

MILLENNIUM TELECOM TELEPHONY & INTERNET ACCESS – Terms and Conditions

1. Definitions

1.1. In this agreement the following terms shall have the following meanings:

“Agreement” means the Order Form and these terms and conditions;

“Customer” means the person or entity whose details are set out on the Order Form;

“Customer Equipment” means any telecommunications apparatus or system owned or controlled by the customer;

“Order Form” means the request for services attached;

“Minimum Term” unless otherwise set out on the Order Form means a period of 60 months;

“Service” means the telephony service the Customer has requested from Millennium Telecom on the Order Form;

“Service Equipment” means the electric communications equipment Millennium Telecom or its sub-contractors may from time to time install at the Customer’s premises for the purposes of providing the Service; and “Millennium Telecom”.

2. Acceptance

2.1. This Order Form shall be binding on Millennium Telecom only after it indicates its acceptance by commencing provision of the Service. Prior to acceptance the Customer agrees that Millennium Telecom may itself, or by its sub-contractors, carry out such credit checks as it deems necessary pursuant to paragraph 7.3.

3. Service Levels

3.1. Millennium Telecom agrees to provide the Service to the Customer and the Customer agrees to use the Service on the terms set out in this Agreement.

3.2. Millennium Telecom shall provide the Service with the reasonable skill and care of a competent telecommunications service provider.

3.3. Millennium Telecom shall use reasonable endeavours to ensure that the Service is available for use by the Customer but owing to the nature of telecommunications networks it is impossible to guarantee a fault free service and the quality of the Service depends on both the quality and availability of other telecommunications networks across which calls or data are transmitted.

3.4. Any faults in the Service must be reported to Millennium Telecom or its sub-contractors on the telephone number shown on the Order Form.

Millennium Telecom shall aim to comply with the quality of service levels set out in paragraph 3.5 below.

3.5. Standard Care cover will provide cover between 09.00 - 17.30 Monday to Friday (excluding public and bank holidays) Millennium Telecom aims to respond to a fault report received before 17.00 hours on one working day by the end of the next working day. Where a fault is reported outside of the above hours or after 17.00 hours, the fault will be treated as if it has been reported at the beginning of the next working day. Work on fault repair will only be carried out during the above hours.

3.6. Millennium Telecom may change the Service for operational reasons including a change to the code or telephone number used by the Customer or to change any technical specification of the Service provided any change to the technical specification does not materially affect the performance of the Service.

4. Access and Installation

4.1. The Customer shall at its own expense in advance of any installation work:

4.1.1. Obtain all necessary licenses or consents, including consents for any alterations to buildings to allow the installation of the Service Equipment;

4.1.2 Provide sufficient approved electricity connection points for the Service Equipment in close proximity to the Service Equipment;

4.1.3 Provide an appropriate environment for installation of the Service Equipment in accordance with the requirements notified to it by Millennium Telecom or its sub-contractors and carry out any making good or decorator’s work required.

4.2 Millennium Telecom or its appointed sub-contractors shall deliver and install any Service Equipment required for provision of the Service at the Customer’s premises. Millennium Telecom shall use its reasonable endeavours to deliver and install the Service Equipment by such date as is advised, however any delivery date specified shall be an estimate only. Neither Millennium Telecom nor its sub-contractors accept liability for failure to meet the delivery date.

4.3. The Service Equipment shall at all times remain the property of Millennium Telecom or its sub-contractors.

4.4. The Customer must not add to, modify or in any way interfere with the Service Equipment, nor allow anyone else other than someone authorised by Millennium Telecom to do so. The Customer shall be liable for any loss or damage to the Service Equipment except where such damage is due to fair wear and tear or is caused by Millennium Telecom or anyone acting on Millennium Telecom’s behalf.

