Rental Equipment supplied to you. You will not let, sell, charge, assign, sub-license or allow a third party to use the Rental Equipment nor remove any labels, and shall not prejudice our rights in the Rental Equipment in any way. We may replace the Rental Equipment from time to time either with your prior consent or provided that the replacement Rental Equipment is of a specification that is at least equal to the Rental Equipment originally supplied and such change does not materially disrupt the provision of the Services.

7.2 Subject to the other terms of this paragraph 7, we (or our authorised representative) shall, during our usual working hours:

7.2.1 where necessary install the Rental Equipment at your premises at a time and date agreed with you; and

7.2.2 use our reasonable endeavours to repair any faults to the Rental Equipment in accordance with our standard procedures (which are available on request).

7.3 It is your responsibility to look after the Rental Equipment that is in your possession or custody and you agree to pay for the Rental Equipment to be replaced or repaired if it is lost, stolen or damaged.

7.4 You will notify us promptly of any faults which occur, any repairs which become necessary, and of any loss, theft or damage to the Rental Equipment.

7.5 You agree that you will only use the Rental Equipment in conjunction with the relevant Services and shall comply with our reasonable instructions in relation to its use.

7.6 You shall be responsible for maintaining adequate cover in place to insure the Rental Equipment while it remains in your possession and custody. You will also be responsible for obtaining and, where appropriate, paying for all necessary licenses, consents and approvals required for the installation and use of the Rental Equipment.

7.7 You will not (and you will ensure that no-one else will) repair, alter, modify or maintain, or make any additions or attachments to, or otherwise alter, the Rental Equipment without our prior written consent. We will not be liable for any costs or charges incurred, faults caused by, or repairs required as a result of, installation or programming of Rental Equipment that is carried out by any other person (other than our employees or agents). You agree to indemnify us for all losses, damages and expenses that are brought against or incurred by us, arising as a result of the same.

7.8 On expiry or termination of the Agreement or the relevant Service, all Rental Equipment must be returned to us in reasonable condition, subject to reasonable wear and tear. If you fail to return or make available for collection the Rental Equipment in a reasonable condition or at all we may, at our option, invoice you for a sum equal to the original cost of the Rental Equipment less any depreciation together with any costs reasonably incurred by us.

7.9 In the event that you return Rental Equipment to us and it is not received by us, in the absence of reasonable evidence that the Rental Equipment has been delivered to us you accept that you shall remain liable for the Rental Equipment.

## YOUR INFORMATION

### 8. Call monitoring

We may occasionally monitor and record calls made to or by us relating to customer services and telemarketing calls made by us, for the purpose of training and improving customer care services, including complaint handling. We and/or our suppliers may also record 999 and 112 calls.

### 9. Data protection and use of your information

9.1 All information that we hold concerning you as an individual ("Personal Data") will be held and processed by us strictly in accordance with the provisions of the Data Protection Act 1998. Such data will be used by us to provide you with the Services, for related purposes and for the purposes set out in paragraph 9.2. We will not, without your consent, supply any Personal Data to any third party except where (1) such transfer is a necessary part of the Services that we undertake, (2) we are required to do so by operation of law, or (3) we share information for the purpose of managing and administering our relationship with our dealers or channel partners.



9.2 We would like to use the information we have about you and your use of the Services (this includes information about your bill size, the numbers you call and the times you call) to inform you about the products, services, pricing packages and special offers which we provide and which we believe may be of particular interest to you. We would also like to share this information with your dealer or channel partner so they may also inform you about their products and services. By accepting these Conditions you consent to our, and your dealer, sending you such information. However, if you do not wish to receive that information, please advise us, by writing to us at 25 Parliament Street, Liverpool, L8 5RN or any other address we may give you for this purpose from time to time. You may also contact your dealer directly if you do not wish to continue to receive information from them.

9.3 You have the right under the Data Protection Act 1998 to obtain information, including a description of the data that we hold on you. Should you have any queries concerning this right, please contact us at the address set out in paragraph 9.2.

9.4 You must inform us immediately if any of the information you have provided to us about you in connection with this Agreement changes.

9.5 You acknowledge that in connection with the provision of the Services detailed technical information (including by way of example, but without limitation, information as to your existing telecoms suppliers and supplies) as well as your contact details may have been provided on your behalf by a dealer with whom you may have had initial discussions and you hereby confirm to us that we may rely on that information.

## YOUR OBLIGATIONS

### 10. Paying our charges for the Services

#### 10.1 Charges

You must pay the charges for the Services according to the applicable Tariff(s). This applies whether you or someone else use the Services and whether the Services are used with your full knowledge and consent or otherwise. (This means by way of example but not by way of limitation that you are liable to pay for all calls made as a result of "rogue diallers", unbarred premium rate numbers and calls made by any third party gaining unauthorised access to your telephony systems). We may vary the charges set out in the Tariff as explained in paragraph 19.2.

## 10.2 Installation and Connection charges

The Service Agreement, Order Schedules and Tariff(s) set out whether installation costs are payable for the Services we have agreed to supply to you. However, we may be unable (due to third party constraints) to tell you when you place, or we confirm, your order for the Services how much these installation costs will be. If this is the case, we will give you an estimate of how much the installation costs will be prior to commencement of the installation work, but there may be supplementary excess construction charges. You agree to pay all installation costs actually incurred. In the event of an installation being cancelled before being completed you agree to pay all of the installation costs actually incurred to the point of cancellation which will be notified to you at the time.

## 10.3 Equipment

You must pay the charges for any Sale Equipment that we supply to you. We will invoice you for the Sale Equipment in the next invoice that we send to you (in accordance with paragraph 10.4) following the date on which we dispatch the Sale Equipment to you. You shall also pay the rental charges for any Rental Equipment that we supply to you, and we shall invoice you for this on a monthly basis in accordance with paragraph 10.4.

## 10.4 Invoices

We will send you your first invoice at the beginning of the month after the Services commence and thereafter on a monthly basis, but we shall be entitled to send you an invoice at a different time, which you shall pay in each case in accordance with paragraph 10.7. We will send all invoices and other correspondence to the address set out in the Service Agreement or otherwise the address you ask us to. We will show on the invoice which charges are payable in advance or in arrears, as referred to in paragraph 10.5. We will include all charges on the next invoice where possible, and in any event as soon as we can. Invoices shall be deemed to have been accepted by you if you do not present a written objection, identifying clearly the disputed invoice and the reasons why it is challenged, to us within six (6) months of the date of the invoice. If such objection is made we shall both make all reasonable efforts to resolve such dispute promptly. Provided you comply with these requirements in presenting your objection, if we fail to respond to that objection within thirty (30) days after its receipt by us, the objection will be deemed to have been accepted by us. We will accordingly amend the relevant invoice either with an appropriate credit to you or you shall be liable to pay the balance (if any) of the amended invoice within seven (7) days of its receipt by you.

## 10.5 Rental and Call charges

You will incur charges from the time any part of a Service is used or received except in the case of Services subject to a periodic rental, in which case you will incur charges from the date the Service is made available for use. We will usually ask you to pay the rental in advance and your first invoice will include both one month's rental in advance and a charge for a part month's rental from the Contract Commencement Date up to the beginning of the first complete month, where appropriate, and then monthly in advance thereafter. Call and other charges will be invoiced in arrears. We will calculate the charges for Calls using the details recorded by our network.

10.6 Payments in advance and deposits (a) We may ask you for a payment in advance before payment would normally be due, which you shall pay in accordance with paragraph 10.7. This advance payment will not be more than our best estimate of your following month's invoice. Should your advance payment exceed your actual invoice then any surplus will be credited to your account to be offset against subsequent invoices, should there be no further invoices and your account is not in debit then we will refund to you any surplus after deducting any cancellation or termination charges. (b) We may ask for a deposit at any time, as security for payment of your invoices if it is reasonable for us to do so, which you shall pay in accordance with paragraph 10.7. Our procedures for deposits will be explained to you at the relevant time.

