



Service and Usage Agreement

16.4 The unenforceability or invalidity of any part of this Agreement shall not affect the enforceability or validity of the remainder of it. If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

16.5 The termination or expiry of this Agreement shall be without prejudice to the rights of either Party, which have accrued prior to termination or expiry. Clauses that are expressed to survive or which are by implication intended to survive termination or expiry of this Agreement shall so survive.

16.6 This Agreement contains the entire agreement and supersedes all other agreements and understandings between the Parties with respect to its subject matter. Any terms proposed by the Customer that are not written in these Terms and Conditions shall be invalid. Subject to Clause 10.4, each Party acknowledges that, in entering into this Agreement, it does not do so on the basis of, and does not rely on, any representation, warranty or other provision except as expressly written in this Agreement, and that its only remedy can be for breach of contract.

16.7 Nothing in this Agreement shall create, or be deemed to create, a partnership or the relationship of principal and agent or employer and employee between the Parties.

16.8 This Agreement is not intended to be for the benefit of and shall not be exercisable by, any third party under the Contracts (Rights of Third Parties) Act 1999 or otherwise and neither Party can declare itself trustee of the rights under it for the benefit of any third party.

16.9 The Supplier may change this Agreement at any time without requiring the agreement of the Customer. The Agreement in its current format is available at <http://www.incom-business-systems.co.uk>

16.10 The Supplier may transfer or assign its rights and obligations to any of its Associated Companies and may sub-contract any of its obligations. Otherwise, neither Party may transfer, assign, sub-licence or subcontract any rights, licences or obligations under this Agreement without the prior written consent of the other Party, which will not be unreasonably withheld or delayed.

16.11 English law shall govern the validity, construction and performance of this Agreement and the Parties submit to the exclusive jurisdiction of the English Courts.

PART 2 – Fixed Line Rental and calls additional Terms and Conditions

The provisions of this Part 2 shall apply in respect of Services providing fixed line rental and calls in addition to those set out in Part 1.

1. Definitions and Interpretation

CPS: means carrier pre-selection.

Call Charge: means the Supplier's charges for calls made on the System (including reverse charge calls) as specified in the Order or otherwise notified by the Supplier.

Network Service Provider: means the internet, telephony, and other network services provided by the Supplier in respect of the Services.

Telephone Directory: means a Telephone Directory published by BT or any other operator (as appropriate).

2.1 If line numbers are not detailed individually on the Order it is agreed that line numbers detailed on the invoice are governed by this Agreement.

2.2 In addition to the right to terminate in clause 9 of Part 1, the Customer shall be entitled to terminate this Agreement without having to pay the Early Termination Fee if call routing and line rental ceases to be provided on the relevant Exchange Line during the term as defined in Clause 2.1.

2.3 Further to the provisions of clause 2.7 of Part 1, the Customer shall provide to the Supplier any relevant account and Calling Line Identification numbers that may be required by the Network Services Provider or other communications provider, and also access to carry out their obligations for the Supplier, the Network Services Provider and anyone acting on either of their behalf, to the Customer's premises if so required. The Customer acknowledges that the Supplier cannot process the provision of the Service until such information and access is provided.

2.4 The provision of the Service requires that the Network Services Provider undertake programming at exchange level. Accordingly, it is agreed that any act, default or delay by the Network Services Provider or other communications provider in carrying out such programming or otherwise relating to or affecting the Service shall not be the responsibility of the Supplier.

2.5 The Call Routing & Line Rental Service is available only if the Customer has a valid contract for the use of an analogue Exchange Line (in the case of the wholesale access Service) or digital Exchange Line capable of supporting an existing ISDN30 or ISDN2 service (in the case of wholesale ISDN30 and ISDN2 Service) direct Exchange Line (for each Exchange Line being ordered) which terminates on a Connection Point. If such contract does not exist, the Customer must request the Supplier to have installed an Exchange Line, Connection Point and/or ISDN30 or ISDN2 bearer, as appropriate.

2.6 The Customer acknowledges that certain services are incompatible with the Call Routing & Line Rental Service available from the Network Services Provider, and such incompatible services are excluded from the Services. The Customer also acknowledges that some technical limitations within the System may not become apparent until after the Service has been working for some time: in such circumstances, the Service may need to be withdrawn in which case the Customer shall be entitled to a pro rata rebate of any relevant Charges paid in advance by the Customer.

