

# TERMS AND CONDITIONS FOR THE PROVISION OF MOBILE TELECOM AND DATA SERVICES AND MOBILE EQUIPMENT TO BUSINESSES ("THE CONDITIONS")

## DEFINITIONS

In this Agreement the words below have the meanings next to them unless the context requires otherwise:

<b>Agreement</b>	these Conditions and the Form
<b>Authorised Person</b>	a person authorised by Us to carry out a function under the Agreement
<b>Charges</b>	as defined in Clause 9.1
<b>Form</b>	the Service Agreement Form
<b>Initial Period</b>	the initial period that You and We have agreed to be parties to this Agreement as set out on the Form
<b>Intellectual Property Rights</b>	all patents, copyrights, design rights, trade marks, service marks, trade secrets, know how, database rights, moral rights and other rights in the nature of intellectual property rights (whether registered or unregistered) and all applications for the same, anywhere in the world
<b>Internet</b>	means the global data network comprising interconnected networks using the TCP/IP protocol suite
<b>Mobile Equipment</b>	any wireless devices, handsets and related items (including, but not limited to BlackBerry devices and USB modems) or other Mobile Equipment We supply to you in accordance with this Agreement for use in connection with the Mobile Services
<b>Network</b>	means the network of any Third Party used by Us to supply the Services, as applicable
<b>Price List</b>	means the price list as amended from time to time available on our Website;
<b>Services</b>	the services provided by Us to You as identified in the Form and another other services agreed by the parties from time to time
<b>We/ Us/ Our</b>	Portsmouth Communications Limited of Unit 13 Regents Trade Park, Barwell Lane, Gosport, Hants, PO13 0EQ
<b>Website</b>	<a href="http://www.portsmouthcomms.co.uk">www.portsmouthcomms.co.uk</a>
<b>Working Day</b>	Monday to Friday 9am-5pm not including public holidays
<b>Working Hours</b>	between 9am and 5pm on a Working Day
<b>You/ Your</b>	the individual, partnership, company or other organisation who wishes to be supplied with the Services and/or Mobile Equipment and is identified in the Form
<b>Your Material</b>	any documents, plans, drawings, specifications, details, pictures of any other record of information in any form provide by You to Us in connection with this Agreement

## **1 DURATION**

- 1.1 The Agreement shall take effect from the date You sign the Agreement or verbally accept it. The Agreement shall continue unless terminated in accordance with its terms or by either party giving to the other not less than **THREE MONTHS'** prior written notice. In order to be valid, such notice must not expire before the end of the Initial Period set out on the Form.
- 1.2 If You purport to terminate the Agreement either before the expiry of the Initial Term or by giving less than **THREE MONTHS'** prior written notice, You will be regarded as having committed a material breach which is incapable of remedy, for the purposes of clause 10.1.2, and We may choose to terminate the Agreement in accordance with that clause and claim damages from You pursuant to clause 10.4.
- 1.3 You authorise Us to activate and provide the Services to You, and You will be responsible for the payment of all charges relating to the supply of the Services from the date on which the relevant Service becomes operational.
- 1.4 We shall use reasonable endeavours to activate the Services as soon as possible after the commencement of the Agreement and within any time periods and/or by any date indicated to You but We cannot guarantee that the Services will be activated by a particular date. All time periods and dates are estimates and except where explicitly stated We shall have no liability to You or any other party for any failure to meet any date or perform any of its obligations within the time period indicated.
- 1.5 You shall not be entitled to change or cancel any Mobile Equipment You have ordered (as detailed in the Form) without Our prior written consent.

