

Contract Terms and Conditions

1. CONTRACT DEFINITION

- 1.1 'Application Form' means the application/order form relating to the provision of the Services in the form provided by PMS Networks Limited (PMS) from time to time incorporating these terms and conditions.
- 1.2 'Associated Company' means any subsidiary or holding company of PMS or other associated company as defined by Sections 736 and 736A of the Companies ACT 1985.
- 1.3 'Authorised Person' means a Director or authorised signatory of PMS.
- 1.4 'Account Number' means the account opened by PMS in the name of the Customer upon creation of the Contract and relating to the Services.
- 1.5 'Customer' means a person, company, body corporate or other entity or association whatsoever or howsoever whose Application Form is accepted by PMS and/or for whom PMS has opened an Account Number.
- 1.6 'Contract' means the contract governed by these terms and conditions made between PMS and the Customer created upon acceptance by PMS of the Customer's Application Form and evidenced by the opening of an Account Number. Subject to Clause 1.17, the Agreement becomes effective when signed by a Director or authorised signatory of PMS.
- 1.7 'PMS' means PMS Networks Ltd which expression shall, where the contest so requires, include its successors and assigns and any Associated Company thereof.
- 1.8 'PMS Access Equipment' means any equipment supplied by PMS
- 1.9 'Additional Provisions' means any Terms additional to those outlined within the Terms of this Agreement as evidenced on the Application Form.
- 1.10 'Discount' means the amount at which any of the Services are provided by PMS to the Customer during the Contract at less than the full rate as outlined under Additional Provisions on the Application Form.
- 1.11 'Discount Services' means any Services provided by PMS to the Customer from time to time and not charged for by PMS from time to time or charged at a Discount.
- 1.12 'Least Cost Routing Software' means software installed on a telephone system which automatically enables the routing of calls via different telephone operators.
- 1.13 'Minimum Term' means the minimum duration of this Contract, which unless otherwise expressly stated on this Application Form shall be 36 months from the date the Customer first starts to receive the Services.
- 1.14 'Services' means re-routing the Customer's telecommunications including without limitation all calls, voice, fax and data traffic over the PMS Network and any additional Services as outlined on the Application Form and provided under the terms of this Agreement. Services shall be deemed to include Discount Services where appropriate.
- 1.15 'Services Literature' means PMS's literature specific to the Services and other associated services existing from time to time.
- 1.16 'Site' means the Customer and any individual or company utilising the Services provided to the Customer under the Terms of this Agreement.
- 1.17 'Refusal of Service' means the non-provision of the Services outlined on the Application Form due to circumstances outside of PMS's control and including, but not limited to, the Customer's poor credit history. PMS reserves the right to make a reasonable administrative charge for service thus far rendered to the Customer in such instances.

