

TELEPHONE SERVICES APPLICATION/  
AGREEMENT – TERMS AND CONDITIONS

1. Definitions

1.1 In these conditions (unless the context otherwise requires):

1.1.1 "Act" means the Telecommunications Act 1984 and any amendments, modifications, re-enactments or replacements of the Act that have or may be made from time to time;

1.1.2 "CCC" means Customer Care Company Ltd and its successors in title and assigns from time to time;

1.1.3 "Agreement" means the Telephone Services Agreement set out overleaf to which these terms and conditions are annexed;

1.1.4 "Customer" means the person, firm or company named in the Agreement and includes successors in title to the person, firm or company which is the beneficiary of the Services;

1.1.5 "Order Form" means the relevant Order Form of CCC for the supply of the Services to the Customer;

1.1.6 "Services" means the telecommunications services including by way of example but not by way of limitation fixed and mobile line rentals and associated network features, ADSL line rentals and features, together with fixed and mobile telephone calls to be supplied by CCC pursuant to the Agreement;

1.1.7 "VAT" means Value Added Tax and any other like tax or duty;

1.2 Unless the context otherwise requires:-

1.2.1 Words in the singular shall include the plural vice versa;

1.2.2 Words importing the masculine gender shall include the other genders;

1.2.3 References to persons shall include natural persons and bodies of persons whether corporate or incorporate;

1.2.4 The headings in these conditions are intended for convenience only and shall not affect the construction or interpretation of these conditions

2. Quotation/Proposal

2.1 Subject to withdrawal by CCC by written notice to the Customer prior to acceptance pursuant to condition 3.1 below, any quotation or proposal by CCC shall, unless otherwise stated therein, be open for acceptance by the Customer within 30 days of the date of quotation or proposal.

3. The Services

3.1 CCC undertakes to provide the Customer with and the Customer agrees to accept the Services covering fixed and/or mobile telephone lines, ADSL lines and services other lines and network features and/or non geographic special numbers in accordance with any written quotation of CCC which is accepted by the Customer in writing or any written order of the Customer which is accepted by CCC, subject to these conditions, which shall govern the Agreement and be incorporated therein to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be made, by the Customer. Notwithstanding that the Customer may require the Services on its standard form of purchase order and whether or not incorporating the Customer's own terms and conditions, any such order shall be treated solely as a request to provided the Services and have no other contractual effect whatsoever.

3.2 No Agreement shall come into existence until the Customer's order, however given, is accepted by the earliest of (a) CCC's written acceptance or (b) supply of the Services or (c) the acceptance and authorisation by a Director or Sales Manager of CCC once the Agreement is reviewed back at CCC's Headquarters.

3.3 These conditions shall be incorporated into the Agreement to the exclusion of any terms conditions stipulated and referred to by the Customer.

3.4 No variations to or amendments to the Agreement unless agreed, accepted and confirmed by CCC.

3.5 CCC's employees or agents are not authorised to make any representations concerning the Services unless confirmed by CCC in writing and signed by a Director of CCC. In entering into the Agreement the Customer acknowledges that it does not rely on, and waives any claim for breach of any such representations which are not so confirmed.

3.6 Any advice or recommendations given by CCC or its employees or agents to the Customer or its employees or agents as to the application or use of the Services which is not confirmed in writing by CCC is followed or acted upon entirely at the Customer's own risk, and accordingly CCC shall not be liable for any such advice or recommendation which is not so confirmed.

3.7 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by CCC shall be subject to correction without any liability on the part of CCC and the charges and payment rates of CCC prevailing at the date of acceptance of the Agreement by CCC shall apply.

3.8 The Customer shall be liable for the cost of any additional services required due to the provision of any incorrect information to CCC.

3.9 Where appropriate, the Customer authorised CCC, its partners, agents, employees or other authorised personnel, to reprogram its telephone equipment and/or install access equipment, charged at its standard rates, in order to provide the Services.

3.10 Where CCC installs access equipment, such equipment shall remain the property of CCC at all times and will be removed if the Customer ceases to use the Services from CCC.