2.7 The Call Charges have been based upon Call Routing & Line Rental only being provided as part of the Service where the Customer is also taking CPS from the Supplier in respect of the relevant Exchange Line. If the Call Routing & Line Rental Service on any relevant Exchange Lines ceases to be provided, the Supplier shall be entitled to amend its Call Charges to its then standard charges for CPS as a stand-alone service. If CPS on any relevant Exchange Line ceases to be provided; the Agreement shall terminate forthwith, without prejudice to clause 2.2.

2.8 Any reference to Call Charges include calls to Vodafone, O2, EE (T-Mobile and Orange) and Virgin only. It does not include calls to 3 (unless otherwise stated in your tariff), 116xxx, Lycra or Lebara mobiles or any mobile virtual network operator not based on the UK GSM cellular networks. If your tariff includes minutes to UK mobiles the same applies

3. Services

3.1 The Supplier may alter the name or number of a telephone exchange serving the Exchange Line, the telephone number, or any other name, code or number whatsoever that the Supplier allocates to the Customer in instances where such alterations are required as a result of necessary operational or technical changes to the Supplier's communications network or changes in legal or regulatory requirements.

3.2 The Supplier will allocate a telephone number to the Customer in respect of the Exchange Line and, unless the Customer requests otherwise, will arrange for a free standard entry to be made in a Telephone Directory, if the Supplier agrees to arrange a special entry (for which a charge would be made), this will be subject to additional terms and conditions.

3.3 Where the Supplier allocates telephone numbers to the Customer, the Customer will not (subject to any statutory or authorisation provisions relating to number portability) acquire any

rights whatsoever in such telephone numbers. The Customer will not apply for registration of the telephone numbers as part of a trademark, company name, or URL.

3.4 If the Supplier has an agreement with the Customer's existing communications service provider, the Supplier can, at the Customer's request, provide the Customer with a telephone line using the Customer's existing number subject to the following:

3.4.1 There are no technical reasons preventing the use of the number;

3.4.2 The existing communications service provider agrees to release the relevant telephone number(s);

3.4.3 The Customer agrees to cease service on the existing communications service provider's telephone line using the telephone number and authorises the Supplier to arrange for that cease to take place;

3.4.4 The Customer provides the Supplier with full details including (but not limited to) the account name, account number, service address and billing address;

3.4.5 The Customer pays the Supplier's charges (if any) for number portability;

3.4.6 Number portability is only available at the Site.

3.5 The Supplier does not accept any liability or claims relating to the Customer's ability to use or to continue use of a single telephone number.

4. Customer Obligations

4.1 The Customer shall comply with any requirements notified by the Supplier relating to number portability.

4.2 Where the Customer's existing account with its current supplier of services includes equipment that is not required for the provision of the Service, the Customer shall contact their current supplier in order to remove the equipment or move such equipment to another account with such supplier.

5. Payment

5.1 The Supplier shall be entitled to send an invoice to the Customer for the Connection Charge when the Telephone Service is available to the Customer.

6. Suspension and variation of service

6.1 The Customer acknowledges that the Network Services Provider may make alterations to the service (including, without limitation, conversions, shifts, reconfigurations and renumbers) which may result in disruption.

7. Fraud

7.1 In accordance with the rest of this clause 7, the Customer will be liable for any fraudulent calls made from the Customer's site. Controlling unauthorised access (including fraudulent access to PBX, trunking or other equipment or resource shall be the sole responsibility of the Customer.

7.2 For the avoidance of doubt, fraudulent calls include but are not limited to:

(i) Calls made from the customer's PBX without their knowledge;

(ii) Calls made utilising the customer's authentication details;

(iii) Calls made from an authenticated IP address;

7.3 The Customer acknowledges that the Service known as "FraudGuard" is not a fraud prevention system and does not prevent unauthorised access to the Equipment. It is the sole responsibility of the Customer to setup and maintain their own security independently of the Supplier and therefore the Supplier accepts no liability whatsoever for any costs incurred as a result of a breach of security.

