

Lemon Terms and Condition

1. Definitions

In this Agreement the following words shall have the following meanings:

"Lemon" being the trading style of Liberty Bell Voice & Data Ltd

"Act" means the Telecommunications Act 2003 and any amendments to the Act from time to time or any subsequent thereof.

"Connection Date" means the date upon which it is envisaged that the Services will be provided

"Direct Debit" means any request(s) for any payment or series of payments by bank direct debit payment method.

"Equipment" means any equipment or product supplied by Lemon or any third party on behalf of Lemon to the Customer.

"Services" means the provision of telecom services and/or Equipment specified in the Agreement.

2. Services

2.1. Lemon agrees to provide the Customer and the Customer agrees to use the Services on the terms set out in these terms and conditions.

2.2. The Customer shall be responsible for the safe keeping and safe and proper use of the Services and / or any Equipment after installation.

2.3. Other than those approved by the Act the Customer will not cause any attachments to be connected to any Equipment.

2.4. The Customer undertakes not to contravene the Act or any other regulation or licenses.

2.5. Any Equipment will remain the property of Lemon and must be made available for collection on the termination of this Agreement.

2.6. Lemon, may at its sole discretion, use any provider of the Services it chooses.

2.7. Lemon reserves the right to alter its terms and conditions at its sole discretion by giving the Customer not less than twenty-eight days written notice.

2.8. The Customer acknowledges that the legal, equitable and other rights in respect of telephone numbers or codes vests in Lemon. The Customer may not sell or transfer, or seek to sell or transfer, any telephone number or code allocated by Lemon, save with the written consent of Lemon, such consent not to be unreasonably withheld. The Customer may port numbers or codes to Lemon and may also port numbers or codes to other carriers with whom Lemon or their suppliers have porting agreements. Numbers or codes ported away from Lemon will be subject to a reasonable administration charge.

2.9. Any dates given in this Agreement regarding the provision of Services to the Customer are estimates only and are provided for planning purposes only. Time is not of the essence in relation to the provision of the Services to the Customer and Lemon will have no liability for any failure to meet the Connection Date or any other date.

3. Duration and Termination

3.1. This Agreement shall come into effect on the date set out in the Agreement and shall continue in force for sixty months ("Initial Term") or for such other period as specified in the Special Conditions. Thereafter, this Agreement will continue for a subsequent twelve months (the "twelve Month Term") unless terminated in accordance with this Agreement. Following the Initial Term termination may be effected by either party giving to the other not less than three months written notice by recorded delivery post.

3.2. Either party shall be entitled forthwith to terminate this Agreement by giving written notice to the other if:

3.2.1. The other commits a continuing or material breach of this Agreement and, if the breach is capable of remedy, fails to remedy it within 30 days after receipt of a written notice (by recorded delivery post) giving full particulars of the breach and requiring it to be remedied or

3.2.2. An administrator takes possession or a receiver is appointed over any of the property assets of the other party, the other party makes any voluntary arrangement with its creditors or becomes subject to an administration order, the other party goes into liquidation (except for the purposes of reorganisation so the company resulting effectively agrees to be bound by or to assume the obligations imposed on the other party under this Agreement), or

3.2.3. The other party ceases, or threatens to cease, to carry on business.

3.3. Lemon may terminate this Agreement immediately if:

3.3.1. Any license or Agreement under which the Customer has the right to run its telecommunications system and connect it to the Lemon system is revoked, amended or otherwise ceases to be valid, or

3.3.2. If Lemon has a reasonable suspicion that the Customer has engaged or may engage in an activity which Lemon considers in its absolute discretion to be illegal or immoral, or

3.3.3. If any payments due under this agreement remain unpaid for a period of 14 days.

3.3.4. If the Customer gives less than the specified amount of written notice to terminate this Agreement or ceases to use the Services or part thereof (including a reduced usage) or attempts to terminate this Agreement prior to the expiry of the Initial Term or any subsequent Twelve Month Term or fails to achieve a minimum call spend as set out in the agreement, Lemon reserves the right to invoice the Customer, at any time, for loss of revenue for the short notice given for the balance of the Initial Term or the Twelve Month Term (as the case maybe) based on an average of 6 months bills (of Lemon's choosing) of the Customer in which periods the Customer has made full use of the Service (or such lesser periods as may be available).