3.11 Any quotes dated by CCC for the delivery of Equipment or the performance of the Services are approximate only and CCC shall not be liable for any delay in delivery or performance, howsoever caused. Time for delivery or performance shall not be of the essence unless previously agreed in writing by CCC.

3.12 The Services will be provided via numerous telephone network suppliers of CCC and will not be limited to a single supplier of CCC. CCC may switch between alternative telephone call providers at any time in its supply of the Services to the Customer, so long as its quoted charges to the Customer do not vary outside of the conditions of this Agreement.

3.13 CCC may switch between telephone network suppliers if it believes this to be in the best interests of the Customer, for example, in order to reduce costs, improve service or to restore service to the Customer in the event of the failure of an alternative termination.

4. Agreement Period and Termination

4.1 Unless a specific term is agreed by CCC and the Customer in writing, the Agreement shall come into force on and be effective from the date this Application/Agreement is accepted and authorised for and on behalf of CCC pursuant to condition 3.2 above and shall continue for the period of any lease or other financial arrangement in respect of equipment for use in conjunction

with the services, or (in the absence of any such lease or other financial arrangement) a standard period of twelve months (subject to the other provisions for termination contained in these conditions).

4.2 If concessions have been provided from CCC to the Customer including by way of example, but not by way of limitation, free rental periods, hardware, access equipment, telephone system programming etc, associated costs must be paid in full to CCC at its standard rates if the Agreement is terminated within a period of less than twelve months.

4.3 Where CCC acts under this Agreement on behalf of the Customer and orders lines or other network services from its suppliers, regardless of any issues related to telephone equipment/hardware, the Customer shall at all times maintain payments to CCC for the Services relating to line rentals, features and calls.

5. Responsibility of the Customer

5.1 The Customer undertakes not to contravene the Act or any other relevant regulations or licences regarding the provision and use of the Services.

5.2 The Customer shall ensure that its telecommunications apparatus shall at all times conform to the relevant standard or standards (if any) for the timer being designated under the Act and CCC shall not be under any obligation to connect or keep connected any of its telecommunications such telecommunications apparatus. If such telecommunicative equipment does not so conform or if in CCC's reasonable opinion is liable to cause death, personal injury or damage to property or to impair the quality of any Services provided by CCC or to put CCC in breach of CCC's obligations to any third party. The Customer shall also comply with all relevant statutes, regulations or other legislation in force from time to time.

5.3 The Customer undertakes to use the Services in accordance with the Act and any licence granted thereunder. The Customer further undertakes not to use the Services:

(a) as a means of communication for a purpose other than that for which the Services are provided; or

(b) for the transmission of any material which is defamatory, offensive or of an abusive or obscene or menacing character or is of a nature which if transmitted would constitute a criminal offence or which infringes the rights of any third party including but not limited to contractual rights and intellectual property rights; or

(c) for any purpose which CCC may notify to the Customer from time to time by reason of any relevant legislation which comes into force.

5.4 The Customer shall indemnify CCC from all losses, fines, damages, claims, costs and expenses suffered or incurred by CCC arising from or in connection with the Customer's use of the Services in contravention of the provisions of this conditions 5 or in breach of any other provision of the Agreement.

6. CCC's Access to the Customer's Premises and Provision of Information by the Customer to CCC.

6.1 To enable CCC to perform its obligations under the Agreement:

(a) The Customer shall permit or procure permission for CCC, CCC's partners, agents, employees and any other persons authorised by CCC to have access to the Customer's premises on reasonable notice and during normal working hours and shall provide such reasonable assistance and information as CCC shall request from time to time;

(b) CCC will endeavour to carry out work during normal working hours but may request that the Customer provides CCC with access to the Customer's premises at other times provided that such requests shall not oblige the Customer to make available such access;

(c) at the Customer's request, CCC may agree to work outside normal working hours and the Customer shall pay CCC's additional charges for complying with such a request at the rate currently in full force at the date of performing such work.