## **2 THE SERVICES**

- 2.1 In consideration of You paying the Charges and fulfilling all of Your commitments as set out in this Agreement, We shall provide You with the Services in accordance with this Agreement using reasonable skill and care.
- 2.2 BY ENTERING INTO THIS AGREEMENT, YOU APPOINT US AS THE EXCLUSIVE SUPPLIER OF THE SERVICES AND YOU SHALL NOT APPOINT A THIRD PARTY TO PROVIDE SERVICES SIMILAR TO OR IDENTICAL TO "THE SERVICES" WITHOUT OUR PRIOR WRITTEN CONSENT (SUCH CONSENT WILL NOT BE WITHHELD WHERE WE ARE UNABLE TO PROVIDE THE SERVICES OFFERED BY THE THIRD PARTY).
- 2.3 We are willing to enter into this Agreement principally because of the monthly call spend which We anticipate You will generate. If at any time Your monthly call spend falls beneath 75% of the anticipated monthly call spend (other than due to circumstances beyond Your reasonable control), You will be regarded as having committed a material breach which is incapable of remedy, for the purposes of clause 10.1.2.
- 2.4 Some faults in the Services will not be under Our control because they are due to a problem in a network or Mobile Equipment provided by third parties. As a result, We cannot guarantee that the Services will be secure, uninterrupted, continuously available or operate free from any faults. You acknowledge that faults may occur from time to time. We will use reasonable endeavours to provide the Services subject to technical and commercial feasibility.
- 2.5 The parties acknowledge that in entering into this Agreement they have not relied on any representation, warranty, agreement or statement not set out in this Agreement and that (in the absence of fraud) the only remedy available for breach of this Agreement, is for breach of contract.

## **3 ORDERS**

- 3.1 You shall be entitled to place with Us an order for any Mobile Equipment identified by Us from time to time.
- 3.2 Our acceptance of an order is subject to availability and We may reject any order without any liability to You. In the event that We accept an order, that order will be processed accordingly. Any order, once accepted by Us, may not be revoked by You.
- 3.3 We reserves the right to add to, substitute, or to discontinue any item of Mobile Equipment at any time. We do not guarantee the continuing availability of any particular item of Mobile Equipment.

## **4 USE OF THE SERVICES**

- 4.1 You shall and shall procure that anyone having access to the Services, shall:
  - 4.1.1 comply with any instructions from Us relating to the use of the Services;
  - 4.1.2 not use the Services in a manner which is inconsistent with a reasonable customer's good faith use of the Services or the Network;
  - 4.1.3 not use the Services in a manner which, in Our opinion, will (or is likely to) adversely affect the provision of the Services to You, Our other customers or users of the Network;
  - 4.1.4 not use the Services fraudulently or in connection with a criminal offence;
  - 4.1.5 not make nuisance calls;
  - 4.1.6 not use the Services to send, knowingly receive, store or communicate any material which is unlawful, offensive, abusive, indecent, defamatory, obscene or menacing, a nuisance or a hoax;
  - 4.1.7 not use the Services in a way that contravenes any licence, code of practice, instructions or guidelines issued by a relevant regulatory authority;
  - 4.1.8 not use the Services in a way that is in contravention of a third party's rights (including but not limited to intellectual property rights);
  - 4.1.9 not use the Services to spam or to send unsolicited advertising or promotional material;

- 4.1.10 not use the Services in any way which causes annoyance, inconvenience or needless anxiety as set out in the Communications Act 2003;
  - 4.1.11 not use the Services in a manner which may damage the reputation of Us and/or the provider of the Network, the reputation of the Services or otherwise bring Us into disrepute;
  - 4.1.12 hold and will continue to hold any licences, consents and/or notifications required under any applicable legislation, regulation and/or administrative order to receive and use the Services and/or to connect to the Network;
  - 4.1.13 notify Us of any methods of doing business which may affect Your use of the Services or Your ability to comply with the terms of this Agreement;
  - 4.1.14 comply with Our reasonable instructions relating to health, safety, security and use of the Network;
  - 4.1.15 comply with all applicable laws and regulatory provisions; and
  - 4.1.16 comply with any applicable fair use policy that We may issue from time to time.
- 4.2 You agree that You are procuring the Services solely for Your own use and that You will not re-sell or otherwise act as any form of distributor in respect of the Services.
- 4.3 You shall notify Us immediately (and confirm in writing) on becoming aware that any person is making improper or illegal use of the Services.
- 4.4 You acknowledge that some of the Services enable access to the Internet and that use of the Internet is solely at Your risk and subject to all applicable laws. We shall have no responsibility for any information, software, services, goods or other materials obtained by You using the Internet.

## **5 THE MOBILE EQUIPMENT**

- 5.1 Unless otherwise agreed in writing by Us, all specifications and particulars of the Mobile Equipment provided by Us are approximate only and any samples, drawings, models, illustrations or other descriptive matter, whether contained on the Website, catalogues, price lists or otherwise shall be regarded as indicative only and not binding as to detail.