#### 10.7 Terms of payment

Our standard credit terms are payment within fourteen (30) days of date of invoice by direct debit and these are the credit terms which will apply to this Agreement unless we have agreed otherwise in writing. You must pay all charges and rental within the credit terms which we have agreed and any advance payments and deposits when we ask for them. We reserve the right to apply a nominal monthly charge for non direct debit payment methods. Where payment is arranged through a finance provider payment shall be in accordance with the terms of the finance agreement. Unless otherwise stated all charges exclude VAT which is chargeable at the applicable rate. If you pay us from a non UK bank account which means we incur costs for receiving international payments, then we shall pass these costs on to you.

10.8 Tariff (a) You hereby acknowledge and agree that we have agreed to supply the Services to you at the agreed Tariff and charges on the basis that you have committed to the Minimum Spend and Minimum Term commitments. (b) Our call rates for outbound calls to UK non geographic numbers are charged according to the banding used by BT. You hereby acknowledge and agree that there may be occasions where a call type moves from one band to another band or BT change their charging structure and subsequently the charges for some of these call types may change, we will apply this change from the 1st of the month following the change and you acknowledge that we may not always be able to give you notice of such changes. (c) Where you take any bundled service you agree to pay for all chargeable items which are excluded from or exceed the allowance of the

bundle. (d) Unless otherwise agreed with you in writing all call costs in our Tariff are displayed in pence per minute. All billing is per second, call durations are measured up to the whole second and the call charges rounded up to a penny. (e) Inbound bundles include calls which terminate to landlines only, unless specified otherwise in writing. Should you terminate your calls to a mobile, a non-geographic or an international number then standard call charges will apply and are available on request. (f) You accept there may be charges for elements of a Service (such as additional features, regrades, moves or ceases) that you may incur which may not be detailed in your Service Agreement but you accept responsibility for these charges should they occur.

## 10.9 Finance and Credit

10.9.1 You hereby consent to and shall procure that your owners, directors, officers and assigns consent to, us carrying out searches with credit reference agencies relating to the credit worthiness of your Company and/or your owners, directors, officers and assigns and you undertake to supply or procure the supply of all information requested for a credit search with a credit reference agency, who will add to your records and/or those records of your directors, officers and assigns details of the searches and these will be seen by other organisations that make searches.

10.9.2 It is agreed that where we approach a finance provider to arrange finance for the purchase of Equipment then we are acting as an agent for the Customer and not for the finance provider.

10.9.3 In the event that we are unable to obtain finance on the terms originally proposed or on other terms acceptable to you then we shall return any deposit received from you without further liability to you. Where third party indemnities are required by the finance provider failure to provide such indemnities shall constitute a breach of these Conditions and shall entitle us to retain any deposit paid by you.

10.9.4 After delivery and installation (where applicable) is completed any failure by you to complete the finance agreement documentation and/or commence payment in accordance with the terms of the finance agreement shall render you liable to pay to us the full value of the order (plus VAT) within seven (7) days of presentation of an invoice.

## 10.10 Inbound Rebates

We reserve the right to offset any inbound rebates which may be due to you against any amounts you may owe to us. We reserve the right not to pay any inbound rebates until such rebates total a cumulative minimum of £500.00 in any month.

10.11 Offsetting Where we owe you any monies, you agree that we may offset this against any monies you may owe us before we make any payment to you.

#### 10.12 Online Orders and Payments

Where you place an order and make a payment online for that order and we accept your order, we will confirm your order and receipt of payment by email at which point your contract will be binding. You may also get a payment confirmation from the third party payment processing company. Where we do not accept your order we reserve the right to return a payment to you. You should contact us immediately if you have any concerns regarding the order or payment. Where you fail to advise us of any issues regarding your online payment we are not liable for any consequences of any such payment but will make reasonable endeavours to rectify any of your concerns.

#### 10.13 Trial Periods

Where you take a product or service on a trial basis for a full, reduced or zero charge for a fixed period, unless otherwise advised to you in writing, you need to give us notice in writing if you wish to cancel the Service at the end of the trial. If you fail to give us notice then we will automatically invoice you for the product or service at the end of the trial for the remainder of the agreed contract term (or where there is no agreed term, for a minimum of twelve months). For the avoidance of doubt, unless otherwise agreed in writing you will be liable for all usage charges during the trial period. Should you wish to cancel after the trial then you agree to return, at your own cost, any equipment to us in full working order.

#### 10.14 Other Charges

We reserve the right to make a nominal monthly charge for paper itemised billing; our basic online billing is provided as standard to all customers free of charge. We also reserve the right to apply a £20 per month minimum charge if your monthly invoice would be less than £20.

#### 10.15 Credit Limit

We may apply a credit limit to your account and if you exceed this credit limit we reserve the right to suspend Services until you have paid a deposit.

## 10.16 Unusual Call Profile

If in our reasonable opinion your call profile is indicative of fraudulent activity we reserve the right to suspend Service immediately without notice.

## 11. Your other responsibilities

### 11.1 Our equipment and instructions

You agree to comply with our reasonable instructions relating to the Services and any equipment we supply to you in connection with the Services.

11.2 Entry to your premises (a) If our engineers or sub-contractors have to enter your premises you agree to let them do so within normal working hours (Monday to Friday, 9am to 5pm) or otherwise if agreed with you in advance. We will meet your reasonable requirements regarding the safety of people on your premises and you must do the same for us. (b) If we need someone else's permission to cross, or put our equipment in, or make an installation on their premises, you must get that permission for us and make any necessary arrangements. We will not be liable for any loss or damage where this permission is not obtained by you and you agree to pay any costs actually incurred. (c) When our work is completed, you will be responsible for putting items back and for any necessary re-decorating.

11.3 Misuse of the Services Nobody must use the Services: (a) to make abusive, defamatory, obscene, offensive, indecent, menacing, disruptive, nuisance or hoax Calls, emails or other communications or Calls, emails or other communications in breach of privacy or any other rights; (b) to send, knowingly receive, upload, display, download, use or re-use material which is abusive, defamatory, obscene, offensive, indecent or menacing or in breach of copyright, privacy or any other rights; (c) to send and receive data in such a way or in such amount so as to adversely affect the network (or any part of it) which underpins any Service or to adversely affect our other customers or customers of our suppliers; (d) for the carrying out of fraud, an unlawful activity or a criminal offence or in a way which does not comply with the terms of any legislation; (e) in a way that does not comply with any instructions given by us to you under paragraph 11.1; (f) to obtain access, through whatever means, to restricted areas of the underlying network; or (g) in a way which (in our reasonable opinion) brings our name into disrepute, or which places us in breach of our legal or regulatory obligations, and you must make sure that this does not happen. The action we can take if this happens is explained in paragraph 15. If a claim is made against us because the Services are misused in these ways, you must indemnify us in respect of any sums we are obliged to pay and/or costs we incur.

11.4 Indemnity (a) If you use the Services for business purposes, you must indemnify us against any claims that anyone (other than you) threatens or makes against us because the Services are faulty or cannot be used by them. (b) Where you take any product or service via Telecoms Cloud for which you are billed by us but where you are directly contracted to third party for that product or service, including but not limited to maintenance and insurance, you agree to indemnify us from any direct or indirect claims in relation to this product or service. You also agree not to make any deduction from any monies owed to us as a result of any dispute you may have with any such third party.

#### 11.5 Line rentals

When we provide your Line rentals, we will route your Calls through our network. No other service provider may route these Calls or attempt to, and if they do we reserve the right to bar these calls. Where your lines are transferred to us on a like for like basis, you agree to pay for any additional services which may exist on your lines that you may not have made us aware of at the time of ordering regardless of when these services are billed to us by the underlying supplier (including but not limited to telephone book entries that may be billed to us annually by BT).

#### 11.6 Call charges

We will bill you for all Calls that are routed over our chosen network provider. Any Calls that are routed by other means for any reason beyond our control and for which you are invoiced by another provider will remain your responsibility. It is your responsibility to advise us if you receive invoices from other providers for services you believe to be with us and you should advise us as soon as you receive these invoices. We shall not be liable for any loss or damages as a result of you being invoiced by other providers (including but not limited to any perceived loss of savings).

#### 11.7 Existing Contractual Obligations

It is your responsibility to ensure that signing a contract with us does not breach any existing contractual obligations you may have with any other suppliers and you should give any other suppliers notice as may be required by them. We are not responsible or liable for any costs, financial losses or disputes that may arise from any such breach of contract or your failure to give the correct notice.