6.2 If the Customer requests maintenance or repair work which is found to be unnecessary, the Customer may be charged for any work performed and costs incurred by or on behalf of CCC, CCC will notify the Customer if work is considered by CCC to be unnecessary prior to raising any relevant charges.

6.3 If the Customer ceases to use the Services, the Customer shall permit CCC, its partners, servants or agents full access to the premises of the Customer in order that any access equipment remaining the property of CCC can be removed. For the avoidance of doubt, the Customer shall nevertheless pay CCC's charges for the installation of such equipment and any related system programming.

7. Suspension of Services by CCC

7.1 CCC may at its sole discretion elect to suspend and/or terminate forthwith provision of the Services until further notice, without compensation, in the event that:

(a) the Customer is in breach of any term of the Agreement; or

(b) CCC are obliged to comply with an order, instruction or request of the UK Government, an emergency services organisation or other competent administrative authority; or

(c) the Customer has failed to pay any payments when due or any invoices submitted pursuant to or in connection with the Agreement whether such invoices have been submitted or payments demanded by CCC or a third party.

7.2 Where any suspension of the Services is implemented as a consequence of the Customer's breach, default act or omission (but not otherwise), the Customer shall reimburse CCC for all costs and expenses incurred by CCC's implementation of such suspension and/or the reconnection of the provision of the Services as appropriate.

7.3 Any exercise by CCC of its right to suspend or terminate the Services shall be without prejudice to the right of CCC to terminate the Agreement

8. CCC's Liability

8.1 In these Conditions, CCC does not exclude or restrict its liability for death or personal injury under UK statute resulting from the negligence of CCC or its employees whilst acting in the course of their employment and nothing contained within the Agreement shall detract from any of Customer's rights or CCC's obligations which CCC is prohibited from seeking to exclude or limit under English law.

8.2 In the event that either the Services fail or for any other reason the Customer's calls are made via, diverted to, or leaked to another telephone call provider, CCC shall not be liable for any extra costs incurred by the Customer. CCC shall only be entitled to charge the Customer usage charges for calls which the Customer makes using the Services pursuant to the Agreement.

8.3 No warranty is given by CCC that its telephone call charges will at all times be the lowest for every type of call.

8.4 Nothing in these conditions shall impose any liability upon CCC in respect of any non-performance or Services which are not performed in accordance with the

Agreement arising out of the Customer's own acts, omissions, negligence or default.

9. Charges & Payment

9.1 Unless otherwise agreed in writing, the Customer agrees to pay for the Services by direct debit from the Customer's bank account within fourteen days of the date of CCC's invoice, such invoice to be rendered once in each calendar month during the continuance of the Agreement. Fixed, mobile and special numbers and telephone call charges shall be paid monthly in arrears. Mobile telephone line and features rentals shall be paid monthly in advance. Fixed telephone line rentals and associated features shall be paid quarterly or monthly in advance in accordance with the invoicing practice from time to time of CCC's suppliers.

9.2 The Customer shall pay the price for the Services as set out in the CCC's quotation or Order Form the price for the Services shall be the standard charge of CCC for the Services prevailing on the date of acceptance of the Agreement by CCC pursuant to condition 3.2 above. CCC may decrease its prices at any time, such decreases shall apply to all the Services provided after the date of the decrease and shall be reflected in CCC's next invoice for the Services. CCC may increase its charges at any time and shall give to the Customer 30 days notice of any such increase, such increase shall take effect after the expiry of such notice. Upon notification of such increase the Customer may cancel the Agreement immediately by giving CCC notice in writing by recorded delivery mail within 30 days of the date of its notice of increase in its charges.

9.3 CCC shall invoice the Customer each calendar month for the Service or in such other form and manner as shall be agreed with the Customer. Usage charges payable shall be calculated by reference to data recorded or logged by CCC and not be referenced to any data recorded or logged by the Customer and such data shall, in the absence of manifest error, be final and binding.