### Title and Risk

- 5.2 Except as may be otherwise agreed with Us in writing, risk of damage to or loss of the Mobile Equipment shall pass to you on delivery of the Mobile Equipment.
- 5.3 Title to an item of Mobile Equipment shall not pass to You, except that title to accessory items shall pass to You upon payment in full for such accessory items.
- 5.4 In respect of Mobile Equipment in which We retain title pursuant to Clause 5.3 above You undertake not to sell, transfer, lease, hire, loan, charge, assign by way of security or otherwise deal in or encumber the same in any way and that You shall keep such Mobile Equipment in good working order allowing for fair wear and tear during Your period of use.
- 5.5 Following an upgrade or replacement of Mobile Equipment or disconnection of Mobile Equipment from the Mobile Services, We reserve the right to request the safe return of any such Mobile Equipment in which We retain title pursuant to Clause 5.3 of these terms at Your expense.
- 5.6 We reserve the right to charge You the price set out in the Replacement Section of Our Price List from time to time for any Mobile Equipment not returned to Us in accordance with the provisions of Clause 5.5 or where You fail to fulfil Your obligations under Clause 5.4 of these terms.
- 5.7 Without prejudice to Clause 5.6, in the event that You sell any Mobile Equipment in breach of Clause 5.4, You agree that liquidated damages equal to the price set out in the Replacement Section of Our Price List for such Mobile Equipment on the date on which We invoke Our right to recover liquidated damages, shall immediately become due and payable by You.
- 5.8 You shall immediately notify Us in writing upon the occurrence of any of the events in Clause 10.1.1 and/or upon any third party asserting or attempting to assert any claim over any of the Mobile Equipment which remains Our property. You shall notify any creditor, trustee in bankruptcy, administrator, liquidator, receiver or third party (as the case may be) of Our rights of ownership of the Mobile Equipment.

### Mobile Equipment Warranty

- 5.9 Subject to clauses 5.10 to 5.12 (inclusive), We warrant to You that the Mobile Equipment will correspond with any agreed specification for a period of 12 months from that date on which each item of Mobile Equipment is dispatched to You.
- 5.10 We shall have no liability for any loss, damage, costs, expenses or other claims:
- 5.10.1 in respect of any defect in the Mobile Equipment arising from any instructions, advice, Your Material or other information supplied by You or any third party on Your behalf which is incomplete, inaccurate, illegible, out of date, out of sequence or in the wrong form, or arising from their non-arrival or any other fault caused by You;

- 5.10.2 in respect of any defect arising from wilful damage, negligence, failure to follow Our instructions, misuse or alteration of the Mobile Equipment without Our prior written approval;
  - 5.10.3 if You have not paid for the Mobile Equipment in full by the due date for payment;
  - 5.10.4 for Mobile Equipment not manufactured by Us, in respect of which You shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to Us.
- 5.11 If, within the relevant Warranty Period, You notify Us of any defect or fault in the Mobile Equipment or Software arising under normal use in consequence of which it fails to conform in any material respect with the manufacturer's specification We shall, at Our option either: repair the faulty Mobile Equipment or Software; or, replace the faulty Mobile Equipment or Software with the same or an equivalent item of Mobile Equipment or Software which may be a new or refurbished item. In the event that Mobile Equipment or Software is provided to replace Mobile Equipment or Software which has failed during its Warranty Period, the replacement Mobile Equipment or Software will be provided with its own Warranty Period which shall last for the greater of: a) three months from the date on which the replacement Mobile Equipment or Software is despatched to the Customer; or b) the outstanding period of the original Warranty Period.
- 5.12 If, You fail to give notice of any defect or fault of the Mobile Equipment or, having given notice of any defect or fault of the Mobile Equipment, You deal with the Mobile Equipment as owner or if Your conduct is inconsistent with such rejection or with the ownership of the Mobile Equipment by Us, You shall be deemed to have accepted the Mobile Equipment, and be bound to pay for it. If You do not notify Us within such 21 day period of any defect or failure of the Mobile Equipment which subsequently becomes apparent, We shall have no liability for such defect or failure.