#### 11.8 Resilience

It is your responsibility to ensure you have adequate resilience in place to protect against any loss of data, service or connectivity; this includes a separate power supply for IPT phones. In accordance with paragraph 13.2, we will not be liable for any loss or damage (financial or otherwise) where you fail to do so.

#### 11.9 Emergency Calls

IP Phones need an additional power supply to operate. In the event of a power failure it is your responsibility to ensure you have the means to make emergency calls. In accordance with paragraph 13.2, we will not be liable for any loss or damage (financial or otherwise) where you fail to do so.

#### 11.10 User Names, Passwords and Pin Codes

It is your responsibility to keep private any user names, passwords or pin codes that we may provide you with to use any of our Services. You are liable for all charges associated with the use of such user names, passwords and pin codes to access our Services unless you advise us that the security of any of the user names, passwords or pin codes may have been compromised and we confirm back to you that we have disabled the access. Should you fail to notify us of any such compromise in security then you will remain liable for all charges incurred in accessing the Services. Where we disable any access following a compromise in security, we shall provide you with new user names, passwords or pin codes as appropriate which are subject to the terms of this paragraph.

#### 11.11 Your Details

It is your responsibility to inform us of any changes to any of your personal details including but not limited to contact names, telephone numbers, email addresses, site addresses or billing addresses. We shall not be liable for any consequence of us having any incorrect details unless due to our negligence.

#### REPAIRING FAULTS

### 12. Repairing faults



12.1 We will investigate any fault that is reported to us according to our standard procedures for the Service in question (which are available on request). We will use reasonable endeavours to repair any fault that is reported to us and which is directly caused by us or our employees or agents according to our standard procedures for the Service in question.

12.2 When we agree to work on a fault outside the hours covered by our standard procedures, you will be liable to pay us an extra charge at the applicable rate set out in our tariffs in force at the time.

12.3 If you tell us there is a fault in a Service and we find either that there is not or that you, someone at your premises or a third party (including, without limitation, another network operator or communications supplier) has caused the fault or the interruption in service, we may charge you for any work we have done to try to find the fault or to repair it. We are not liable for any loss or damages arising from a fault or interruption in service caused by someone other than us, and we are not responsible for fixing any faults not caused by us.

12.4 During any fault investigations, we may require you to carry out tests and we will require you to feedback any results of these tests to allow us to follow our standard procedures and conclude our investigations.

12.5 Where Call routing utilises IP, you acknowledge that call quality and availability can be subject to factors outside of our control e.g. bandwidth contention or quality of service (QoS). We shall not be liable to you in respect to any quality or availability issues with such a Service.

12.6 Where a fault reported is deemed to be caused by a router provided by Telecoms Cloud, we will replace this as long as the current router is within its warranty period. We will ship a new router to you as soon as possible, pre-configured with the username and password and any IP Addressing requested on the original order. At this point a charge for the new router will be raised and only credited back on receipt of the original faulty router. If the router is outside of the 12 month warranty period, the new router is chargeable and will show on the next invoice.

## LIMITATION OF LIABILITY

### 13. Liability

13.1 We accept liability for personal injury or death as a result of our negligence. We also accept liability for fraud or fraudulent misrepresentation. We do not limit that liability and paragraphs 13.2 and 13.3 do not apply to that liability.

13.2 We have no liability (howsoever caused including (without limitation) by negligence) for any loss of business, profits, revenue or savings you expected to make, wasted expense, financial loss, data being lost or damaged, lack of availability of IT and/or communications systems not provided by us, damage to reputation or for any liability for any loss that is not reasonably foreseeable or for any indirect or consequential loss.

13.3 Any liability we have of any sort (including any liability because of our negligence) is limited to £100,000 for any one event or any series of related events, and in any twelve (12) month period to £500,000 in total.

13.4 Except as expressly set out in this Agreement, all conditions, warranties, terms, undertakings and obligations implied by statute, common law, custom, trade usage or otherwise are hereby excluded to the maximum extent permitted by law.

13.5 Each part of this Agreement that excludes or limits our liability operates separately. If any part is disallowed or is not effective, the other parts will continue to apply.

13.6 We are not responsible for any pricing, typographical, or other errors and reserve the right to reject any orders where such an error may have occurred.

13.7 The provisions of this paragraph 13 shall continue to apply notwithstanding termination of this Agreement.

14. Matters beyond our reasonable control If we cannot fulfil, or are delayed in fulfilling, or are interrupted in continuing to fulfil, our obligations under this Agreement because of something beyond our reasonable control such as, without limitation, lightning, flood, or exceptionally severe weather, fire or explosion, civil disorder, war, or military operations, national or local emergency, anything done by government or other competent authority, acts or omissions of other communications suppliers or network operators, or industrial disputes of any kind, (including those involving our employees or suppliers), we will not be liable for this.

## CHANGING AND TERMINATING THE AGREEMENT

### 15. Breach of the Agreement

15.1 We may suspend any or all of the Services or terminate the Agreement immediately at any time by notifying you in writing if: (a) you commit a material breach of this Agreement or any other agreement you have with us and fail to remedy the breach within a reasonable time of being asked to do so; (b) we believe that the Service(s) are being used in a way forbidden by paragraph 11.3. This applies even if you do not know that the Service(s) are being used in such a way; (c) bankruptcy or insolvency proceedings are brought against you, or if you do not make any payment under a judgment of a court on time, or (if you are a business) you make an arrangement with your creditors, or a receiver or administrator is appointed over any of your assets, or you go into liquidation.

15.2 If you fail to pay any charges due to us by the due date we may (without losing or reducing any other right or remedy) suspend any Service (in whole or in part) or terminate the Agreement without notice if; (a) you fail to make any payment requested within seven (7) days of the date of a letter, e-mail or other appropriate correspondence requesting such payment; (b) two (2) consecutive direct debit requests are rejected; and/or (c) you fail to pay any payment on the due date where there have been two (2) preceding failures which were remedied within the seven (7) day period.

15.3 We reserve the right to charge interest at the rate of five percent (5%) above the bank of England base rate per annum on any charges not paid by the due date for payment until the date when they are received by us.

15.4 If we suspend any Services, we will not provide them again until you rectify the situation that caused us to suspend the Services or you have satisfied us that you will do so or that the Services will not be used in a way that is forbidden by paragraph 11.3.

15.5 If we suspend any Services because you breach this Agreement, the Agreement will still continue and you must still pay us any rental charges as and when they arise unless and until the Agreement is terminated.

15.6 If this Agreement or any of the Services are terminated in accordance with this paragraph 15 during the Minimum Term or any agreed term applicable to each of the Services, we will levy a cancellation charge in relation to each relevant Service calculated in accordance with the following:-

(a) Each Service for which a monthly rental charge is payable – number of months remaining of Minimum Term for that Service multiplied by the monthly rental; and/or (b) Call Spend – number of months remaining on Minimum Term multiplied by the monthly Minimum Spend (or the average of your last three months call spend where there is no Minimum Spend) and/or (c) Repayment of any subsidised charges or any other contribution we may have made towards any other costs, as described in paragraph 18.2. (d) Repayment of any discount or other benefit you may have received which was based on a minimum contract term commitment, and/or (e) Any applicable cease charges as may be detailed in the tariff.

15.7 Following a suspension of services, we will only reactivate your services after you have paid the re-activation charges as may be advised at the time.

#### 16. Cancelling the Services before they are provided (domestic users only)

16.1 If you are a domestic user, you may cancel the Services or an individual Service without giving any reason at any time up to fourteen (14) calendar days after either the date on which you accepted these Conditions (and the Service Agreement and other documents comprising this Agreement) or, if earlier, the date on which we commenced our supply of the Services to you, provided that you notify us clearly in writing of such cancellation within such period and return any equipment that we may have sent to you, undamaged and in its original packaging by sending it special delivery to us at 25 Parliament Street, Liverpool, L8 5RN. You will be deemed to have accepted these Conditions at the time you sign our Service Agreement and Order Schedule. These Conditions are available for download from [www.telecomscloud.com/legal](http://www.telecomscloud.com/legal). Please note that if you have commenced using any Service or equipment after receiving these Conditions, you will also be deemed to have accepted these Conditions. If you cancel the Services or an individual Service, we will reimburse to you all payments received from you, including the costs of delivery of any equipment (except for the supplementary costs arising if you choose a type of delivery other than the least expensive type of standard delivery offered by us), and we will make the reimbursement using the same means of payment as you used for the initial transaction but in any event you will not incur any fees as a result of the reimbursement. No cancellation charge or other charge will be payable for the Services although if you do not return any equipment that we may have sent to you, we shall be entitled to charge you or withhold reimbursement for the costs we incur in collecting it from you. This does not affect your statutory rights. For the avoidance of doubt, this cancellation right does not apply to business users.