4.5. The Customer must grant Millennium Telecom and its sub-contractors access to its premises at any agreed time during 08.00 to 18.00 Monday to Friday (excluding public holidays) (“Working Hours”) and Millennium Telecom or its sub-contractors may, on reasonable notice, require access to the Customer’s premises outside Working Hours. Any work carried out by Millennium Telecom or its sub-contractors outside the Working Hours shall be subject to additional charges. The Customer may be required to designate a named individual to be available if Millennium Telecom or its sub-contractors require access to the premises. If no such person is available or is not present at the premises then Millennium Telecom (and its sub-contractors) shall have no liability to the Customer for non-performance of its obligations under this Agreement.

4.6. The Customer shall provide a suitable and safe working environment for Millennium Telecom and its sub-contractors. Millennium Telecom and its sub-contractors shall comply with the Customer’s reasonable site regulations previously notified to Millennium Telecom in writing. Neither Millennium Telecom nor its sub-contractors shall be liable for any breach of this Agreement which arises as a result of conflict between any such site regulations and this Agreement.

5. Use of the Service

5.1. The Service is for the supply of both a Telephone Access Line(s) and outbound Call Traffic over that Access Line(s). The Customer shall not request Carrier Pre-Selection or use any other Indirect Access routing method for the purpose of routing Call Traffic through another Service Provider over the Access Line(s).

5.2. The Customer shall ensure that the Customer Equipment is in proper working order and complies with all applicable standards and approvals for network connection. Customer Equipment must be used in accordance with any published instructions, safety and security procedures applicable to the use of that equipment.

5.3. The Customer shall ensure that the Service is not used either by the Customer or any third party for any fraudulent, criminal, defamatory, offensive, obscene, indecent or abusive purpose (including menacing, nuisance or hoax calls) or so as to constitute a violation or infringement of the rights (including intellectual property rights) of Millennium Telecom or any third party. The Customer hereby undertakes to comply with all applicable laws, regulations, conditions of entitlement and guidelines and all reasonable instructions of Millennium Telecom or its sub-contractors in relation to its use of the Service and the Service Equipment. The Customer shall not use the Service in a manner in which, in Millennium Telecom’s reasonable opinion, could materially affect the quality of any electronic communications service over a public electronic communications network, including the Service.

5.4. Millennium Telecom and its subcontractors shall have the right to recover all reasonable costs incurred in investigating or remedying any fault with the Service where it is caused by the Customer’s negligence or default or by the Customer Equipment or where the fault does not lie with Millennium Telecom, its sub-contractors or any Service Equipment.

5.5 The Customer acknowledges that it does not own the telephone number(s) and that it may not transfer the telephone number(s) without the permission of Millennium Telecom or its sub-contractors. Unless the Customer elects otherwise Millennium Telecom or its sub-contractors shall use its reasonable endeavours to publish the telephone number and the Customer’s details in a telephone directory and will make such details available to directory enquiry services.

5.6. The Customer shall indemnify Millennium Telecom or its sub-contractors against any claims or legal proceedings which are brought against Millennium Telecom or its sub-contractors because the Service is used in breach of the restrictions set out in this paragraph 5.

5.7. The Customer may request changes to features of the Service by completing a change request form. If the Customer wishes to change the type of Service supplied it will be required to separately order such service and to enter into a new agreement for the supply of that different service.

5.8. In the event that Millennium Telecom or its sub-contractors supply software to use in conjunction with the Service, Millennium Telecom grants the Customer a non-exclusive, non-transferable license for the use of such software for the duration of this Agreement. Except as permitted by law, the Customer is not permitted to copy, de-compile or modify the software, nor copy the manuals or documentation supplied with such software.

6. Payment

6.1. The Customer shall pay the charges for the Service from the date the Service is first made available and as set in the Order Form or as otherwise set out in the Millennium Telecom tariff current from time to time (a copy of which is available on request). All prices are exclusive of value added tax and all prices are subject to change upon Millennium Telecom or its sub-contractors giving not less than 20 days prior written notice to the Customer.

6.2. All sums due to Millennium Telecom or its sub-contractors under this agreement shall be paid in full by the Customer without any set off whatsoever. Millennium Telecom may sub-contract the issuing of invoices and the collection of monies.