## **6 SUSPENSION OF SERVICES AND CHANGES**

- 6.1 We may at Our sole discretion and without notice suspend immediately the provision of the Services until further notice with no obligation to give the reason for such suspension. We will endeavour to give reasonable notice where practicable.
- 6.2 You shall reimburse Us for all reasonable costs and expenses incurred by the implementation of such suspension and/or the recommencement of the provision of the Services as appropriate. This shall not apply where the suspension is implemented otherwise than due to Your breach or fault or omission.
- 6.3 Occasionally We may have to:
- 6.3.1 interrupt the Services for operational reasons, such as repairs, maintenance or improvements or because of an emergency or a legal obligation to comply with an order, instruction or request of a government or other competent authority;
  - 6.3.2 give You instructions that We believe are necessary for health or safety, or for the quality of the Services that We supply to You or to other customers.
- 6.4 If We have to interrupt or suspend the Services for operational reasons We will restore them as quickly as it can.

## **7 INTELLECTUAL PROPERTY RIGHTS**

- 7.1 The Intellectual Property Rights in:
- 7.1.1 Your Material shall (subject to the rights of any third party) belong to You; and
  - 7.1.2 any documents, plans, drawings, specifications and data provided by Us ("**Our Materials**"), or anything produced or used by Us in the supply of the Mobile Equipment and/or the Services, the Form, and/or this Agreement shall vest solely with Us and may not be reproduced without Our prior written consent.
- 7.2 You warrant that Your Material and its use by Us for the purposes of this Agreement will not infringe the Intellectual Property Rights or other rights of any third party and You shall indemnify Us in full and on demand against all losses, damages, legal fees, costs, expenses or other claims arising from any such infringement or alleged infringement.
- 7.3 In the event of any claim or action against Us on the grounds that the Mobile Equipment infringes the Intellectual Property Rights of any third party, We may, at Our sole discretion and where the infringement arises from Our Materials, replace or modify the Mobile Equipment or terminate the Agreement or part of the Agreement without any further liability to You.
- 7.4 You shall promptly notify Us of any claim or action by a third party alleging the Mobile Equipment infringes any Intellectual Property Rights. In the event of any such claim or action against You arising as a result of Our alleged infringement, We shall be entitled to defend such action or take legal action against that third party or take any such action that We deem appropriate and You agree to give Us Your full co-operation in respect of any such action.

## **8 LIABILITY**

- 8.1 Nothing in this Agreement shall exclude or restrict Our liability for death or personal injury resulting from Our negligence or that of Our employees while acting in the course of their employment.
- 8.2 If the Services fail to operate and You switch to another supplier, We will not be responsible for that supplier's charges. You will switch back to Us as soon as reasonably practicable once the Services are operating.

- 8.3 We shall not be liable to You by reason of any representation (unless fraudulent) or any implied warranty, condition or other term, or any duty at common law or under the express terms of this Agreement for any loss of revenue, profit, opportunity, goodwill, data, business, contracts, anticipated savings or any indirect or consequential loss or damage howsoever arising in connection with this Agreement (whether by breach of contract, tort, breach of statutory duty or otherwise of Us, Our employees, agents or subcontractors).
- 8.4 Our liability (whether for breach of contract, tort, breach of statutory duty or otherwise) arising out of or in connection with the performance or non-performance of Our obligations under this Agreement shall be limited to the higher of any amount recovered by Us under a relevant policy of insurance or £500,000 in respect of any one incident or a series of related incidents and £1,000,000 in total in any 12 month period.
- 8.5 You shall indemnify Us against any claims, losses, expenses, damages and liability incurred by or awarded against Us arising out of any act, omission or breach by You, Your employees, agents or subcontractors relating to the Services and the supply of Mobile Equipment and/or this Agreement.
- 8.6 Neither party shall be liable to the other for any loss or damage which may be suffered by the other party due to any cause beyond the first party's reasonable control ("**Force Majeure**") including without limitation any act of God, inclement weather, failure or shortage of power supplies, flood, drought, lightning, fire, strike, lock-out, trade dispute or labour disturbance, terrorism, any act or omission of Government, highways authorities, other public telecommunication operators or other competent authority, or failure of supply of services by third parties. This clause 8.6 shall not apply to a requirement on either party to pay a sum to the other.

