

Terms And Conditions

Terms and Conditions of Service Provision Ardencom Ltd.

The terms and conditions contained in this Telephony Service Agreement ("the Agreement") and the Request for Service (as defined below) apply to the provision of services which we, Ardencom Limited ("Ardencom") provide to you from time to time.

1. Definitions

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

- a. "Contract Value" means the aggregate of all monies (excluding interest) due from you to Ardencom (whether having been paid or not) during the lifetime of this Agreement;
- b. "the Equipment" means such telecommunications equipment (whether software or hardware) belonging to Ardencom or any third party delivered and I or installed by Ardencom to you to enable you to receive the Service;
- c. "Existing Services" means those telecommunications services taken by you as at the date of the commissioning of the Report;
- d. "Intellectual Property" means without limitation all patents, copyright, design, rights, trade marks, service marks, trade secrets, know-how, database rights and rights in any domain name (whether registered or unregistered) and all applications for the same anywhere in the world whether now or in the future;
- e. "the Product Sheets" means the section of the Request for Service comprising the details of the individual products that you are requesting I ordering in respect of the Site;
- f. "Request for Service" means the application form including without limitation details of the services that you are requesting ("the Service" or "the Services"), the Site Information Sheet and the Product Sheets;
- g. "the Report" means the report prepared by Ardencom and delivered to you from time to time;
- h. "the Site Information Sheet" means the sheet setting out details of the premises upon which the Service will be provided ("the Site" or "the Sites"); and
- i. "the System" means your existing telecommunications system including without limitation your computer system and the hardware and software relating to or used upon or in connection with it;

2. The Report and the Service

- a. Upon the evaluation of your System Ardencom shall deliver the Report to you. The Report shall include without limitation Ardencom's recommendations as to alternative products and / or services that are available on the market place that would be suitable (as alternatives, amendments, upgrades or otherwise) to your System and Existing Services whether financial, technical or otherwise. Such Report shall be marked, where possible, by Ardencom, with the date of its creation and a reference number. For the avoidance of doubt, such date and reference number shall be for the internal purposes of Ardencom.
- b. Ardencom may amend or you may request that Ardencom amends the Report in accordance with your instructions and specifications as to the products and / or services that you require. Upon its amendment the Report shall be delivered by Ardencom to you. Each such amendment of the Report shall be marked with its respective date of creation and reference number.
- c. You agree that the Report is provided solely for your benefit. Such Report may not be used or relied upon by you for any purposes other than in connection with this Agreement and the Request for Service and subject to the provisions set out in clause 8 may not be disclosed to any third party nor used or relied on by any third party without the prior written consent of Ardencom.
- d. Both parties confirm that the final version of the Report forms the basis for the Request for Service.
- e. Accordingly Ardencom shall provide the Service to you in accordance with this Agreement and the Request for Service. Any changes or variations to these terms and conditions and / or the Request for Service must be agreed in writing by you and Ardencom.

3. Ardencom Responsibilities

Ardencom agrees to:

- a. provide you with the Service indicated in the Request for Service and, where appropriate, any and all equipment and machinery as will be necessary to enable Ardencom to provide the Services ("the Equipment"). For the avoidance of doubt any such Equipment shall (unless otherwise agreed) remain the property of Ardencom or where relevant any third party. You are not granted any rights to such Equipment other than are set out in these terms and conditions;
- b. to exercise reasonable care and skill as a competent switchless service provider; to upgrade, reprogram, modify or vary your System to a specification that is compatible with the Equipment as necessary and as appropriate as agreed between us in writing prior to the installation of the Equipment and apply Carrier Pre Selection (CPS) to your lines as appropriate and as agreed between us.

4. Customer Responsibilities

You undertake to:

- a. ensure that the System used by you and in conjunction with the Service other than the Equipment conforms to the relevant standards and legislation. You further warrant that any approvals and licences that are necessary to enable you to use the System are adequate and up-to-date. You confirm that upon the request of Ardencom you will produce copies of any such approval or licence;
- b. ensure that billing addresses and contact addresses and information are accurate and up to date at all times;
- c. ensure that funds are available for payment in full of all and any outstanding and due monies on the dates that payment falls due in accordance with clause 6 of this Agreement;
- d. ensure that Services provided are not used for any illegal, immoral, or fraudulent purposes as defined under the Telecommunications Act 1984 and hold such licences as are necessary under the Act to connect with the Equipment and to receive the Services;
- e. ensure that the System and all Equipment is fully and properly maintained in order to facilitate use of the Services at all times;
- f. ensure that any changes made to your System or to the Equipment connected to or installed in accordance with the Services provided are made cognisant of the provision of the Services and without disruption or cessation of the Services provided;
- g. ensure that Ardencom are kept fully updated with any additions, cancellations, changes, alterations, modifications to the System and I or the Equipment connected to or used in conjunction with the Service, or any other fact which may affect the use of the Services under this Agreement;
- h. ensure that Ardencom has such rights and access at all reasonable time to your System and such Equipment and facilities as may be required to perform its obligations under this Agreement;
- i. ensure safe use and custody of all Equipment supplied to you under this Agreement you further agree to keep all such Equipment adequately insured against accidental loss or damage. You will produce copies of such insurance policies at the request of Ardencom
- j. comply with all reasonable requests made by Ardencom to modify the System to receive the Service; and
- k. not to assign or transfer this Agreement or any part of it to any other party without the prior written consent of Ardencom.

5. Duration and Termination

- a. This Agreement is contractually binding and should not be entered into without consideration of the responsibilities and liabilities incurred by signing this document. You are allowed a 'cooling off' period of ten working days from the date of signature of this Agreement during which you may change your mind and cancel the Agreement between us. Such cancellation must be notified (in accordance with Clause 11 of this Agreement) before the expiry of the ten day period and confirmed in writing by fax or e-mail to Ardencom's operating address for cancellation to become effective
- b. You are agreeing to accept the Services of Ardencom as defined in the Request for Service for a minimum period of time and subject to the provisions for termination as described in Clause 11 (Notice) and Clause 7 (Suspension of Service) of this Agreement.
- c. The minimum period of time for which Ardencom will provide and you will pay for Services is 1 (one) calendar month or such other period set out in the Request for Service (whichever is the longer) commencing upon the date on which the Service is provided to you or upon signature of a delivery note or receipt of order acknowledgement whichever is sooner ("the Minimum Period").
- d. Save as set out in Clause 9a below, you may terminate this Agreement upon the expiry of the Minimum Period by providing Ardencom with one month's notice in accordance with Clause 11 (Notice) in writing prior to the expiry of the Minimum Period. In the event that, this Agreement is terminated by you prior to the time limits set out in this clause 5d or in accordance with clause 5g or Clause 7 (Supervision of Service), Ardencom shall be entitled to invoice you for the full amount which Ardencom would have received for the unexpired balance of the Minimum Period or for the value of such monies as Ardencom will incur and be invoiced for in terminating its like Agreement with a third party service provider.
- e. Ardencom may terminate the Agreement at any time by providing one month's written notice to you of its intention to do so, or immediately following suspension of the Service pursuant to clause 5f below.
- f. Either party may terminate the Agreement forthwith if:
 - (i) the other party has committed a material breach which is incapable of remedy
 - (ii) the other party has committed a material breach capable of remedy but which it does not remedy after 15 days
 - (iii) the other party becomes unable to pay its debts as described in Section 123 of the Insolvency Act 1986 (and as subsequently amended)
 - (iv) a liquidator or other professional relevant to bankruptcy is appointed to manage all or some of the other party's assets (other than for the purpose of amalgamation or reconstruction)
 - (v) the other party enters into an arrangement or composition with its creditors; or
 - (vi) Service is interrupted for a period exceeding 1 calendar month due to any event which occurs and which is outside the reasonable control of the parties, which shall include but not be limited to any act of God, war, trade union dispute, flood, explosion, Governmental act, civil commotion or failure or malfunction of any telecommunications or computer services
- g. Upon the termination or expiry of this Agreement (howsoever arising) you shall deliver up to Ardencom within 7 days of such termination all Equipment and any other materials in your possession, custody or control belonging to Ardencom or any other third party delivered or installed to you in accordance with this Agreement.