2. THE SERVICES

- 2.1 Services
 - a) the Customer shall complete, sign and return to PMS an Application Form prior to PMS agreeing to provide the Services.
 - b) where the Customer has Least Cost Routing Software available for use at its premises, PMS will, if necessary, and at its sole discretion, reprogram it in order to provide the Services.
 - c) where the Customer does not have Least Cost Routing Software available for use at its premises, PMS will, if necessary, and at its sole discretion supply, install and connect the Customer to PMS Access Equipment in order to provide the Services.
 - d) PMS shall use all the reasonable care and skill of a competent telecommunications provider to provide the Customer with the Services throughout the term of the Contract.
 - e) PMS shall be at liberty, where necessary, to improve, update or upgrade the Services or alter the provision of the Services without any notice to the Customer.
- 2.2 The Customer undertakes to PMS that:
 - a) for the duration of the Minimum Term it will route all its inbound, non-geographic and outbound calls (including without limitation all its voice, fax and data traffic) via PMS on an exclusive basis. For the avoidance of doubt the Customer acknowledges and accepts that during the Minimum Term it shall not use any services offered by a third party which are competitive with or substantially similar to the Services. In the event of any breach by the Customer of this Condition 2.2(a) the terms of Condition 4.12 shall apply;
 - b) the Services and the PMS Network will only be used in accordance with the Contract;
 - c) only the Customer and Users shall use the Services and the PMS Network and no other person shall be suffered or permitted to use the same;
- 2.3 Upon the termination of the Contract:
 - a) no attempt shall be made to make calls via the Services or otherwise to use the PMS Network and; (ii) the Customer shall pay in full an amount equal to the Discount for the period any of the Services have been supplied as Discount Services. Such payment to be in accordance with and subject to Condition 4;
 - b) the Services Literature and any other instructions regarding the use of the Services and the PMS Network as may be notified to the Customer by PMS from time to time shall be complied with promptly and such literature and instructions shall be deemed to form part of the Contract.
- 2.4 The Customer agrees that at all times during the term of the Contract it shall:
 - a) provide access to all appropriate sites for any Authorised Persons during the Customer's normal working hours and allow the removal, installation and maintenance of PMS Access Equipment;
 - b) keep its telecommunications equipment including without limitation the PMS Access Equipment in good working order and ensure that such equipment complies with applicable standards and approvals so as to enable PMS to provide the Services;
 - c) only use and connect those telephones, ducting, cables, sockets and other equipment to the PMS Network that have been approved in advance by PMS in writing and comply with all the relevant legislation relating to the use of such equipment;
 - d) provide all reasonable assistance required by PMS to enable it to provide the Services;
 - e) inform PMS by one month's prior notice in writing of any premises relocation or change of telephone number(s) on which the Services are registered;
 - f) provide a safe working environment for Authorised Persons working on the Customer's premises;
 - g) indemnify PMS fully against all losses, liabilities, costs (including without limitation legal costs) and expenses which PMS may incur as a result of any breach of the Customer's obligations under the Contract or misuse of the Services or the PMS Network;
 - h) pay PMS (at its then current published rates) for all call-out visits required from PMS where PMS determines the problem with the Services or the PMS Network is not the fault of PMS or the PMS Access Equipment or the PMS Access Equipment has been damaged.
- 2.5 The Customer undertakes to PMS to ensure that the Services and the PMS Network are not used:
 - a) for the transmission of any material which is intended to be a hoax call to emergency services or is of a defamatory, offensive, abusive, obscene or menacing character; or
 - b) fraudulently or in connection with a criminal offence; or
 - c) otherwise in a manner which constitutes a violation or infringement of the rights of any other party; or
 - d) otherwise, than for the purpose of a telecommunications system.

3. PMS'S RIGHTS

- 3.1 PMS shall be entitled to alter any access or authorisation number or method of accessing the Services from time to time and may reprogram the Customer's equipment as a result.
 - a) PMS may suspend the Services to the Customer at its sole discretion including but not limited to the following:-
 - i) in the interests of the quality of the Services or the PMS Network;
 - ii) if any credit limit agreed between PMS and the Customer from time to time is exceeded;
 - iii) if any term of the Contract is breached (including, without limitation, in the event of a failure to make any payment or provide any deposit required to be made or provided under the Contract);
 - iv) in order to comply with an order, instruction or request of any government, emergency service organisation or other competent authority; or
 - v) if fraud or attempted fraud is suspected by PMS (in its reasonable opinion) in connection with the use of the Services or the PMS Network.
 - f) if in PMS's reasonable opinion it suspects the Customer is offering to resell the Services to any third party.
- 3.2 PMS may collect and store data and information about the Customer and its use of the Services and provide this information to companies affiliated with PMS including without limitation any Associated Company and (ii) third parties.