## **9 CHARGES AND PAYMENT**

- 9.1 You must pay Our charges for the Services and, where applicable, the Mobile Equipment ("**the Charges**"). You can request the details of the applicable Charges from Our Customer Care Department. We may change the Charges at any time upon giving You at least 14 days prior notice, provided that in exceptional circumstances we may change the Charges on less than 14 days notice. Such exceptional circumstances may include where Our suppliers change their charges to Us on less than 14 days notice.
- 9.2 In addition to the Charges, You shall pay Us any additional sums which are agreed by Us and You, or any sums which, in Our sole discretion are required, including, without limitation as a result of:
- 9.2.1 any change in delivery dates, designs, quantities or specifications for the Mobile Equipment which is requested by You;
  - 9.2.2 any delay caused by Your instructions or Your failure to give Us adequate information or instructions;
  - 9.2.3 unexpected or unforeseen complications arising;
  - 9.2.4 the inaccuracy of Your Material
  - 9.2.5 any other cause attributable to You.
- 9.3 Unless otherwise agreed by Us, You shall pay:
- 9.3.1 in advance for subscription, rental and other recurring Charges (including inclusive usage Charges); and
  - 9.3.2 in arrears for usage (excluding inclusive usage Charges), connection and other non-recurring Charges.
- 9.4 You agree to pay the Charges billed by Us within 14 days of the date of each bill for Services unless alternative terms are agreed in writing by Us at the time the Agreement is entered into. You agree to pay the Charges relating to Mobile Equipment within 30 days of the date of Our bill.
- 9.5 You shall pay the Charges (including any termination fees) in full without any deduction or set off.
- 9.6 You shall make payment of all Charges by direct debit unless otherwise agreed in writing by Us. You shall sign and maintain for the duration of the Agreement a variable direct debit mandate which will enable Us to withdraw the amount of the Charges from Your nominated bank account. If You allow a direct debit mandate to lapse, We reserve the right to charge an additional fee to cover any administrative costs which we incur in collecting payment by alternative means.
- 9.7 If at any time during the Agreement We have reasonable cause to doubt Your credit worthiness, We may require You to make payment in advance of the whole or part of the Charges for Mobile Equipment and/or the Services, or at Our discretion to provide reliable security to the value of such sum or sums as are owed or will become payable to us under the Agreement.
- 9.8 We shall prepare and send bills for usage Charges in such form and manner as shall be agreed between You and Us (or in the absence of agreement, as determined by Us). Usage Charges payable by You shall be calculated with reference to data recorded, logged or obtained by Us whether or not the Services have been used by or with Your authority and irrespective of any fraud and not by reference to any data logged or recorded by You.
- 9.9 All sums referred to in this Agreement are exclusive of Value Added Tax and any other taxes of a similar nature which may from time to time be introduced, and which shall be charged in addition.
- 9.10 If this Agreement is terminated part way through a month, no refund shall be due to You and nor shall We pro rata any Charges payable by You in respect of that month for the Services and/or the Mobile Equipment.

9.11 If You fail to make payment of any amount on the due date then, without limiting any other right or remedy available to Us, We may:

- 9.11.1 terminate the Agreement or suspend any further deliveries of Mobile Equipment and/or the Services to You and We shall have no liability to You in respect of the suspension, nor in respect of any loss or damage caused to You as a result of it; and/or
- 9.11.2 appropriate any payment made by You to such of the Mobile Equipment (or any Mobile Equipment supplied under any other agreement between Us and You ), and/or Services or any additional sums payable as We may think fit (notwithstanding any purported appropriation by You); and/or
- 9.11.3 charge You for all the legal or debt collection costs incurred by Us (both in and out of Court) which shall be a minimum of 15% of the unpaid amount on a full indemnity basis.