7.4 The Service known as FraudGuard, which is chargeable, will operate to bar calls by a CLI (telephone number) where calls from that CLI to destinations other than UK geographic or UK mobile numbers totalling over £500 have been made within a 24 hour period. The parameters are as follows:

7.4.1 CPS Calls – CPS (Carrier Pre Select) calls are calls that are routed over an alternative carrier to BT.

Automated Call Barring

7.4.2 Operates on a per CLI basis (i.e. the service will be applied to all CLIs where the service is active and paid for)

7.4.3 Will only operate on CPS calls

7.4.4 When spent by a single CLI on CPS calls to all destinations other than UK geographic or UK mobile reaches £500 within a 24 hour period further calls from that CLI will be barred. This bar will apply to all destinations including UK geographic and UK mobile.

7.4.5 The activation of the bar will generate an email from our supplier notifying us that the bar is in place. We will then, in turn, endeavour to notify you that the bar is in place.

7.4.6 The call bar can be lifted upon request by the Customer, subject to us being able to authenticate that the request is genuine.

7.4.7 As a result of the Automated CLI Call Barring, charges for CPS calls to the relevant destinations will be limited to £500 for as long as the bar remains in place. The £500 threshold is based on the wholesale cost of the calls.

7.5 The Supplier reserves the right to invoice the Customer for any fraudulent calls made in accordance with this clause 7 and clause 11.1 of Part 1 but where possible the fraudulent calls may be charged at cost.

8. Confidentiality and Data Protection

8.1 The Customer hereby consents to the Supplier contacting the Customer's current service provider on the Customer's behalf in order to provide the Services and such supplier disclosing to the Supplier any information relating to the transfer or removal of such supplier's retail products and services that exist on the Exchange Line as at the time of transfer of the service from them to the Supplier.

PART 3 – Mobile Phone Terms and Conditions

The provisions of this Part 3 shall apply in respect of services providing mobile phone line rental and calls in addition to those set out in Part 1.

1. Definitions and Interpretation

Content Service Provider (Supplier): means Incom Network Services a division of Incom Business Systems Limited, Clarendon House, Clarendon Road, Eccles, Manchester, M30 9AL

Disconnection Fee: the fee of up to £30 that may be payable if a PAC code or disconnection request is required.

Equipment: means any equipment supplied as part of the Services (including, but not limited to, cellular phones, cables, plugs and ancillary equipment).

Minimum Period: means twenty four (24) months (or such alternative period as is set out on the Order) from the date that the Services are first delivered to the Customer.

PAC: a porting authorisation code.

Technology Fund: a credit in the amount set out in the Order which the Customer shall be entitled to utilise against the cost of other services and/or equipment from the Supplier.

Termination: the agreement shall commence on the Commencement Date and shall continue until the relevant Services are terminated in accordance with the Agreement.

2. Scope

2.1 If mobile numbers are not detailed individually on the Order it is agreed that mobile numbers detailed on invoices are governed by this Agreement.

2.2 Each party shall have the right to terminate the Agreement in whole or in part by giving the other party 30 days' written notice of termination. The Customer may cease using content services at any time however the Customer shall remain liable for the charges for the Services

until the end of the Minimum period. The Customer must check with the Content Service Provider on how they can end the Agreement.

2.3 Once the Agreement end date is reached, the Agreement will enter a 30 day rolling contract until such time that the Customer notifies the Supplier of either termination or their wish to renew the Agreement. Clause 2.2 of Part 1 of this Agreement shall not apply to mobile services.

2.4 The Customer shall provide to the Supplier any PAC or other codes or authorisations that may be required by the Supplier or any third party in order to provide the Services. The Customer acknowledges that the Supplier cannot provide the Services until such PAC or other codes or authorisations are provided and the Supplier shall not be liable for any loss or damage suffered by the Customer in respect of any delay in providing the Services as a result.

2.5 If the Customer requests to use its own equipment, the subject to Supplier's agreement, the Customer shall provide such equipment to the Supplier who shall arrange for it to be reprogrammed by its designated maintainer in accordance with instructions provided by the Supplier and the Supplier shall have no responsibility in respect of such reprogramming and clause 2.7 of Part 1 of this Agreement shall not apply.

3. Technology Fund

3.1 In consideration of the Customer entering into this Agreement, the Supplier shall agree to make available to the Customer the Technology Fund which shall be used only as a credit against purchases by the Customer from the Supplier of such other services or equipment that the Supplier in its sole discretion determines to be eligible for the same.

3.2 The Technology Fund shall at all times remain the property of the Supplier whose only obligations relating to it shall be as set out in the terms of this Agreement.

3.3 For the avoidance of any doubt the Technology Fund shall cease to be available immediately upon termination of this Agreement and no use of the Technology Fund may be made by the Customer at any times when any invoice(s) is or are outstanding.