6. Charging Periods and Payment Terms

- a. Charges will be as set out and appended to this Agreement and as subsequently applied from time to time and shall accrue from the date on which use of the Service is commenced.
- b. Invoices will be sent to you on the first day of each calendar month at the address specified in the Request for Service or as from time to time formally notified by you as the address to which bills and invoices should be submitted for settlement. Any fixed and periodic charges that are due and payable by you will be invoiced to you and are payable monthly in advance
- c. Payment will only be accepted by Direct Debit or BACS (Bank Automated Clearing Services) and will be due in full no more than 14 days after the date of invoice. It is your responsibility to ensure that funds are available and submitted to settle all outstanding amounts due and overdue on the date of collection. Failure to make payments by Direct Debit on the due date and in the full amount will incur a charge of £25 plus VAT for each instance on which payment has to be requested. Such charge will be added to the invoice amounts due and overdue and will be shown on your next statement of account.
- d. Overdue amounts will attract an additional charge at the rate of 2.5% over and above the Bank of England base rate as publicised on the day on which the charge is added to your account. Interest will accrue daily on overdue amounts even after termination of this Agreement from the due date of the invoice until the date of payment. This clause does not exclude the Late Payment of Commercial Debts (Interest) Act 1998.
- e. No set-off or deduction will be allowed except for recognised and valid disputed charges notified to Ardencom and acknowledged by us as legitimate queries or disputes. Such queries must be notified to us in writing by either fax or e-mail and any such deduction or withheld sums must relate only to those parts or items legitimately under query. VAT will be charged separately at the rate for the time being in force and added to the invoice for Services provided. VAT shall become due and payable in accordance with clause 4c above.

7. Suspension of Service

Ardencom

- a. we are or become entitled to terminate the contract;
- b. we are required to do so in order to avoid a breach of our or your licences or agreements in respect of the Equipment or the Services;
- c. we are obliged to comply with an order, instruction, or request of the Government, an emergency Services organisation, or other competent relevant administrative authority which affects Ardencom's ability to provide the Service;
- d. we believe that the Service is being used for any illegal immoral or improper purpose;
- e. we have reason to believe that you will fail to pay any amount due under this Agreement; or
- f. the network providers fail to supply Service equipment or access upon which our Service to you is dependent.

8. Liabilities

- a. Subject to clause 8b below, each party's total liability to the other whether arising from contract, tort (including negligence or breach of statutory duty) or otherwise arising in connection with this Agreement and any other contract for Ardencom Services, shall be limited to the Contract Value for any series of any events in any twelve month period.
- b. Neither party shall be liable to the other for any indirect or consequential loss or otherwise for harm to business, lost revenues, loss of profits or non-realisation of anticipated savings, business opportunity goodwill or loss or corruption of data as a result of the provision of or acceptance of the Service.
- c. Nothing in these terms shall limit either party's liability in respect of death or personal injury caused by or arising from that party's negligence.
- d. No warranties or conditions, express or implied, are included in this Agreement nor in the provision or acceptance of Service.
- e. Neither party shall be liable to the other for any delay or non performance of its obligations under this Agreement that is caused by an event beyond its reasonable control, such events to include but not be limited to acts of God; lightning damage; fires; flood; explosion; war; civil commotion; deficient power supplies; failure or malfunction of any telecommunications or computer services; labour disturbances; loss of Service on exchange lines provided by other operators; any acts or omissions of Governments, Highways Authorities; telecommunications providers or third parties generally.
- f. Ardencom shall not be liable for any loss or damage (howsoever arising) caused to your system as a result of any defect in any of the Equipment belonging to any third party and that is installed by Ardencom into your system in accordance with the service.
- g. You shall indemnify and keep indemnified Ardencom from and against any losses, damages, costs (including all legal fees) and expenses incurred by or awarded against Ardencom as a result of a third party's Intellectual Property rights or any breach of this Agreement.

9. Third Party Providers

- a. You agree and acknowledge that in order for Ardencom to provide you with certain of the Services, Ardencom may have to enter into arrangements or contracts with a third party. You further acknowledge that any price increase made by such third party in such contract may result in the charge for the Service being increased by like amount. Ardencom shall provide you with notice, where possible, one month prior to the increase of any price. In the event that you should disagree with such price increase you may terminate this agreement by providing 21 days written notice within 7 days of receiving such notice of the price increase.