9.4 Where the Services include the provision by CCC of Broadband or alternative Internet communications links, CCC shall deem reasonable for the requirements of the customer at the date of entering into this Agreement. Any increased future bandwidth or usage requested by the Customer shall be provided by CCC on condition that in the opinion of CCC the equipment of the Customer has the capacity for and is compatible with such requested increase and shall be charged for at the standard rates of CCC current at the time when such request by the Customer is made.

9.5 In accordance with the Fair Use Policy of CCC where the Services comprise inclusive call charges, the Customer may make local (including Lo-call 0845), national (including national rate 0870), international, landline and national mobile (but excluding national mobile G3) calls to a value of no more than twice the average value of spend of the Customer on calls prior to entering into this Agreement. All other calls (and expressly Internet dial-up calls) are excluded from inclusive call charges and shall be charged separately by CCC at the rates of CCC currently in force.

9.6 The Customer shall submit to CCC a copy of each of the three monthly bills referred to in condition 9.5 and will qualify for an inclusive call spend of twice the average monthly spend based on the call rate charges of the Customer with its alternative supplier at the time of entering into the Agreement. For the avoidance of doubt, failure by the Customer to submit three monthly bills will result in CCC calculating the Customers previous calling rates to be equivalent to CCC's Emerald tariff

9.7 Inclusive call charges are subject to the continued payment by the Customer of charges for the Services and to any finance provider under a finance agreement by direct debit.

9.8 The time of payment for the Services by the Customer shall be of the essence of the Agreement.

9.9 Without prejudice to any other rights, CCC may, at its discretion, charge interest daily at a rate equal to 3 per cent per annum above the base lending rate of Barclays Bank plc as current from time to time on amounts outstanding 14 days after the date of its invoice until payment in full is received, interest shall be deemed to accrue from day to day and be compounded on the last day of each month notwithstanding termination of the Agreement.

9.10 Unless otherwise agreed in writing, the Customer agrees to pay for the Equipment and Services by direct debit from the Customers bank account within 14 days of the date of CCC's invoice, such invoice to be rendered in accordance with condition 9.1 above. Failure by the Customer to pay for the equipment and services by direct debit shall incur a surcharge by CCC of 3% or £5 whichever shall be the greater in respect of each invoice or payment in respect of the Contract Price.

9.11 All sums referred to in the Agreement are stated exclusive of Value Added Tax and any other taxes of a similar nature which may from time to time be introduced which shall (if applicable) be charged by CCC and payable by the Customer in the same manner as the usage charges on submission by CCC of a valid VAT invoice.

9.12 All sums referred to in the Agreement are stated exclusive of Value Added Tax and any other taxes of a similar nature which may from time to time be introduced which shall (if applicable) be charged by CCC and payable by the Customer in the same manner as the usage charges on submission by CCC of a valid VAT invoice.

9.13 The price for the Services shall be due in full to CCC in accordance with the terms of the Agreement and the Customer shall not be entitled to exercise any set-off, lien or any other similar right or claim.

10. Termination of the Agreement

10.1 Notwithstanding any other provision of these conditions (whether express or implied) and without prejudice to any accrued rights of the parties, either party may terminate the Agreement with immediate effect by giving notice in writing to the other, if:

(a) the other is in breach of any provision of the Agreement and (where such breach is remediable) fails to remedy that breach within 14 days of a written notice from the non-defaulting party specifying the breach;

(b) the other is subject to bankruptcy or insolvency proceedings, which shall mean bankruptcy proceedings, becoming insolvent, making any composition or arrangement with creditors or an assignment for their benefit, any execution, distress or seizure;

10.2 Notwithstanding any other provision of these conditions, whether express or implied and without prejudice to any other rights CCC may terminate the Agreement with immediate effect in the event that:

(a) any licence under which the Customer has the right to operate its telecommunications system and connect such system to CCC's system is revoked, amended or otherwise ceases to be valid; or

(b) the Customer fails to make any payment when such payment becomes due to CCC;

10.3 On termination of the Agreement for any reason the Customer shall pay to CCC any outstanding charges for the

usage of the Services by the Customer up to the date of termination and rental charges for the Services for the whole of the term of the Agreement or for a period of 90 days whichever is the greater.