4. CHARGES AND PAYMENTS FOR THE SERVICES

- 4.1 All sums due to PMS under the Contract shall become due on the date of the relevant invoice and are payable within 14 days (including weekends and bank holidays) of the date of the relevant invoice. Unless otherwise stated, any rental or recurring charges are invoiced monthly in advance and call charges and any ad-hoc maintenance or similar charges are invoiced monthly in arrears which will begin on the date on which the Service becomes operational. Charges will be based on PMS's records.
- 4.2 In the event of any error or omission in a PMS invoice for any period, PMS may issue a corrective invoice at a later date.
- 4.3 If the Customer fails to make any payment within the 14-day period following the date of the relevant invoice, without prejudice to its other rights hereunder, PMS shall have the right to require the Customer to pay all sums due on demand.
- 4.4 Time of payment of all sums due to PMS under the Contract shall be of the essence.
- 4.5 PMS reserves the right to amend its charges for the Services from time to time.
- 4.6 PMS shall use its best endeavours to bring to the attention of the Customer any variation in prices prior to their implementation.
- 4.7 Without prejudice to PMS's rights to treat the non-payment as a material breach of the Contract, PMS reserves the right to charge interest on outstanding amounts from the due date until payment is received in full at a rate equal to 4% per annum above the Lloyds TSB Bank plc base lending rate as current from time to time whether before or after judgment. Interest shall continue to accrue notwithstanding termination of the Contract for any cause whatsoever and is deemed to accrue on a day-to-day basis from and including the date for payment under Condition 4.1.
- 4.8 PMS reserves the right to charge for administrative costs incurred by PMS in pursuing late payers.
- 4.9 All sums due to PMS under the Contract are subject to Value Added Tax (VAT), and any other applicable taxes, levies or charges which may from time to time be introduced.
- 4.10 The Customer shall be liable for all charges arising from use of the Services by any person utilising the Customer's registered Services telephone number(s) (with or without Customer's authorisation) until such time as the Customer has notified PMS of any unauthorised use of the Service. Such notice should be sent by the Customer to PMS in writing by 1st Class Recorded Delivery. The Customer must retain the relevant receipt as proof.
- 4.11 Details of the Contract and the conduct of the Account will be registered with a licensed Credit Reference Agency. Information thus registered may be used to help make credit decisions or, fraud prevention or the tracing of debtors.
- 4.12 In the event of the Customer obtaining any services from a third party which are competitive with or substantially similar to the Services during the Minimum Term or if there has been a material breach of the Contract, the Customer accepts that PMS shall be entitled to invoice the Customer during each month of the remainder of the Minimum Term an amount equal to either:
 - a) the average of the monthly amounts invoiced by PMS to the Customer prior to the breach by the Customer of Condition 2.2(a); or
 - b) the actual amount payable by the Customer for the Services during such month (whichever is the higher).

5. PMS ACCESS EQUIPMENT

- 5.1 The Customer shall provide without charge or cost to PMS appropriate equipment space, ducting, environment and continuous stable electrical power to install and maintain the PMS Access Equipment at its premises and to enable PMS to provide the Services.
- 5.2 It is deemed that title to any PMS Access Equipment shall remain with PMS and whilst the PMS Access Equipment is on the Customer's premises, the Customer shall ensure that it is kept safe, secure and fully insured and is not interfered with by any person.
- 5.3 Upon termination of the Contract, the Customer will ensure that PMS is allowed prompt access to all relevant premises to remove the PMS Access Equipment.
- 5.4 In termination of this Agreement, the Customer must return all PMS Access Equipment supplied by PMS within 14 days and in good working order. If the Customer fails to return the equipment (each a 'Fixed Service') then the Contract in relation to such Fixed Service shall automatically terminate at the end of the Minimum Term and the parties shall be entitled to enter into a new Contract in relation to such Fixed Services; or
- 5.4.1 If the Customer is not a Specified Customer or the Service to be provided by PMS under the Contract is not a Fixed Service then the Customer in relation to such Services (other than Fixed Services) shall automatically renew for consecutive 12-month periods (each a 'Renewal Period') until terminated by either party in accordance with the terms of this Contract.
- 5.4.2 This Contract may be terminated by either party upon giving the other party 90 days' prior written notice, such notice to take effect at the end of the Minimum Term or a Renewal Period as the case may be.
- 5.4.3 PMS (without prejudice to its other rights) may terminate the Contract forthwith in the event that:
 - a) the Customer fails to make any payment when it becomes due to PMS or shall default in due performance or observance of any obligation under the Contract or any other contract with PMS or an Associated Company and (in the case of remedial breach) fails to remedy the breach within a reasonable time specified by PMS in its written notice so to do; or
 - b) an interim order is made, or a voluntary arrangement approved, or if a petition for a bankruptcy order is presented or a bankruptcy order is made against the Customer or if any circumstances arise which entitle the court or a creditor to appoint a receiver, administrative receiver or administrator or to present a winding-up petition or make a winding-up order.
- 5.4.4 The terms of this Contract shall continue to bind the parties hereto to such extent as may be necessary to give effect to the rights and obligations embodied in it including without limitation Conditions 2.2, 4, 7 and 8.
- 5.4.5 If the Contract is terminated by either party hereto, the Customer shall:
 - a) pay to PMS all arrears of charges, Termination fees and any interest payable under the Contract and;
 - b) return to PMS all equipment owned or provided by PMS and/or allow PMS or its Agent access forthwith to the Customer's premises for the removal of any PMS Access Equipment and pay any reasonable charges PMS may have incurred in so doing;
 - c) undertake and comply with the provisions of Condition 2.2(d); and
 - d) cease being provided the Services and have no right to use the same.