#### 17. Terminating the Agreement after the Services are provided

17.1 Termination at end of Contract Term Expiry (a) Either party may terminate this Agreement in respect of a Service by giving the other party not less than thirty (30) days notice in writing to take effect at the end of either the first or any subsequent Minimum Term for the relevant Service. Where a Service has a notice period of greater than thirty (30) days then this amount of notice must be provided on that Service. (b) If we give you notice to terminate under paragraph 17.1(a), you must pay rental and any charges for Calls made up to the end of the relevant Minimum Term. If you give us notice to terminate under paragraph 17.1(a), you must pay rental and any charges for Calls made up to the end of the relevant Minimum Term. (c) If you fail to give us notice you must pay rental until thirty (30) days, or longer where a service has a greater notice period, after you have ceased to use our Service. (d) Some Services may incur cease charges as detailed in the Tariff and these will be chargeable on termination unless otherwise agreed in writing.

#### 17.2 Termination before end of Contract Term Expiry

If you want to terminate this Agreement after the date on the Signed Service Agreement in respect of a Service prior to the end of any Minimum Term for the relevant Service (other than because we have materially altered the conditions of this Agreement under paragraph 19.3) you must give us at least thirty (30) days notice in writing and we will levy a cancellation charge calculated in accordance with the following:- (a) Each Service for which a monthly rental charge is payable – number of months remaining of Minimum Term for that Service multiplied by the monthly rental; and/or (b) Call Spend – number of months remaining on Minimum Term multiplied by the monthly Minimum Spend (or the average of your last three months call spend where there is no Minimum Spend); and/or (c) Pro-rata or full repayment of any subsidised installation or any other contribution to upfront or ongoing costs paid by us as described in paragraph 18.3 and in accordance with the terms of the subsidised installation, and/or (d) The appropriate notice period charge for each Service, and/or (e) Repayment of any discount or other benefit you may have received which was based on a minimum contract term commitment, and/or (f) Any applicable cease charges as may be detailed in the Tariff.

17.2.1 Should you fail to pay the early termination cancellation charges with 10 days (or 5 days for non direct debit payment) of the date of invoice we reserve the right to suspend your Services.

17.3 If you have paid any rental in respect of a Service for a period after this Agreement has ended in respect of that Service, we will either repay it or off set towards any money you owe us.

17.4 You must pay all charges for the Services until the date on which we stop providing the Services to you and any applicable notice period.

17.5 We also have the right to terminate this Agreement or any of the Services immediately on notice to you in accordance with paragraph 15 and in these circumstances the thirty (30) day notice period will not apply.

17.6 Additional Termination Provisions (a) The provisions of this paragraph 17.6 shall be without prejudice to the other provisions of this Agreement. (b) At the end of this Agreement, you shall be responsible for arranging for the Services to be provided by another supplier ("the New Supplier"). (c) In the event that we terminate this Agreement pursuant to the provisions of paragraphs 15.1 or 15.2, the provision of Services shall end with immediate effect upon the service of notice to you, in accordance with the provisions of those paragraphs. (d) If we terminate this Agreement pursuant to paragraph 17.1(a) or if you terminate this Agreement for any reason whatsoever, on receipt of your notice of termination we will apply Standard rates, applicable at the time, to all Services on your account to take effect following expiry of your notice period. (e) Once you have served your minimum notice requirement we may serve you a minimum of 48 hours notice to suspend your Services. Following suspension of your Services under this paragraph you may request that Services are reconnected and agree these will be subject to a reconnection charge and a new minimum contract period. We will notify you of this charge and contract period at the time. (f) Should you serve your required notice and fail to move your Services to a new supplier then you accept and agree that you will remain liable for all charges at our Standard rates (available at [www.telecomscloud.com/legal](http://www.telecomscloud.com/legal)) until such time that the Services are transferred to a new supplier.

## 18. Minimum Term

### Minimum Spend and Contract Renewal

18.1 The Minimum Term and Minimum Spend will be as specified on the Service Agreement, Order Schedules or Tariff(s) for each Service, or as otherwise agreed with you in writing. In the event that the Minimum Term is not on the Service Agreement or Order Schedules then the Minimum Term will be 12 months from your Contract Commencement Date. In the event that the Minimum Spend is not on the Service Agreement or Order Schedules then the Minimum Spend applicable will be the sum of any fixed rental charges plus the value of your call usage on your second bill from Telecoms Cloud. The Minimum Term for any new installation will be at least twelve (12) months or greater as may be specified in the Service Agreement or Order Form.

18.2 If you fail to reach the annualised Minimum Spend commitment in respect of a Service over the initial Minimum Term and any renewal Minimum Term for such Service then we reserve the right to bill you the difference between the actual amount you spent and the amount you committed to spend pursuant to the Minimum Spend over the Minimum Term.

18.3 If this Agreement or any individual Services are terminated during the Minimum Term or any agreed term for the relevant Service(s) and you received free or subsidised installation or activation or any other contribution towards costs of any Services, Products, Equipment, Lines or third party termination charges as part of the Tariff or otherwise, then we reserve the right to impose a termination charge equal to the original cost divided by the number of the months in the relevant term, multiplied by the number of months remaining in the relevant term.

18.4 After the expiry of the initial and each subsequent Minimum Term, unless otherwise agreed with you in writing, your contract will automatically renew for a further period of 12 months. This automatic renewal reoccurs on each 12 month anniversary until the Agreement is terminated by either party by giving 30 days written notice to expire no earlier than the end of the then current Minimum Term in accordance with paragraph 17, subject to paragraph 15. Such automatic contract renewal will be on the same terms and, unless otherwise agreed in writing, the same Minimum Spend will apply. Paragraph 18.4 shall not apply to you if: 1) your business meets criteria as defined by Ofcom which would classify you as a residential or small business Customer unless you have opted in to the automatic contract renewal at the point of placing your order by ticking the applicable box on the Service Agreement. For the avoidance of doubt, should you not tick this box and your company does not meet the Ofcom criteria which would classify your company as residential or small business then automatic contract renewal and paragraph 18.4 will apply.

## 19. Changing the Agreement

19.1 In general If you ask us to make any change to the Services or Rental Equipment we will ask you to confirm your request in writing. No action will be taken by us to carry out the change until we have received your written confirmation. If we agree to a change, this Agreement will be changed when we confirm the change to you in writing.

### 19.2 Conditions

We may change the terms and conditions of the Agreement (or any document comprising part of the Agreement, including the Tariff for any Service) at any time on giving you no less than one (1) month's notice. We will notify you of any changes on your monthly invoice and will post any changes or new terms and conditions on [www.telecomscloud.com/legal](http://www.telecomscloud.com/legal). You agree that if you continue to use the Services following receipt of such notice you will be bound by the new/revised Conditions. We reserve the right to pass on any increase in our costs for the Services we provide to you at any time by no less than one (1) month's notice, the only exception being that detailed in 10.8(b).

### 19.3 Material Adverse Effect

Other than in the case of passing on cost increases, if a change has a material adverse effect on you or the Services we provide then the termination charges detailed in paragraph 17.2 will not be payable by you if you wish to terminate the Agreement or any of the Services before the end of the Minimum Term applicable to each of the Services. Termination charges for any subsidised installation as described in paragraph 17.2(c), 17.2(e) and 17.2(f) will remain in effect and will be payable by you.

### 20. Transferring the Agreement

You cannot, and cannot try to, assign or transfer (in whole or in part) this Agreement or the benefit of or the rights under this Agreement to anyone else. We may assign or transfer (in whole or in part) this Agreement to any Associated Company.