## 10 TERMINATION

10.1 We can suspend the Services or end the Agreement in whole or in part at any time without giving advance notice to You if:

- 10.1.1 a liquidator (other than for the purpose of amalgamation or reconstruction), trustee in bankruptcy, administrator, receiver or receiver and manager is appointed in respect of the whole or part of Your assets and/or undertaking or You enter into an arrangement or composition with Your creditors, or if You become unable to pay Your debts within the meaning of S123 of the Insolvency Act 1986 or other circumstances arise which entitle a court or creditor to appoint a receiver or administrator or to make a winding up order;
- 10.1.2 You are materially in breach of a term of the Agreement and upon being given notice of that breach in writing fail to remedy that breach, if capable of remedy, within 14 days; or
- 10.1.3 an event of Force Majeure (as referred to in clause 8.6) prevents a party from performing its obligations under this Agreement for a continuous period of 30 days or more.

10.2 Notwithstanding anything to the contrary in the Agreement, We (without prejudice to Our rights) may terminate this Agreement immediately if any authorisation or licence under which You have the right to run Your telecommunication system and connect it to Our system is revoked, amended or otherwise ceases to be valid.

10.3 If the Agreement is terminated for any reason, You shall return any Mobile Equipment which You have not paid for in full and, except as otherwise provided in this Agreement, shall pay any outstanding charges or costs to Us within 14 days of the date of termination of this Agreement.

10.4 Where We terminate this Agreement under clause 10.1.2, without prejudice to any other claims We may have, We may claim our loss of profit arising from such a termination calculated by the formula :

$$\text{Termination Fee} = A \times B$$

where A equals the remainder of the Initial Term detailed on the Form plus any un-served notice period (where appropriate) and B equals the Company's gross margin earned on the Average Monthly Charges (the "**Liquidated Damages**").

The Average Monthly Charges shall be the average of the Charges billed by the Company during the 6 months immediately prior to such termination of the Agreement, plus an administration fee of £100. Where such termination is within 6 months of the commencement of the Agreement, the Average Monthly Charges shall be an amount equal to Our standard Charges, for those Services listed on the Form, together with an amount equal to Your estimated call spend. The Customer agrees that the Liquidated Damages shall be recoverable by the Company as a debt due from the Customer and agrees that the Liquidated Damages are a genuine pre-estimate of the loss of profit likely to be suffered by the Company.

## 11 GENERAL

11.1 This Agreement represents the entire understanding between the parties in relation to the subject matter hereof and supersedes all other agreements and representations (except for fraudulent misrepresentation) made by either party whether oral or written and this Agreement may only be modified if such modification is in writing and signed by a duly authorised representative of each party thereto.

11.2 Any typographical, clerical or other error or omission in any sales literature, Form, the Charges, bill or any other document issued by Us shall be subject to correction without any liability to You.

11.3 Failure by either party to exercise or enforce any right conferred by this Agreement shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof or of any other right on any later occasion.

11.4 Any notice, bill or other document which may be given by Us under this Agreement shall be deemed to have been duly given if left at or sent by post to an address notified to Us in writing by You as an address (including e-mail address) to which notices, bills or other documents may be sent, or Your usual or last known place of abode or business, or if You are a limited company, its registered office.

11.5 Our address for the service of any notice by You under this Agreement shall be such address as is shown on the last bill rendered to You or such address as We may prescribe for that purpose.

- 11.6 You shall not assign or delegate or otherwise deal with all or any of Your rights and obligations under this Agreement without Our prior written consent.
- 11.7 We will not, unless otherwise agreed in writing, transfer any telephone numbers made available to You under the terms of this Agreement to any third party, unless and until all outstanding charges and costs due under this Agreement have been paid in full. Any transfer to a third party will be at Our sole discretion.
- 11.8 If You have a complaint in relation to the Services, You should contact Our Customer Care Department. In accordance with Ofcom regulations, a Code of Practice for Complaints is in place. The procedure set out in this Code will be followed should a complaint be received. Please contact Our Customer Services Department for a copy.
- 11.9 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.
- 11.10 If any provision of this Agreement is held to be illegal, void or unenforceable, the legality, validity and enforceability of the remainder of this Agreement is not to be affected.
- 11.11 Any director or representative who signs the Agreement on Your behalf will be deemed to be an authorised signatory and We shall be entitled to rely on such signatory as binding You to the terms of the Agreement.
- 11.12 This Agreement shall be governed by and construed and interpreted in accordance with English law, and the parties hereby submit to the jurisdiction of the English courts.