6. TERMINATION

- 6.1 The Contract shall continue for the Minimum Term and, thereafter:
 - a) 6.1.1 If the Customer is a consumer or employs less than 10 employees (a "Specified Customer") and the Services to be provided by PMS are (i) fixed line services and/or (ii) fixed broadband services (each a 'Fixed Service') then the Contract in relation to such Fixed Service shall automatically terminate at the end of the Minimum Term and the parties shall be entitled to enter into a new Contract in relation to such Fixed Services; or
 - a) 6.1.2 If the Customer is not a Specified Customer or the Service to be provided by PMS under the Contract is not a Fixed Service then the Customer in relation to such Services (other than Fixed Services) shall automatically renew for consecutive 12-month periods (each a 'Renewal Period') until terminated by either party in accordance with the terms of this Contract.
- 6.2 This Contract may be terminated by either party upon giving the other party 90 days' prior written notice, such notice to take effect at the end of the Minimum Term or a Renewal Period as the case may be.
- 6.3 PMS (without prejudice to its other rights) may terminate the Contract forthwith in the event that:
 - a) the Customer fails to make any payment when it becomes due to PMS or shall default in due performance or observance of any obligation under the Contract or any other contract with PMS or an Associated Company and (in the case of remedial breach) fails to remedy the breach within a reasonable time specified by PMS in its written notice so to do; or
 - b) an interim order is made, or a voluntary arrangement approved, or if a petition for a bankruptcy order is presented or a bankruptcy order is made against the Customer or if any circumstances arise which entitle the court or a creditor to appoint a receiver, administrative receiver or administrator or to present a winding-up petition or make a winding-up order.
- 6.4 The terms of this Contract shall continue to bind the parties hereto to such extent as may be necessary to give effect to the rights and obligations embodied in it including without limitation Conditions 2.2, 4, 7 and 8.
- 6.5 If the Contract is terminated by either party hereto, the Customer shall:
 - a) pay to PMS all arrears of charges, Termination fees and any interest payable under the Contract and;
 - b) return to PMS all equipment owned or provided by PMS and/or allow PMS or its Agent access forthwith to the Customer's premises for the removal of any PMS Access Equipment and pay any reasonable charges PMS may have incurred in so doing;
 - c) undertake and comply with the provisions of Condition 2.2(d); and
 - d) cease being provided the Services and have no right to use the same.

7. CONFIDENTIALITY

- 7.1 The Customer and any User shall at all times keep confidential the terms of this Contract and all matters relating to the Services and shall not disclose the same to any third party without the prior written consent of PMS.
- 7.2 The confidentiality obligations set out in Condition 7.1 shall survive the termination of the Contract.
- 7.3 Nothing in the Agreement shall prevent PMS disclosing any of the Customer's confidential information to a Service Provider's employees, sub-contractors or advisers and other consultants on a 'need to know' basis provided those persons are aware of the confidential nature of the information.