## GENERAL CONDITIONS

21. Giving notice Any notice given under this Agreement must be delivered by hand or sent by email or prepaid post as follows: (a) to us at the address or email address shown on the Service Agreement or on your last invoice, or at any other address or email address we give you; (b) to you at the address you have asked us to send invoices to or to the email address you have given us.

21.1 Any notices that we may send to you from time to time concerning your account, shall be sent to the main contact we have registered on your account. It is your responsibility to inform us of any changes to your nominated contact. We shall not be liable for any consequence of sending such notices to the incorrect contact unless due to our negligence.

### 22. Entire Agreement

The Agreement (including these Conditions, the documents referred to in them, the Service Agreement, the Order Schedules and any conditions relating to specific Services) constitutes the



entire agreement between you and us for the Services and supersedes any and all other written, recorded and oral communications between you and us in connection with the Services.

#### 23. Severance

If any of these Conditions or any term or condition of this Agreement is deemed invalid, void, or for any reason unenforceable, that term or condition will be deemed severable and will not affect the validity and enforceability of any remaining term or condition.

#### 24. Reliance

You acknowledge that you have not been induced to enter into this Agreement by, nor have you relied upon, any representation, promise, assurance, warranty or undertaking (whether written or oral) by or on behalf of us or any other person save for those set out in this Agreement, except in the case of fraud.

#### 25. No waiver

If you breach these Conditions and we take no action, we will still be entitled to use our rights and remedies in any other situation where you breach these Conditions. 26. Survival Any Conditions which are expressed to survive expiry or termination shall survive expiry or termination of the Agreement however caused.

#### 27. Third Party Rights

A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

#### 28. Governing Law and Jurisdiction 28.1 Subject to paragraph 28.2, this Agreement shall be governed by and construed in accordance with the laws of England and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

28.2 We are a member of Ombudsman-Services who offer an independent dispute resolution service. You are entitled to refer any complaint to Ombudsman-Services should you deem that we have failed to address a complaint to your satisfaction.

## 29. Applicable Conditions

29.1 This Agreement will continue in respect of each Service for the Minimum Term applicable to each Service and thereafter unless and until terminated in accordance with this Agreement.

29.2 These Conditions apply to the provision of all Services.

29.3 Where we publish separate conditions for specific Services, both conditions will apply but those conditions will take precedence over these Conditions in the event of inconsistencies between them.

29.4 These Conditions in their entirety shall take precedence over any terms which may form your purchase order for any of the Services.

30. Publicity If you are a business, we may use your business name and logo in our marketing material. If you do not agree you must notify us accordingly in writing.

31. Definitions "Associated Company" means, as appropriate, the ultimate holding company of either party or any subsidiary thereof. "BT" means British Telecommunications plc. "Call" means a signal, message or communication which is silent, spoken or visual on each Line that we agree to provide to you under this Agreement. "Conditions" means these Conditions for Communications Services and any other conditions specific to other Services ("Supplementary Conditions"). "Contract Renewal" means an automatic renewal of your contract for a further 12 months after the initial Minimum Term and each subsequent 12 month renewal thereafter. "Customer Service Plan" means the provisioning and fault management support processes and escalation paths as may be published and varied by us from time to time. "Line" means a connection to our network or that of our suppliers, whether direct or indirect. "Minimum Spend" means in relation to each Service the monthly minimum spend commitment as outlined in the Service Agreement, or the Order Schedule, or the Tariff or otherwise in any agreed tariff plan referred to in the Service Agreement or

Order Schedule constituting the minimum amount you agree to pay to us each month for that Service regardless of your actual use of the Service. "Minimum Term" means each minimum initial and subsequent period of service for each Service as shown on the Service Agreement and Order Schedule, the initial period to start on the date on which the relevant Service is first made available to you for use. For the avoidance of doubt, unless otherwise agreed or if not stated on the Service Agreement or order schedules, the Minimum Term will be 12 months or such other period as may be notified to you in accordance with paragraph 19.2. "Rental Equipment" means the equipment identified on the Service Agreement and Order Schedule or otherwise notified to you in writing that we will rent to you as part of our provision of the Services and which you will return to us after expiry or termination of the Agreement, subject to the provisions of this Agreement. "Sale Equipment" means the equipment identified on the Service Agreement, Order Schedule or otherwise notified to you in writing that we will sell to you, subject to the provisions of this Agreement. "Service" or "Services" means all or part of the Services explained in paragraph 1 or identified in the Service Agreement and Order Schedule and any related services that we agree to provide to you under this Agreement. "Service Agreement" means (i) where you place an order with us by telephone, the confirmation of order accompanying these Conditions for Communications, or (ii) where you place a written order, the document you sign when you become our customer, in each case detailing, amongst other things, the Services you wish to receive, the minimum period you wish to receive the Services for and the Tariff at which you will be charged and which forms part of this Agreement. "Tariff" means our tariff referred to in the Service Agreement and Order Schedules and as amended from time to time under paragraph 19.2 above. For the avoidance of doubt, any tariff sheet provided by you is not a valid Tariff. "we" and "us" and "Telecoms Cloud" and "our" means Telecoms Cloud Limited, whose place of business is 25 Parliament Street, Liverpool, L8 5RN "you" and "your" means the customer we make this Agreement with. It includes a person who we reasonably believe is acting with the customer's authority or knowledge.

### 32. Supplementary Conditions

Supplementary Conditions relating to a specific Service apply to the following products: (a) Mobile Services Where you take any of these Services under this Agreement then all relevant Supplementary Conditions shall be incorporated into this Agreement. We reserve the right to add additional Supplementary Conditions at any time.

## Conditions for Short Message Services

All contracts for the provision of services made by Telecoms Cloud Limited (hereinafter called "Telecoms Cloud") are subject to the following conditions:–

### 1. DEFINITIONS

In these Conditions and in the Schedule (as defined below) the following expressions shall unless the context otherwise requires, have the following meanings:–

"Charges" means the charges to be paid by the Customer to Telecoms Cloud in consideration for the provision of the Services;

"Contract" means the contract for the supply of Services between Telecoms Cloud and the Customer as set out in these Conditions.

"Confidential Information" means any know-how, trade secrets, source code, software, Customer Data (as defined below) and any other confidential information of either party from time to time including all information marked as confidential or which is of its nature confidential including financial information, business policies, sales and marketing data which is disclosed by either party to the other pursuant to these Conditions;

"Customer" means the individual, firm, company or other organisation who agrees to acquire the Services from Telecoms Cloud pursuant to these Conditions;

"Customer Contact" means the Customer's designated technical, commercial and/or other representative(s) authorised to make and communicate decisions relating to the Services;

"Customer Data" means any information sourced from the Customer and which is contained in messages transmitted to or from the Customer;

"Documentation" means any e-mail messages or documentation (in whatever medium) made available to the Customer which relate to the Services;

"Telecoms Cloud Contact" means Telecoms Cloud's designated technical, commercial and/or other representative(s) authorised to make and communicate decisions relating to the Services;

"Intellectual Property Rights"

means any and all patents, copyright, registered or unregistered design rights, trade marks, trade names, know-how, database rights or other intellectual property rights;

"Retail Price Index" means the General Index of Retail Prices which is published on a monthly basis by the Central Statistical Office or any other index (or table) replacing that index;

“Schedule” means the Schedule annexed to these Conditions;

“Service Level Agreement” means performance criteria which may be agreed by the Customer and Telecoms Cloud and, if so agreed separately

“Services” means mobile device messaging services and related services to be provided by Telecoms Cloud to the Customer

“SMS” means those services set out at signup

“SMS Gateway” means the system consisting of a networking infrastructure incorporating software operated by Telecoms Cloud, and used for the provision of mobile device messaging services to the Customer;

“Specification” means the general specification for SMS Service

## 2. PROVISION OF SERVICES TO THE CUSTOMER

Telecoms Cloud shall provide the Customer with the Service upon and subject to the terms and conditions set out in these Conditions.

## 3. OBLIGATIONS OF Telecoms Cloud Telecoms Cloud shall:–.

3.1. provide the Services with reasonable skill and care and using suitably skilled and appropriately experienced personnel;

3.2. use all reasonable endeavours to provide the Services in accordance with any timescales as may be agreed between the parties;

## 4. BLANK

## 5. DELIVERY OF THE SERVICES

Telecoms Cloud shall have no liability to the Customer if there is any delay in commencing provision of the Services unless the delay exceeds three (3) months from the agreed date of commencement of the Services in which case the Customer shall be entitled to terminate the Contract.