6.3. The Customer shall be invoiced monthly in advance for Access Line(s) charges and in arrears for call charges by Millennium Telecom or its sub-contractors for charges under this Agreement plus value added tax. Payment is due within 14 days of the invoice date. The time of payment of all sums due to Millennium Telecom or its sub-contractors under this Agreement shall be of the essence. If payment in full is not received by Millennium Telecom or its sub-contractors upon the due date, Millennium Telecom or its sub-contractors shall be entitled to levy a late payment charge of £10 + VAT on any unpaid overdue balance based upon The Late Payments of Commercial Debts (Interest) Act 1998 and as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002. Interest will be charged on a daily basis. Should this account not be settled when due, and thereby fall into arrears, and Millennium Telecom or its sub-contractors instruct a Debt Collection Agency and/or a Solicitor to collect the said debt/account; all commissions, legal fees, costs, disbursements, Value Added Tax, and all sums that Millennium Telecom or its sub-contractors are called upon to pay in order to collect the said outstanding debt/account, will be borne by the Customer and/or the party or parties to the Agreement or to any contract that Millennium Telecom has entered into with the Customer. Invoices paid by means other than direct debit shall be subject to an additional £10 monthly charge.

6.4 All charges payable under this Agreement shall be calculated by reference to data recorded or logged by Millennium Telecom or its sub-contractors and not by reference to data recorded or logged by the Customer.

6.5. Subsequent to carrying out a credit check pursuant to paragraph 7.3. Millennium Telecom may require a cash deposit or bank guarantee to cover charges which Millennium Telecom might reasonably expect the Customer to incur the Agreement or may place a limit on the Customer’s account for charges that can be accumulated by the Customer before payment is received by Millennium Telecom or its sub-contractors in respect of provision of the Service.

6.6. Where the Customer fails to comply with paragraph 4.1 or Millennium Telecom and/or its sub-contractors are not able to access the Customer’s premises to carry out installation work or fault repair work then Millennium Telecom or its sub-contractors may charge the Customer for an aborted visit at the rate of £500.00 (plus VAT) per day or part day as such rate may be varied by the Millennium Telecom tariff from time to time.

7. Provision of Information and Data Protection

7.1. The Customer undertakes promptly to provide Millennium Telecom or its sub-contractors free of charge, with all information and cooperation as Millennium Telecom or its sub-contractors may reasonably require to enable it to proceed without interruption with the performance of its obligations under this Agreement.

7.2. Millennium Telecom undertakes to keep any personal data it obtains in the performance of its obligation under this Agreement in accordance with relevant data protection legislation and not to use or disclose such information for any unlawful purpose. Millennium Telecom may from time to time disclose personal data of the Customer and (if relevant) the customer's employees to its sub-contractors and service providers in order to supply the Service.

7.3. Millennium Telecom and its sub-contractors reserve the right to carry out a credit check against the Customer and may register information about the Customer and the Customer's account with credit reference agencies. Millennium Telecom and other parties may use this information to make credit decisions. This information may also be used to prevent fraud and to trace debtors.

8. Liability

8.1. Nothing in this agreement shall exclude or restrict Millennium Telecom's liability (or its sub-contractors' liability for death or personal injury resulting from the negligence of Millennium Telecom or its employees while acting in the course of their employment or its sub-contractors or its employees while acting in the course of their employment or for fraudulent misrepresentation or for any other liability that cannot by Law be excluded.

8.2. Subject to paragraph 8.1, Millennium Telecom's total aggregate liability (or its sub-contractors' total aggregate liability if any claim is made against such sub-contractors) to the Customer in respect of all causes of action arising in each calendar year in contract, tort (including negligence), breach of statutory duty or otherwise in connection with this Agreement shall be limited to 125% of the total charges paid or payable by the Customer for the Service in such calendar year or to £5,000, whichever is the greater.