3.4. Upon termination of this Agreement the Customer shall be obliged to pay on demand all sums due to Lemon.

3.5. In the event of termination by either party for any reason, Lemon shall be entitled to recover the Equipment from the Customer or if the same is not reasonably recoverable, the Customer shall pay Lemon the cost thereof, including, but not limited to the cost of removing the Equipment, all liabilities, claims, costs, losses and expenses incurred by Lemon including the initial CPS/WLR and engineering costs and of providing the Service.

3.6. Until such time as the Customer has transferred to a new provider Lemon shall be entitled to amend its charges to its standard usage charges.

4. Charges and Payments

4.1. In addition to any other fees due under this Agreement, the Customer will pay Lemon, the charges calculated in accordance with Lemon's price list, which Lemon reserves the right to alter from time to time, at its discretion.

4.2. The Charges are exclusive of any applicable Value Added Tax for which the Customer shall also be liable. Where the Customer discharges the Charges other than by Direct Debit, Lemon may levy an additional payment processing fee.

4.3. Lemon may from time to time set a credit limit for the Customer, the amount of which shall be at Lemon's sole discretion. Changes to the credit limit will be notified to the Customer from time to time in writing.

4.4. Lemon may refuse to accept a request for Services and / or suspend the provision of the Services if such request or provision would result in the Customer exceeding its credit limit or if the credit limit is already exceeded.

4.5. Lemon may require a pre-payment before reconnecting the Customer or any exchange line to the Service if the Customer has been disconnected for non-payment or other breach of this Agreement.

4.6. Where the Customer requests a tariff review and Lemon agrees to amend the tariff, a further Twenty Four Month Term will

commence with effect from the date upon which Lemon agree the new tariff. No such tariff review will be granted during the Initial Term.

5. Billing and Payment

5.1. The Customer shall be invoiced monthly by Lemon for the Charges together with any applicable Value Added Tax. Payment is required to be paid by Direct Debit. Payment will be taken by Lemon 10 days from the date of the invoice. In exceptional circumstances, where Lemon agree to accept payment by cheque then payment must be made by the Customer within 14 days from the date of invoice.

5.2. If payment in full is not received by Lemon upon the due date, Lemon shall be entitled to levy interest on any sums outstanding at 3% above the Royal Bank of Scotland base rate per month.

5.3. All sums due to Lemon under this Agreement shall be paid in full by the Customer and the Customer shall have no rights of set-off for whatever reason.

5.4. All charges payable under this Agreement shall be calculated by reference to data recorded or logged by Lemon and not by reference to data recorded or logged by the Customer.

5.5. If any Direct Debit is cancelled or returned unpaid by the Customer's bank or if the Customer fails to discharge any invoice within 14 days of its date, then without prejudice to any right of remedies under this Agreement (including the payment of interest), Lemon will be entitled to charge an administration fee of £50.00.

5.6. Should the Customer dispute the Charges then the Customer shall give written notice by recorded delivery post to Lemon of the amount in dispute and the reason for the dispute. Such notice must be received by Lemon prior to the date upon which the invoice in question falls due for payment and any undisputed amount must be discharged in accordance with Clause 5.1 hereof.

6. Data Protection

Each party to this agreement agrees with the other that in performing its obligations under this Agreement it will:-

6.1. Comply at all times with any statutory or regulatory provisions which are applicable to those other party's obligations as data Controller and/or data Processor under this Agreement including but not limited to the Data Protection Act 1998 and as amended from time to time.