## 6. ACCEPTANCE TESTING

If the parties agree to Acceptance Testing, the parties shall follow the procedures set out in Part 1 of the Schedule.

## 7. SERVICE LEVELS

If applicable, the parties shall comply with the provisions of the Service Level Agreement as set out in Part 4 of the Schedule.

## 8. BLANK

## 9. DURATION OF THE SERVICES

Subject to the provisions on termination contained in Condition 20 below, the Services shall be provided for the period set out in Part 5 of the Schedule.

## 10. CONFIDENTIALITY

10.1. Each of Telecoms Cloud and the Customer undertakes to the other that it shall at all times during and subsequent to the period of the Contract, hold any Confidential Information received from the other party or in its possession which relates to the other in strict confidence and secrecy and shall not use, disclose, publish or otherwise make available to any third party any such information save as is strictly necessary for the proper performance of its obligations under these Conditions.

10.2. Each of the parties shall ensure that its directors, officers, employees, shareholders, agents and representatives at all times fully comply with the provisions of this Condition 10.

10.3. The provisions of this Condition 10 shall not apply to information which:–

10.3.1. is or becomes public knowledge otherwise than through the fault of the party to whom the Confidential Information is disclosed.

10.3.2. is already at the date hereof in the possession of the party to whom the Confidential Information is disclosed;

10.3.3. is legally acquired from a third party by the person to whom the Confidential Information is disclosed; or

10.3.4. is required to be disclosed to other parties by law or by any government authority.

10.4. The Customer consents to their name and logo being used by Telecoms Cloud for the purpose of providing a list of clients on their web site and in promotional material.

## 11. NON-COMPETITION

Both parties agree that while the Services are being provided by Telecoms Cloud to the Customer, and for a period of one (1) year after the Services cease to be provided, each of the parties will not employ or otherwise contract for the services of, whether indirectly or directly:–

11.1. an employee of the other party; or

11.2. a former employee of the other party, unless the offer of employment or offer to contract services was made more than six (6) months after the previous employment with the other party has come to an end.

## 12. CHARGES

12.1. The customer shall pay the Charges to Telecoms Cloud. The Charges shall be payable in accordance with the following provisions:–

12.1.1. Payment in respect of the Message Charge for the SMS Service as set out shall be paid in advance and credited to the Customers account. Message Charges will be deducted from this credit until there are insufficient funds available at which point the Customer will be required to make another payment to allow further messages to be sent.

12.2. If the parties agree to extend the period of the Contract, then on the first anniversary of the date of commencement of provision of the Services and on each anniversary thereafter the Charges referable to the following year and all subsequent years shall be index-linked in line with the Retail Price Index, and the Charges referable to that year and the following years shall be increased accordingly.

12.3. For the purposes of these Conditions all Charges, expenses and other costs are exclusive of value added tax or any other similar taxes.

12.4. If at any time during the period of the Contract Telecoms Cloud is required to make any changes to the Specification as a result of any circumstances beyond its control Telecoms Cloud shall be entitled to make a corresponding variation to the level of the Charges.

### 13. OBLIGATIONS TO THE CUSTOMER

13.1. The Customer shall:–

13.1.1. provide all reasonable assistance to Telecoms Cloud as Telecoms Cloud may reasonably require for the purposes of performing its obligations under these Conditions;

13.1.2. pay the Charges and any other sums due under these Conditions on the dates provided;

13.1.3. take all reasonable precautions to protect the health and safety of Telecoms Cloud's personnel whilst at the Customer's premises or any other location of the Customer;

13.1.4. allow Telecoms Cloud and its authorised representatives access to the Customer's premises and any other premises in the possession or under the control of the Customer to enable Telecoms Cloud to fulfil its

obligations under these Conditions;

13.1.5. promptly provide Telecoms Cloud, on request, with all information and assistance that Telecoms Cloud may reasonably require;

13.1.6. keep all allocated user name(s) and password(s) secure and shall not disclose to any third party any such information;

13.1.7. inform Telecoms Cloud immediately if any password used in connection with the Services becomes known to any unauthorised user.

13.2. The Customer shall not:–

13.2.1. authorise (or permit any other party to) use the Services to receive or transmit material which is in violation of any law, regulation or Telecoms Cloud's Acceptable Use Policy (as published from time to time) or which is obscene, threatening, menacing, offensive, defamatory, in breach of confidence, in breach of any intellectual property right (including copyright) or otherwise unlawful;

13.2.2. knowingly or recklessly transmit any electronic material (including viruses) which shall cause or be likely to cause detriment or harm, in any degree, to computer systems owned by Telecoms Cloud, other customers of the SMS Messaging Service, or any other users;

13.2.3. allow the Services to be used in such a way as to hide the identity of the originator or assume the identity of another individual, organisation or other entity without having authority to do so;

13.2.4. send unsolicited messages using Telecoms Cloud's network and systems.

13.3. The Customer accepts that failure to comply with these obligations may result in the suspension or termination of the SMS Messaging Service provided to them.

#### 14. DOCUMENTATION

Telecoms Cloud shall provide all Documentation which in the reasonable opinion of Telecoms Cloud is necessary to enable the Customer to use the Services in accordance with these Conditions. If Telecoms Cloud provides standard form user manuals to the Customer, the Customer may copy extracts from Telecoms Cloud's manuals for the Customer's own internal use only. The Customer agrees to treat any such copies, including those that are modified or customised, as Confidential Information and subject to the provisions on confidentiality contained in Condition 10.

#### 15. INTELLECTUAL PROPERTY

The Customer acknowledges that any and all Intellectual Property Rights arising from or relating to the Documentation and the Service are and shall remain at all times the exclusive property of Telecoms Cloud.

#### 16. INSURANCE

Telecoms Cloud shall, throughout the period when the Services are being provided to the Customer by Telecoms Cloud, take out and maintain appropriate professional indemnity insurance cover.

#### 17. INDEMNITY

The Customer hereby agrees to fully indemnify Telecoms Cloud from and against any claim brought by a third party resulting from the use of the Services by the Customer and to fully indemnify Telecoms Cloud in respect of all losses, costs, actions, proceedings, claims, damages, expenses (including reasonable legal costs and expenses) or liabilities whatsoever suffered or incurred directly by Telecoms Cloud in consequence of the Customer's breach or non observance of these Conditions.



## 18. LIMITATION OF LIABILITY

18.1. The maximum aggregate liability of Telecoms Cloud to the Customer in respect of breach of contract, negligence or otherwise shall, be limited to £100,000, except for circumstances in which such acts result in death or personal injury in which case liability shall be unlimited.

18.2. Telecoms Cloud shall in no circumstances be liable to the Customer for any indirect, consequential or pure economic loss, loss of profit, loss of business, goodwill or any other anticipated profits.

18.3. The Customer shall only be entitled to bring a claim against Telecoms Cloud if the Customer issues legal proceedings against Telecoms Cloud within a period of twelve (12) months after the date upon which the Customer ought reasonably to have known of its entitlement to bring such a claim.

18.4. All conditions and warranties which are to be implied by statute or otherwise by general law into these Conditions or otherwise relating to the Services are, to the fullest extent permissible by law, hereby excluded.

18.5. Telecoms Cloud will not be liable for any losses as a result of delays in transmission of or loss or missed deliveries of Customer Data or service interruptions caused by events beyond its control including but not limited to loss of data by third party mobile networks or errors or omissions of the Customer. Telecoms Cloud excludes any warranty as to the accuracy of information received by the Customer in the course of provision of the Service.

18.6. Telecoms Cloud will not be liable, where in Telecoms Cloud's opinion, any employee or representative of the Customer, has been incapable of following reasonable instruction given by Telecoms Cloud, and an act or omission of any employee or representative of the Customer has resulted in a material adverse effect on the performance of Services;

18.7. Telecoms Cloud will not under any circumstances be liable to the Customer for any losses arising as a result of:-

18.7.1. an employee or representative of the Customer using the Services for a purpose for which it was not designed;

18.7.2. failure of or surges in electrical power or failures arising from air conditioning, humidity or other environmental controls;

18.7.3. communications breakdown due to failures in links to or from a third party network, including but not limited to the Customer's link to the internet.