11. Force Majeure

11.1 If the performance of the Agreement or any obligations thereunder are prevented, restricted or interfered with by reason of circumstances beyond the reasonable control of the party obligated so to perform, the party so affected, upon giving prompt notice to the other party shall be excused from performance to the extent of the prevention, restriction or interference but the party so affected shall use its best efforts to avoid or remove such causes or non-performance and shall continue the performance under the Agreement with the utmost dispatch whenever such causes are removed or diminished.

12. No Liability for Loss of Profits and Data

12.1 CCC shall not be liable for any costs claims, losses, damages or expenses arising out of breach of contract, tort (including breach of statutory duty) or otherwise calculated by reference to the Customer's loss of profits, income, production the accrual of any such costs, claims, damages or expenses on a basis or otherwise calculated by reference to any loss of anticipated savings or profits whatsoever or for the corruption or destruction of data.

13. Limitation of Liability

13.1 CCC's aggregate liability (whether in contract, tort (including negligence and breach of statutory duty) or otherwise howsoever), to the Customer for any loss or damage of whatsoever nature and howsoever caused shall be limited to and in no circumstances shall exceed a sum equal to one month billing for the Services by CCC to the Customer up to a maximum of £50,000 based on the average billing for the Services by CCC to the Customer over the 3 months prior to the date of the claim or since the commencement of the Agreement if the contract commenced within 3 months of the date of the claim concerned.

14. Representations.

14.1 No statement, description, information, warranty, condition or recommendation contained in any catalogue, price list, advertisement or communication or made verbally by any of CCC's partners, agents or employees shall be construed to enlarge, vary or override in any way any of these conditions.

15. Confidentiality

15.1 Neither CCC nor the Customer shall whilst the Agreement is in force or thereafter disclose any confidential information of the other party or any details of the other party's commercial or technical activities or policy except insofar as is strictly necessary for fulfilling its obligations hereunder and except for any disclosure required by statute or law and save for information which is or subsequently enters the public domain.

16. Assignment and Sub-contracting

16.1 CCC may assign the Agreement with the Customer and the rights and obligations thereunder or sub-contract the whole or any part of the performance of the Services to any person, firm or company without the Customer's prior written consent.

16.2 The Customer shall not assign charge, sub-licence or otherwise deal with all or any of its rights or obligations under the Agreement without CCC's prior written consent.

17. General

17.1 The Agreement represents the entire understanding between the Customer and CCC in relation to the subject matter hereof and supersedes all other agreements and representations made by either the Customer or CCC, whether oral or written and the Agreement may only be modified if such modifications are in writing and signed by a duly authorised representative of each of the Customer and CCC.

17.2 Failure by either the Customer or CCC to exercise or enforce any right conferred by the 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.

17.3 Any notice, invoice or other document which may be given by one party to the other under these conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to and making reference to this provision to the party giving the notice, invoice or other document. Notices, invoices or other documents shall in the case of the Customer be given by pre-paid first class recorded delivery post and in the case of CCC by pre-paid first class post (which may at the option of CCC be recorded delivery) or by facsimile transmission provided that CCC's fax machine generates a transmission report showing a transmission in full without error to the correct fax number of the Customer.

17.4 Notices, invoices and other documents sent by post shall be deemed to be served 48 hours after posting. Notices served by facsimile transmission shall be deemed to be served immediately, provided that a hard copy of such transmission is sent to the Customer by first class post on the same day.

17.5 If any provision of this Agreement is held by any competent authority to be invalid or unenforceable in whole or in part it shall be serviced here from and the validity of the other provisions of this Agreement and the remainder of the provision in question shall not be affected thereby.

17.6 The Agreement shall be governed by and construed and interpreted in accordance with English law.

17.7 Full terms and conditions, terms of use and privacy policies can be found on our website: <http://www.customercaregroup.co.uk/about-us/terms-and-conditions/>