6.2. With regard to any Personal Data to be processed in connection with this Agreement, co-operate as far as is reasonable with the other parties in complying with any subject access request;

6.2.1. Only use the Personal Data to comply with the obligations under this Agreement with regard to any Personal Data to be processed in connection with this Agreement, co-operate as far as is reasonable with the other parties in complying with any subject access request;

6.2.2. Not transfer the Personal Data or any copy of the data to any other country without the express prior written agreement from the other party concerned.

6.3. If any party discloses data in the performance of its duties, it shall make it clear to the recipient in writing that the data is only to be used and disclosed as required for the proper performance of the recipient's duties and all Parties shall ensure that they enforce this obligation. With regard to any Personal Data to be processed in connection with this Contract each party agrees to, co-operate fully with the other in dealing with any enquiry made, or investigation or assessment of processing initiated by the information commissioner.

6.4. Each party will indemnify the other party against any claim arising from a data subject in respect of the other's breach of these conditions. Each party will take appropriate technical and organisational measures to avoid unauthorised or unlawful processing of Personal Data and against accidental loss, damage or destruction of Personal Data and will provide:

6.5. Physical security by means of locked and access restricted storage facilities of the database server;

6.6. Connectivity security by means of firewalls for both hardware and software, preventing unauthorised connection to the system;

6.7. Database security by means of encrypted login names and passwords preventing unauthorised login.

6.8. If in the future, or from time to time, the services provided are amended as agreed between all Parties and if the revisions are subject to the provisions of the Data Protection Act, all Parties will perform the services as stipulated by the Act.

6.9. For the purposes of this clause Personal Data shall mean any personal data as defined in the Data Protection Act 1998 processed by processor on behalf of the Controller on performing the Services described in this Agreement.

7. Liability

7.1. Nothing in this Agreement shall exclude or restrict Lemon's liability for death or personal injury resulting from the negligence of Lemon or its employees while acting in the course of their employment.

7.2. Lemon shall be liable for the damage to the property of the Customer caused by any negligent act or omission of Lemon or its employees provided that such liability of Lemon in contract, tort or otherwise, including any liability for Lemon's obligations under this Agreement shall be limited to £20,000 for any one incident or £50,000 for any series of incidents arising from a common cause in any 12 month period.

7.3. Lemon shall not be liable to the Customer in contract, tort or otherwise, including a liability for negligence, for any loss of revenue, business, anticipating savings or profit or any indirect or consequential loss however arising.

7.4. In the event of any failure in the Services, Lemon shall not be liable to the Customer for any charges incurred by the Customer should its traffic be diverted to another carrier at the request of the Customer or Lemon.

7.5. Controlling unauthorised access to PABX resources (which can lead to very large telephone bills) shall be the responsibility of the Customer; Lemon shall have no responsibility whatsoever for any such access, or for the bills resulting from Customer's failure to control such access (which shall remain the Customer's obligation).

7.6. The provisions of this Condition (7) shall continue to apply notwithstanding the termination of this Agreement.

7.7. Lemon shall not be liable in any circumstances for making good the Customer premises in the event of the removal of the Equipment in accordance with this Agreement.

7.8. Lemon cannot guarantee that the Services will operate fault free as other third party companies may provide the network. This is beyond the reasonable control of Lemon and therefore Lemon is not therefore liable for faults due to these matters.

8. Third Party Rights

8.1. A person who is not party to this agreement shall have no right under Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

9. Force Majeure

9.1. Lemon will not be liable for failure to comply with its obligations as set out in this Agreement due to matters beyond its reasonable control including but not limited to lightning, flood, or exceptionally severe weather, re or explosion, terrorism, civil disorder, riot, war, or military operations, national or local emergency anything done by government or other competent authority or industrial disputes of any kind or in respect of any acts or omissions of Ofcom or any other Public Electronic Communications Network Providers as defined in the telecommunications Act 2003

10. Assignment

10.1. The benefits and burdens of this contract shall be assignable by Lemon on reasonable notice to Customer; Customer may assign the benefits and burdens of this contract only on Lemon's written consent.

11. Law and Jurisdiction

11.1. This Agreement or any term of this Agreement will be governed by English law and the English courts will have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

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