## 19. FORCE MAJEURE

Neither party shall be liable to the other party in any manner whatsoever for any failure or delay in performing its obligations under these Conditions due to force majeure which expression for the purposes of these Conditions means any cause beyond the reasonable control of the party in

question and which, for the avoidance of doubt and without prejudice to the generally of the foregoing, shall include any government actions, labour disputes, flood, fire or Act of God.

## 20. TERMINATION

The Services may be terminated by either party if:–

- 20.1. the other party commits any material breach of any obligation under these Conditions and fails to remedy such breach within thirty (30) days of a written request to remedy the same by the other party; or
- 20.2. the other party (being an individual) becomes bankrupt or threatens to become bankrupt or makes any voluntary arrangement with its creditors; or
- 20.3. the other party becomes insolvent, has a receiver appointed over the whole or any part of its assets, enters into any arrangement or compounds with its creditors generally or has an order made or regulation passed for it to be wound-up (otherwise than in furtherance of a scheme for a solvent amalgamation or reconstruction).

The Services may be terminated by Telecoms Cloud if:–

- 20.4. the Customer remains suspended for a consecutive period of 6 months or more due to non-payment of invoices; or
- 20.5. the Customer incurs nil charging for a consecutive period of 6 months or more.

## 21. CONSEQUENCES OF TERMINATION

- 21.1. The provisions of Conditions 10 (Confidentiality), 11 (Non-Competition) and 18 (Limitation of Liability) shall survive termination of the Contract.
- 21.2. The Customer shall return to Telecoms Cloud (or at Telecoms Cloud's option destroy) all Documentation and certify in writing to Telecoms Cloud that such return (or destruction) has taken place.
- 21.3. On reasonable notice being given to the Customer, Telecoms Cloud shall be entitled to exercise rights of entry over the Customer's premises or any other premises in the possession or control of the Customer to ensure that the Customer has complied with its obligations to return to Telecoms Cloud (or at Telecoms Cloud's option destroy) all copies of the Documentation.
- 21.4. All outstanding Charges due to Telecoms Cloud by the Customer shall become immediately due and payable.

## 22. GENERAL

- 22.1. If any provision of these Conditions is held up by any court or other competent authority to be void and unenforceable in whole or part, these Conditions shall continue to be valid as to the other provisions thereof and the remainder of the affected provision.

22.2. The headings in these Conditions are for convenience only and are not intended to have any legal effect.

22.3. A failure by either party to exercise or enforce any rights conferred upon it by these Conditions shall not be deemed to be a waiver of any such rights or operate so as to bar the exercise or enforcement thereof at any subsequent time or times.

## 23. NOTICES

23.1. Any notice required to be given under these Conditions shall be in writing and shall be served by either party sending the same by registered or recorded delivery post or facsimile transmission to the Customer Contact or the Telecoms Cloud Contact, as appropriate, at the address of the other party or to such other addresses as that party may have previously notified to the party giving notice as its address for such service.

23.2. Any notice so given by registered or recorded delivery post shall be deemed to have been served three (3) days after it shall have been posted.

## 24. ASSIGNATION

The Customer shall not be entitled to assign its rights or obligations under these Conditions without the prior written consent of Telecoms Cloud.

## 25. SUB-CONTRACTING

Telecoms Cloud shall be entitled to sub-contract any of its obligations under these Conditions but shall give reasonable notice of any sub-contracting arrangements to the Customer.

## 26. DISPUTE RESOLUTION

The parties will attempt to resolve any dispute or claim arising out of or relating to these Conditions promptly through negotiations. If the matter is not resolved within fourteen (14) days through negotiation, the parties will attempt to resolve the dispute or claim through the Alternative Dispute Resolution (ADR) procedure as recommended to the parties by the Centre For Dispute Resolution. If the matter has not been resolved by an ADR procedure within thirty

(30) days of the initiation of such a procedure, or if either party will not participate in the ADR procedure within such thirty day period, the dispute shall be referred to litigation in which case the parties hereto submit to the jurisdiction of the English courts. Notwithstanding the foregoing it is acknowledged and agreed that either party shall be entitled to seek interdict and/or similar injunctive relief if the other party is in breach of any of the terms hereof in any court of competent jurisdiction.

## 27. GOVERNING LAW

These Conditions shall be governed by the laws of England and Wales and the parties submit to the non-exclusive jurisdiction of the English Courts.

Provision of the Services by Telecoms Cloud shall commence within three (3) working days of the latest date of signature on this contract and shall, subject to the provisions of Condition 20, continue until terminated. The contract may be terminated by either party by giving at least 14 days notice.

#### **LIABILITY**

Subject to the provisions of Condition 18, the maximum aggregate liability of Telecoms Cloud to the Customer arising from breach of contract, negligence or otherwise shall be limited to £1,000,000 in respect of all claims made during any period of one year forming part of the period of the Contract.

### **Conditions For Telephone Preference Service Lookup Tools**

#### **1. Definitions**

In this Contract the following terms have the definitions shown next to them:

"Telecoms Cloud" means Telecoms Cloud Limited of 25 Parliament Street, Liverpool, L8 5RN, United Kingdom

"Contract" means these Conditions.

"Customer" means a user of the Service.

"Data" means the name, address, telephone number and or any information made available by a third party advertiser on the Service.

"Service" means the on-line Telephone Preference Service lookup tool, used by our web interface or using our API.

"Business Use" means the use of the service in a commercial, public service or government context including, but not limited to registered charities.

#### **2. Provision of the service**

2.1 Telecoms Cloud provides the Service to the Customer on these terms and conditions.

2.2 Telecoms Cloud will provide the Service with reasonable skill and care.

2.3 The Customer accepts and acknowledges that it is technically impracticable to provide a fault free Service and the Customer accepts that Telecoms Cloud does not undertake to do so.

2.4 Telecoms Cloud does not warrant that the Data is free from errors or omissions.

2.5 Telecoms Cloud may suspend the Service for operational reasons such as maintenance or because of an emergency. Before doing so Telecoms Cloud will give the Customer as much notice as possible when the Service will be suspended.

2.6 This Service is provided solely for the Customer's own use and the Customer will not resell the Service (or any part or facility of it) to any third party.

### **3. Use of the service**

3.1 The Service must not be used in any way that does not comply with the terms of any legislation or any licence applicable to the Customer or that is in any way unlawful

3.2 The Customer must not:

(a) Engage in any form of automated searching or attempt to bulk-download information from the Service. The information delivered to The Customer as the result of a Search is for The Customer's use only and must not be transferred, stored or exported to any other computerised system for the purpose of creating a secondary database other than a personal address book containing no more than 500 records.

(b) provide, disclose or otherwise make available to any third party any portion of the Data and will use the Service and the Data only for its own personal, private use; or

(c) use the Service as the sole source for generating mailing or address lists for direct marketing or other marketing purposes

(d) use the Service for Business Use

3.3 The Customer acknowledges that there may be implications under the Data Protection Act 1998 (or any other applicable statutory or European Community data protection requirements) if individual telephone numbers are added to a database and permanently stored.

3.4 The Customer must not use the Service or the Data provided for any purpose except in accordance with the terms and conditions set out in this Contract.

3.5 For the avoidance of doubt, the provisions of this paragraph 3 are not intended to prevent the Customer recording any individual item of Data, or disclosing any individual item of Data, free of charge, to friends or relations for non-commercial purposes.

3.6 The Customer will comply with all reasonable instructions which Telecoms Cloud may give from time to time regarding the use of the Service.

3.7 The Customer hereby indemnifies Telecoms Cloud against any claims or legal proceedings which are brought or threatened against Telecoms Cloud by a third party because the Service is used in breach of paragraph 3.3, or because the Service is faulty and cannot be used by that third party.

### **4. Intellectual property rights**

4.1 Where software is provided to enable the Customer to use the Service, Telecoms Cloud grants the Customer a non-exclusive, non-transferable licence to use the software for that purpose.

4.2 The Customer will not, without Telecoms Cloud's prior written consent, copy or (except as permitted by law) decompile or modify the software, nor copy the manuals or documentation.

4.3 The Customer will sign any agreement reasonably required by the owner of the copyright in the software to protect the owner's interest in that software.