8.3. Subject to paragraph 8.1, neither Millennium Telecom nor its sub-contractors shall be liable to the Customer in contract, tort (including negligence) breach of statutory duty or otherwise, including any liability in negligence for any of the following: (a) loss of revenue; (b) loss of business; (c) loss of data; (d) loss of profit; (e) loss of any anticipated savings; (f) loss of time; (g) wasted expenditure; (h) loss of opportunity; or (i) any indirect or consequential loss.

8.4. Neither Millennium Telecom nor its sub-contractors shall be liable for failure to perform any of its obligations under this Agreement if it is prevented from doing so by any circumstances beyond its reasonable control, including, but not limited to, lightning, flood, exceptionally severe weather, fire, explosion, war, civil disorder, industrial disputes (including industrial disputes involving Millennium Telecom or its sub-contractors' own employees where that industrial dispute is beyond the reasonable control of that party) act of God, act of terrorism, BT "Matters Beyond Our Reasonable Control" (MBORC), subsidence, national or local emergency, statutory obligation or acts or omissions of local or central government or other competent authorities or persons for whom Millennium Telecom or its sub-contractors is not responsible or events beyond the reasonable control of Millennium Telecom's suppliers (or its sub-contractors suppliers) including the acts or omissions of third party telecommunications network operators.

8.5. In the event of any failure in the Service, neither Millennium Telecom nor its sub-contractors shall be liable to the Customer for any charges incurred by the Customer should the Customer divert its call traffic to another service provider unless specially requested to do so by Millennium Telecom or its sub-contractors.

8.6. Each of the above provisions excluding or limiting liability shall operate separately and if any of provision (or part thereof) is held by a court to be unreasonable or inapplicable the remaining provisions shall continue to apply.

8.7 Each of the provisions in this Agreement excluding or limiting liability shall also apply to limit or exclude the liability of Millennium Telecom's sub-contractors and agents.

9. Suspension of Service

9.1. Millennium Telecom may at its sole discretion elect to immediately suspend the provision of the Service until further notice without liability to the Customer on notifying the Customer either orally (confirming the same in writing) or in writing in the event that:

9.1.1. The Customer is in breach of any term of this agreement;

9.1.2. The Customer prevents or delays any prearranged maintenance or fault repair work from being carried out;

9.1.3. The Customer is suspected, in Millennium Telecom's reasonable opinion, of involvement with fraud or attempted fraud in connection with the use of the Service;

9.1.4. Millennium Telecom (or its sub-contractors) is obliged to do so in order to comply with an order, instruction or request of any government, emergency service organisation or other competent authority;

9.1.5. operational reasons (such as maintenance or service upgrades) require such suspension or because of an emergency (in which case no written notice shall be required);

9.1.6. in the event that any of the events set out in paragraph 10.3 occurs; or

9.1.7. the Customer charges have reached the limit set under paragraph 6.5.

9.2. The Customer must continue to pay the charges for the Services during any suspension up to the date of termination.

10. Term and Termination

10.1. This Agreement shall start on the date that Millennium Telecom or its sub-contractors first makes the Service available to the Customer and shall remain in effect for the Minimum Term and thereafter for further periods of one year unless and until terminated in accordance with this paragraph 10. On termination of this the Agreement for whatever reason the telephone service may be disconnected unless the Customer makes alternative arrangements with another provider of telephone services.

10.2. Each party may terminate this Agreement on not less than 90 days notice in writing to expire at the end of the Minimum Term or on each anniversary thereof. Written termination notice to be sent strictly by recorded delivery to Millennium Telecom, 17 Midland Court, Oakham, Rutland, LE15 6RA.

10.3. Without prejudice to its other rights under this Agreement, Millennium Telecom may terminate this agreement immediately if:

10.3.1. The Customer has committed a material breach of this Agreement which is incapable of remedy or in the case of a remediable breach, the Customer fails to remedy within a reasonable time of having been requested to do so by Millennium Telecom or its sub-contractors;

10.3.2. the Customer is repeatedly in breach of this Agreement;

10.3.3. any contract upon which Millennium Telecom or its sub-contractors relies for the provision of the Services is terminated (for whatever reason);

10.3.4. the site at which the Service is provided is demolished; or

10.3.5. the Customer is the subject of a bankruptcy order, or becomes insolvent, or makes an arrangement or composition with or assignment for the benefit of its creditors, or goes into voluntary (other than for reconstruction or amalgamation), or compulsory liquidation or a receiver or administration is appointed over all or any of its assets or ceases to carry on business.