8. LIMITATION OF LIABILITY

- 8.1 The following provisions set out PMS's entire liability (including any liability for the acts and omissions of its directors, officers, employees, agents or sub-contractors) to the Customer in respect of:
 - (a) any breach of its contractual obligations arising under this Contract; and
 - (b) any representation statement or tortious act or omission including negligence arising under or in connection with this Contract.
- 8.2 Any act or omission on the part of PMS or their directors, officers, employees agents or sub-contractors falling within Condition 8.1 shall for the purposes of this Condition 8 be known as an "Event of Default".
- 8.3 PMS's liability to the Customer for the tort of deceit and for death or injury resulting from their own or that of their directors, officers', employees', agents' or sub-contractors' negligence shall not be limited.
- 8.4 Subject to the provisions of condition 8.3, PMS's entire liability in respect of any event of default shall be limited to damages not exceeding the sums paid by the customer to PMS for the services pursuant to this Agreement in the preceding twelve month period in the case of a single event of default and twice the sums paid by the customer to PMS for the services pursuant to this Agreement in the preceding twelve month period in the case of all events of default or series of connected events of default occurring in any twelve month period.
- 8.5 Subject to Condition 8.3, PMS shall not be liable to the Customer in respect of any Event of Default for loss of profits, goodwill, contracts, opportunity or any other type of special, indirect or consequential loss whatsoever or howsoever even if such loss was reasonably foreseeable or PMS had been advised of the possibility of the Customer incurring the same.
- 8.6 If a number of Events of Default give rise substantially to the same loss, then they shall be regarded as giving rise to only one claim under the Contract.
- 8.7 Except in the case of an Event of Default arising under Condition 8.3, PMS shall have no liability to the Customer in respect of any Event of Default unless the Customer shall have served notice of the same upon PMS within six months of the date the Customer became aware of the circumstances giving rise to the Event of Default or the date when it ought reasonably to have become so aware.
- 8.8 PMS shall not be responsible for complying with statutory regulations, or local by-laws, or the fulfillment of any special regulations affecting the Customer.
- 8.9 Save as set out in Condition 8.3, PMS shall have no liability under this Contract of the acts and omissions of other public telecommunication operators or the breakdown total or partial of the PMS Network or any other network.
- 8.10 To the extent that any or part of the Services are faulty, unavailable or interrupted, the Customer's sole and exclusive remedy shall be to be compensated in accordance with compensation schemes that may be introduced from time to time by PMS.
- 8.11 PMS shall not be liable for faults in the Customer's telecommunications equipment which result in PMS being unable to provide the Services.
- 8.12 Dates and terms for provisions of the Services shall be estimates only and no liability shall accrue to PMS for failure to meet any such dates or times. PMS will not be held responsible for any loss due to programming errors or omissions made by any person.
- 8.13 In the event of any failure in the Services, PMS shall not be liable to the Customer for any charges incurred by the Customer should it direct its traffic to another carrier.
- 8.14 PMS reserves the right not to provide the Services due to any technical limitation in the Customer's telephone system, telephone exchange or PMS Access Equipment.
- 8.15 The obligations set out in this Condition 8 as to limitations of liability shall remain in full force and effect notwithstanding the expiration or any termination of this Contract for any reason whatsoever.

9. DEPOSIT

- 9.1 PMS may at any time before or after the provision of the Services require payment by the Customer in a manner specified by PMS of a sum to be held by way of a deposit as and against any charges arising from use of the Services by the Customer and PMS shall be entitled to offset such deposit against any sums due under this Contract from time to time including interest due or owing to PMS pursuant to Condition 4.7.
- 9.2 Any deposit held by PMS will not accrue interest whatsoever although any deposit (or part thereof) which is held by PMS for over one year and which is subsequently repaid to the Customer may, at PMS's discretion, attract interest at an amount determined by PMS.

10. ASSIGNMENT

- 10.1 The Customer shall not assign, transfer, sub-contract, delegate or otherwise deal with all or any of its rights under the Contract.
- 10.2 PMS shall have the right to assign or otherwise transfer, sub-contract, delegate all or any of its rights and obligations hereunder to an Associated Company or other person.

11. FORCE MAJEURE

- Neither PMS or the Customer 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 including without limitation any act of God, inclement weather, failure or shortage of power supply, flood, drought, lightning or fire, strike, lock-out, trade dispute or labour disturbance, the act or omission of Government, highway authorities, public telecommunication operators or other competent authority, war, military operations, or riot, difficulty, delay or failure in manufacture, production or supply by third parties of the Services or any part thereof.

12. NO WAIVER

- Failure by either PMS or the Customer to exercise or enforce any right conferred by this Contract 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.

13. ENTIRE CONTRACT

- The Contract represents the entire understanding between the parties in relation to the subject matter of the Contract and supersedes all other agreements and representations made by either party, whether oral or written.

14. SERVICE OF NOTICE

- 14.1 All notice to PMS herein provided shall be sent by the Customer in writing by 1st Class Recorded Delivery post and the Customer must retain the relevant receipt as proof.

15. GENERAL

- 15.1 Reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted, with or without amendment.
- 15.2 Unless there is something inconsistent in the subject or context, words denoting the singular number only include the plural and vice versa, words denoting one gender only include the other genders.
- 15.3 Unless the context otherwise requires, a reference to a Condition is to a condition of the Contract.
- 15.4 The headings in the Contract are inserted for convenience only and do not affect its interpretation.
- 15.5 If any provision of the Contract is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Contract had been entered into with the invalid provision eliminated.
- 15.6 A person who is not a party to this Contract has no right under the Contracts (Rights of Third parties) ACT 1999 to enforce any provisions of this Contract.

16. GOVERNING LAW

- The Contract shall be governed, construed and interpreted in accordance with English law and the parties submit to the exclusive jurisdiction of the English courts as regards any claim, matter or dispute arising out of or relating to the Contract or any document entered into pursuant to the Contract