4.4 The Customer is not entitled to use any registered or unregistered trade mark, service mark or logo belonging to Telecoms Cloud, nor to imply or infer any association with, connection to, authority from or approval by Telecoms Cloud.

## **5. Intellectual property rights indemnities**

5.1 Telecoms Cloud will indemnify the Customer against all claims and proceedings arising from infringement of any intellectual property rights by reason of Telecoms Cloud's provision of the Service to the Customer. As a condition of this indemnity the Customer must:

(a) notify Telecoms Cloud promptly in writing of any allegation of infringement;

(b) make no admission relating to the infringement;

(c) allow Telecoms Cloud to conduct all negotiations and proceedings and give Telecoms Cloud all reasonable assistance in doing so (Telecoms Cloud will pay the Customer's reasonable expenses for such assistance); and

(d) allow Telecoms Cloud to modify the Service, or any item provided as part of the Service, so as to avoid the infringement, provided that the modification does not materially affect the performance of the Service.

5.2 The indemnity in paragraph 5.1 does not apply to infringements caused by the use of the Service in conjunction with other equipment, software or services not supplied by Telecoms Cloud or to infringements caused by designs or specifications made by, or on behalf of, the Customer. The Customer will indemnify Telecoms Cloud against all claims, proceedings and expenses arising from such infringements.

The limitations and exclusions of liability contained in paragraph 6 do not apply to this paragraph.

## **6. Limits of liability**

6.1 Telecoms Cloud accepts unlimited liability for death or personal injury resulting from its negligence.

6.2 Telecoms Cloud accepts no liability for any loss whatsoever caused by or attributed to any defect or failure of the Service for whatever reason, including without limitation, the inaccuracy of any portion of the Data.

## **7. Matters beyond the reasonable control of Telecoms Cloud**

If Telecoms Cloud is unable to perform any obligation under this Contract because of a matter beyond its reasonable control, such as lightning, flood, exceptionally severe weather, fire, explosion, war, civil disorder, industrial disputes or acts of local or central Government or other

competent authorities or events beyond the reasonable control of Telecoms Cloud's suppliers then Telecoms Cloud will have no liability to the Customer for that failure to perform.

#### **8. Termination of this contract or the service**

Telecoms Cloud may immediately terminate this Contract or suspend the Service either temporarily or indefinitely at any time without any reference to the Customer.

#### **9. Change to this contract**

Telecoms Cloud can change the Conditions of this Contract at any time. Telecoms Cloud will give the Customer notice of the changes by email message.

#### **10. Transferring this contract**

The Customer cannot transfer or try to transfer this Contract, or any part of it, to anyone else.

#### **11. Entire agreement**

This Contract contains the whole agreement between the parties and supersedes all previous written or oral agreements relating to its subject matter.

#### **12. Third party rights**

The parties agree that the terms of this Contract are not enforceable by a third party under the Contracts (Rights of Third Parties) Act 1999.

#### **13. Applicable law**

This Contract is governed by the law of England and Wales and both parties submit to the non-exclusive jurisdiction of the English Courts.

#### **14. Refunds and Expiry of Purchased Credit**

Purchases are non-refundable and unused credit will expire twelve (12) months after the date of purchase.

## Telecoms Cloud Call Recording Legal Requirements Guidance

There are very strict legal rules governing (a) the circumstances in which it is permissible to record calls, (b) the purposes for which such recording may be made, (c) the length of time recorded material may be retained, (d) most importantly of all, the need for pre notifications to those taking part in the call, and (e) the manner in which such notification must be given.

It is essential that you obtain advice on these requirements from your own lawyers, and implement all such internal rules and processes, and have in place all such pre-recorded notifications, and publicity and explanatory material, as are required to ensure full compliance.

This document provides an overview of the laws which require certain obligations to have been met before telephone calls can lawfully be recorded. The requirements of all relevant legislation must be complied with. It is not possible to provide comprehensive detail of that legislation here.

Any person considering interception, recording or monitoring of telephone calls is strongly advised to seek his/her own independent legal advice and should not seek to rely on the general information provided below. It should be borne in mind that criminal offences and civil actions may occur when the relevant legislation is not complied with. Accordingly, we accept no liability for reliance by any person on the following information or for any omission of information.

The interception, recording and monitoring of telephone calls is governed by a number of different pieces of UK legislation. The requirements of all relevant legislation must be complied with.

The main ones are:

Regulation of Investigatory Powers Act 2000 ("RIPA")



Telecommunications (Lawful Business Practice)(Interception of Communications) Regulations 2000 ("LBP Regulations") Data Protection Act 1998

The Employment Practices, Data Protection Code

Telecommunications (Data Protection and Privacy) Regulations 1999

Human Rights Act 1998

Below we have summarised the key areas of each law but again this information should not be relied upon as to your compliance.

### **Regulation of Investigatory Powers Act 2000 ("RIPA")**

Call recording is only lawfully carried out if one of the following applies: (i) The person recording the call has reasonable grounds for believing that it has the consent of both the caller and the intended recipient of the call to record; or (ii) The recording is carried out by a business in compliance with the Lawful Business Practice Regulations.

### **Telecommunications (Lawful Business Practice)(Interception of Communications) Regulations 2000 ("LBP Regulations")**

Generally calls can be recorded for the following reasons:

- to provide evidence of a business transaction
- to ensure that a business complies with regulatory procedures
- to see that quality standards or targets are being met in the interests of national security
- to prevent or detect crime to investigate the unauthorised use of a telecom system
- to secure the effective operation of the telecom system

**Data Protection Act 1998** Recording (and use of recordings) where a Company would be able to establish the identity of either party to the call, either directly from the recording or

from other information which it is conceivable that the Company could obtain, would require you to first:

- (i) Have informed that party how the recording would be used;
- (ii) Obtain consent for the recording to take place (This may be implied from the fact that the customer has been notified and not object, but you should obtain explicit consent if the call reveals any information classified as sensitive by the DPA, ie details of race/ethnic background, political opinion, religion, trade union membership, physical/mental health, sexual life, offences committed or legal proceeding brought.)
- (iii) The obligations in relation to processing of that data also apply, so that the data must be kept for longer than necessary, under secure conditions and must be accessible to the customer at their request.

### **The Employment Practices, Data Protection Code**

This regulates employer/employee relations and so is more relevant to the monitoring of calls from your staff's point of view. The code states that employees should be informed about any monitoring of their calls and that their consent should be obtained (as required under the DPA.) The code does provide exemptions from this obligation, for instance where monitoring is necessary to investigate criminal activity, but with provisos, for instance specific examples of criminal activity should have been identified before monitoring begins.

### **Human Rights Act 1998**

The Act provides that "everyone has the right to respect for his private life and family life, his home and his correspondence". Legal cases involving the monitoring of phone calls have recommended that to ensure that this right is protected employees whose calls are monitored should be given access to a private line over which personal calls can then be made, during their lunch break for example.

### **Telecoms License obligations –**

The Service Provision License Private and business use of a telephone system is regulated by certain DTI licenses. These include a similar requirement to that set by the Regulations that “every reasonable effort” to inform parties to a telephone conversation that recording may take place should be made.

## Conclusion

A common theme through the above pieces of law is the requirement to inform all parties to a monitored/recorded call in advance that their conversation will be recorded. This requirement applies in respect of a Company’s staff just as much as it does in respect of its customers. It enables you to record calls, but the obligation to inform customers that the calls are being recorded is not overridden.

The Regulations require that all reasonable efforts to inform participants to a call be made. Mentioning the fact that your calls will be monitored / recorded in customer documentation or adverts is the absolute minimum step which you should take to comply with the Regulations’ prior information requirement. Ideally at the beginning of a monitored/recorded call customers should also be:

informed that recording will be taking place (as required by the Regulations and the DPA) ;

informed of the purpose of the recording/how it will be used, eg for training and monitoring purposes (as required by the Regulations and the DPA); and

asked to consent to this (as required by the DPA.) The requirement to obtain consent should always be observed where sensitive data (as defined by the DPA) is obtained from the individual concerned. Where recording/monitoring takes place in the course of business (as opposed to detect a crime) staff should be notified which phone lines/types of calls will be monitored and should be asked to consent to this happening.