10.4. Without prejudice to its other rights, Millennium Telecom shall have the right immediately to terminate this Agreement by notice in writing where the Customer fails to make any payment when it becomes due to Millennium Telecom.

10.5. On termination of this Agreement, the Customer shall ensure that Millennium Telecom (or its sub-contractors) is supplied with prompt access to remove any Service Equipment supplied. Where this Agreement is terminated prior to the end of the Minimum Term, other than for breach by Millennium Telecom, the Customer shall pay Millennium Telecom:

10.5.1. any outstanding charges due from the date of termination up to the end of the contracted period described in paragraph 10.1;

10.5.2. the cost for the de-installation of the Service Equipment; and

10.5.2. the sum equal to 30% of the average monthly call spend for the period up to the date of termination multiplied by the number of months remaining in the contracted period described in paragraph 10.1.

10.6. On termination, any consequential reprogramming of the Customer Equipment shall be the Customer's responsibility and at the Customer's cost. Neither Millennium Telecom nor its sub-contractors is responsible for any redecorating work at the Customer's premises.

10.7. On termination the provisions of paragraphs 1,4.3 to 4.6, 6, 8, 9, 10.5, 10.6, 11.4, 11.5 and this paragraph 10.7 shall continue to apply.

11. General

11.1 The Customer may not assign or transfer this Agreement or any of its rights under it without Millennium Telecom's prior written consent. Millennium Telecom may assign any or all of its rights and obligations under this Agreement without prior written consent.

11.2. Millennium Telecom may at any time assign, transfer, charge, mortgage, subcontract, declare a trust of or deal in any other manner with all of its obligations under the Agreement to any third party or agent.

11.3 Any notice, invoice or other document which may be given by either party under this Agreement shall be deemed to have been given if left at, or sent by post (registered post in the case of notice) or fax transmission (confirming the same by post, registered post in the case of notice) to an address notified by the other party in writing as an address to which notices or other documents are to be sent. Millennium Telecom's address for service of any notice shall be such address as appears on the last invoice sent to the Customer or such other address as may be notified in writing by Millennium Telecom for that purpose. Unless otherwise notified by the Customer, the Customer's address for service shall be the address for service shall be the address set out on the Order Form and notices sent to that address shall be deemed duly served.

11.4. Millennium Telecom may change this Agreement at any time by giving 30 days notice in writing provided that any change shall not materially affect the Service or the performance of the Service except insofar as it is reasonable to do so.

11.5. If any provision of this Agreement is found to be invalid, unlawful or unenforceable in any respect, the remaining provisions shall continue to apply to the fullest extent permitted by law.

11.6. Failure by either party to exercise or enforce any right under this Agreement shall not be treated as a waiver of that right and shall not prevent that right or any other right being exercised or enforced on a later occasion.

11.7. This Agreement and any documents referred to in it, including, but not limited to, the Millennium Telecom tariff, together represent the entire agreement and understanding of the parties with respect to their subject matter and supersede all prior understandings and representations (other than fraudulent misrepresentations), whether written or oral and this Agreement may only be modified if such modification is in writing and signed by Millennium Telecom and the Customer.

11.8. The parties do not intend that any term of this Agreement should be enforceable under the Contracts (Rights of Third Parties) Act 1999 by anyone else save for any sub-contractor or agent appointed by Millennium Telecom. The parties intend that all rights and obligations of Millennium Telecom under this Agreement may be enforced or performed by its sub-contractors or agents.

11.9. This Agreement shall be governed by English law and the parties agree to submit any dispute to the exclusive jurisdiction of the English courts.