3.4 Subject always to clause 3.5 of this Part 3, the Technology Fund may only be utilised in the amounts and on the dates specified in the Order or, if none are specified then the amount that may be utilised in each month will be equal to the total value of the Technology Fund divided by the number of months in the Minimum Period ("Monthly Spend") and any amount of the Technology Fund not used in any month may be carried forward to future months.

3.5 In the event that the Agreement is terminated before the end of the Minimum Period the Customer's rights in and to the Technology Fund shall cease immediately and if the Customer has used an amount of the Technology Fund greater than the Monthly Spend multiplied by the number of months between the Commencement Date and the date of termination (an "Overspend") then the Customer shall pay to the Supplier on termination an amount equal to any Overspend.

3.6 Unless a number is transferred from another provider, the Supplier will allocate a telephone number to the Customer in respect of each line and the Customer accepts that the Supplier has no control over the number allocated and the Customer will not (subject to any statutory or authorisation provisions relating to number portability) acquire any rights whatsoever in such telephone numbers. The Customer agrees to not apply for registration of the telephone numbers as part of a trademark, company name, or URL.

3.7 The Supplier does not accept any liability or claims relating to the Customer's ability to use or to continue use of a particular telephone number.

4. Equipment

4.1 All Equipment supplied pursuant to the Agreement shall remain the property of the Supplier until the Customer has paid all Service Charges and Usage Charges that have accrued during the Minimum Period or any new Minimum Period defined in clause 2.1 of Part 1 (as the case may be) and once the same have been paid in full (in cash or cleared funds) title to the Equipment shall pass to the Customer.

4.2 Title to the Equipment has passed to the Customer, the Customer shall:

4.2.1 store and keep the Equipment separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;

4.2.2 not remove, deface or obscure any identifying mark on or relating to the Equipment;

4.2.3 maintain the Equipment in satisfactory condition and keep it insured against all risks for its full price from the date of delivery; and

4.2.4 notify the Supplier immediately if it becomes subject to any of the events listed in clause 10.3 of Part 1.

4.3 The Supplier may recover any Equipment in which title has not passed to the Customer and the Customer irrevocably licenses the Supplier, its officers, employees and agents, to enter any premises of the Customer (including vehicles), in order to satisfy itself that the Customer is complying with the obligations in this clause 4 and to recover any Equipment in which the property has not passed to the Customer.

4.4 For certain items of Equipment the Supplier may (at its sole discretion) make available a faulty handset exchange program whereby certain items of Equipment supplied may be exchanged with the manufacturer should such Equipment develop a fault during the 24 months following its supply by the Supplier (the "Program"). Where the Program is offered, the Supplier will be required to provide with remote access to the Equipment to perform a diagnostic check to determine whether a manufacturer fault exists and the Customer shall procure that such access is provided. If there is, or appears to be a manufacturer fault then the Supplier will confirm what Equipment or part of the Equipment (as the case may be) will be exchanged and will arrange for the equipment to be returned to the Supplier at its cost. If, following an inspection of the Equipment after any such exchange, the Supplier discovers that the fault was in fact caused by the Customer then the Customer shall pay to the Supplier the cost of any replacement Equipment.

4.5 The Customer shall comply with any requirements notified by the Supplier relating to number portability.

4.6 In the event that any Equipment is returned to the Supplier (for example under clause 4.4, as part of an upgrade, or pursuant to the use of the technology refund referred to under clause 3) then the Customer shall ensure that such Equipment has been restored to factory settings, had all passwords unset, and been removed from any cloud or remote account connections (including, but not limited to, iCloud). In the event that any Equipment is not returned to the Supplier in such state the Customer shall pay the Supplier's charges in putting the Equipment in to such state.

5. Payments

5.1 The Supplier and/or the relevant network provider shall invoice the Customer. The Usage Charges for calls will be calculated using the details recorded or logged at the Supplier's telephone exchange and not any details recorded or logged by the Customer and in order to facilitate this the Customer agrees to provide the Supplier with a third party access form and the relevant username and password for their online billing portal with the relevant network provider.

5.2 The Supplier may change the level of its Service Charges and/or Usage Charges after giving the Customer four (4) weeks written notice of its intention to do so and clause 7.6 of Part 1 of the Agreement shall be amended accordingly. This notice may be included as part of an invoice to the Customer.