10. Intellectual Property and Confidentiality

- a. Both parties confirm that the contents of the Report, the Request for Service, this Agreement and any information disclosed by either party relating to that party's business (of whatever nature and on whatever media) ("the Disclosing Party") to the other ("the Receiving Party") for the purpose of the Report, Requested for Service or this Agreement, is confidential ("the Confidential Information").
- b. The Receiving Party confirms that it shall not disclose any Confidential Information belonging to the Disclosing Party to any person other than its employees or representatives except with the prior written consent of the Disclosing Party. Such obligation shall continue for the lifetime of this Agreement.
- c. The obligations of confidence referred to in clause 10b above shall not apply to any Confidential Information which is in the public domain prior to its receipt by the Receiving Party or is required to be disclosed by any order of a court of competent jurisdiction or is or becomes publicly available on a non-confidential basis through no fault of the Receiving Party.
- d. Both parties acknowledge that;
- (i) any Intellectual Property belonging to either party and arising prior to or separate from this Agreement ("the Owner") shall vest and remain vested in the Owner;
- (ii) save as set out in this Agreement, the Owner does not transfer or grant any right, title or interest
- (iii) any Intellectual Property rights arising in the Report or any variation or amendment of it shall vest
- e. You warrant that you have the right to supply the Confidential Information to us and that the supply of such information by you and its receipt and use by us for the Report, the Services or otherwise will not infringe any rights held by any third party, involve any use of confidential information belonging to a third party or result in a breach by you or us of any applicable regulations, Intellectual Property rights or other legal duty owed to any third party.

11. Notice

- a. Intention to serve Notice may be given by fax or e-mail to Ardencom's operating address for the time being but for your best security these instructions will only be accepted once received on your company letterhead signed by an authorised officer of your company and at Ardencom's operating office address.
- b. Notice of termination of Service may be given by Ardencom and served upon you at your last known address at any time in the course of this Agreement if;
- (i) you do not pay in full or upon demand any and all charges outstanding to Ardencom whether incurred under this Agreement or otherwise;
- (ii) you are believed or suspected to be in violation of Industry Codes and the laws relating to illegal, fraudulent, pornographic, or other misuse of the Services provided to you or governed by the Telecommunications Act 1984 or as subsequently amended;
- (iii) the Services which you have ordered under this Agreement are not utilised for a continuous period exceeding one calendar month; or
- (iv) you fail to fulfil your obligations under this Agreement and persist in this failure after such failure has been brought to your attention for remedy.
- c. Such notice will be given to terminate Service one month after the date on which served upon you. Notice shall be deemed to have been served immediately if given by e-mail or fax. If notice of termination is given by letter it will become effective 48 hours after the date of posting. Ardencom reserves the right to suspend Service during the period of notice given.

12. Interpretation and Legal Effect.

- a. This Agreement and the Request for Service contain the entire understanding of Ardencom and you as the customer as to the Service and replaces any and all former agreements, understandings, offers and representations -written and oral -relating to the Service.
- b. This Agreement shall be modified, varied, amended or waived only by the prior written agreement of you and Ardencom.
- c. Failure by either of us to exercise or enforce any right under this Agreement shall not deprive either party of the right to exercise or enforce any rights under the Agreement on a later occasion.
- d. This Agreement shall be governed and construed in accordance with English Law and we both irrevocably agree to the exclusive jurisdiction of the English Courts.
- e. If any provision in this Agreement is judged to be illegal or unenforceable the continuation in full force and effect of the remainder of the provisions will not be prejudiced.
- f. No term of this Agreement is intended to cover a benefit on, or to be enforceable by any person who is not a party to this Agreement under the Contracts (Rights of Third Parties) Act 1999.

13. Fault Resolution

- a. You shall notify Ardencom of any material fault in the service and Ardencom shall use all reasonable endeavours to remedy the fault as quickly as practicable.
- b. In the event that as a consequence of a fault resulting in you having to be routed through an alternative licensed operator via Ardencom or BT, Ardencom will refund the difference between the charges properly, reasonably and directly incurred by you in connection with re-routing the traffic via another licensed operator network and the charges you would have incurred if the calls had been routed via their chosen network. This refund will be in respect of all calls made after the fault has been logged by Ardencom and for which your bill and written evidence of your claim and Ardencom's reimbursement of you and such other documentary evidence as Ardencom may require is produced as proof of expense incurred. The maximum value that Ardencom will refund you in any calendar month would be limited to 10% of the monthly billed revenue by you.
- c. At your request Ardencom may agree to work outside its normal business hours and you shall then pay Ardencom's reasonable charges for complying with such a request.
- d. You may be charged for any repair work and any reasonable costs incurred by Ardencom if such repair work results from your own act or omission or is requested by you but is found by Ardencom to be unnecessary.

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