

1. DEFINITIONS

Words and expressions, which appear in these terms and conditions, have the following meanings where the context allows:

“Account“ means the record of all Charges due from the Customer.

“Act “ means the Communications Act 2003 (as amended).

“Agreement“ means this Agreement between the Customer and Dolphin for the provision of Services incorporating the Price List .

“Charges“ means the charges and fees payable by the Customer in respect of the provision of Services in accordance with the Price List or such other charges and fees agreed in writing between Dolphin and the Customer or notified to the Customer from time to time.

“Customer“ means the person or entity detailed in the Order Form and where inaccurate, incomplete or conflicting information is provided in the Order Form the Customer shall be the person or entity whose details are provided for the purposes of paying for the Services.

“Dolphin“ means Dolphin Com Ltd (registered in England No: 3822743) whose correspondence address is at PO Box 157, Nantwich, Cheshire, CW5 7XD together with all subsidiary companies (as defined in section 1159 Companies Act 2006).

“Invoice“ means the note of Charges issued to the Customer by Dolphin

“Order Form“ means the order for Services completed by or on behalf of the Customer and any reference to an online order form shall mean such form requesting Services on any website owned or operated by Dolphin.

“Price List“ means Dolphin’s published list of prices (exclusive of VAT).

“Services“ means the provision of telecom services, telephone numbers and/or equipment, live call handling and/ or call centre services and such other services as may be offered by Dolphin from time to time.

2. SERVICES

2.1 Dolphin agrees to provide and the Customer agrees to accept the provision of Services subject to the terms and conditions of this Agreement.

2.2 Where Dolphin installs or provides equipment, hardware or any tangible goods the Customer shall be responsible for the safe keeping and safe and proper use of such equipment, hardware or goods and the Customer shall at all times ensure that all such items are insured against loss or damage.

2.3 Any equipment provided by Dolphin will remain the property of Dolphin and must be made available for collection upon the expiry or termination of this agreement.

2.4 The Customer undertakes not to contravene the Act or any other regulations or licences which apply to the Services.

2.5 All intellectual property rights and other rights in any telephone numbers or codes allocated by Dolphin to the Customer shall at all times remain vested in Dolphin or Dolphin’s suppliers and the Customer hereby acknowledges that it shall not acquire any legal, equitable or other rights in relation to any such numbers or codes. The Customer may not sell or transfer or seek to sell or transfer any numbers or codes allocated by Dolphin. At the discretion of Dolphin it may consent to a request from the Customer to transfer a telephone number to a third party supplier or carrier whereupon an administration fee of £395.95 shall be payable by the Customer to Dolphin in respect of each telephone number. Such administration fee is payable in advance of the transfer being made.

2.6 Dolphin may withdraw or change any telephone numbers or codes at any time.

3. COMMENCEMENT AND DURATION

3.1 This Agreement shall commence upon the Customer or their authorised agent completing the online Order Form and clicking ‘Complete Order and Setup Payment Method’ or upon Dolphin accepting an order for Services where an online Order Form has not been completed and shall continue in force for 12 months (“the Initial Term“). The Agreement will automatically renew and continue for successive terms of 12 months (“the Renewal Term“) unless terminated by either party in accordance with the provisions of this Agreement.

3.2 Where the provision of Services by Dolphin to the Customer commenced prior to the 11 November 2011 the Initial Term shall be calculated to have commenced on the date when Dolphin first commenced delivery of Services and the Renewal Date shall be the 12 month anniversary of such date when the provision of Services first commenced.

3.3 The Customer may terminate this Agreement by giving written notice to Dolphin (“Notice of Termination“). The Notice of Termination shall only be valid if given to Dolphin during the last 30 days prior to the expiry of the Initial Term or any Renewal Term.

3.4 Dolphin may terminate this Agreement at any time following the expiry of the Initial Term upon providing 1 month’s notice of termination to the Customer.

3.5 Where the Customer requests a review of tariffs or charges and Dolphin agrees to such an amendment in favour of the Customer this Agreement shall remain in force for a minimum term of 12 months following the introduction of the amendment and shall thereafter renew for successive terms of 12 months in accordance with clause 3.1 of this Agreement.

3.6 Either party shall be entitled forthwith to terminate this Agreement by giving written notice to the other if:

3.6.1 The other commits a continuing or material breach of this Agreement and, if the breach is capable of remedy, fails to remedy it within 30 days after receipt of a written notice detailing such breach.

Or

3.6.2 The other commits a breach of this Agreement which is not capable of remedy.

Or

3.6.3 The other is repeatedly in breach of this Agreement.

Or

3.6.4 The other is the subject of a bankruptcy order or becomes insolvent, or makes any arrangement or composition with or assignment for the benefit of their creditors, or goes into voluntary (otherwise than for reconstruction or amalgamation) or compulsory liquidation, or a receiver or administrator is appointed over their assets.

Or

3.6.5 The other party ceases, or threatens to cease, to carry on business.

3.7 Dolphin may terminate this Agreement immediately if:

3.7.1 Any license or Agreement under which the Customer has the right to run its telecommunications system and connect it to the Dolphin system is revoked, amended or otherwise ceases to be valid:

Or

3.7.2 The Customer is suspected, in the reasonable opinion of Dolphin, of committing fraud or attempted fraud in connection with the Services or if this Agreement or the Services that are provided under it are utilised by the Customer for committing fraud or any other criminal offence.

Or

3.7.3 Dolphin reasonably suspects that the Customer is unable to pay or is refusing to pay Dolphin Charges due. For the avoidance of doubt, any failure by the Customer to reply to Dolphin’s request for payment and failure to make payment following a request by Dolphin shall be deemed as a refusal to pay.

3.8 In the event of termination by either party for any reason:

3.8.1 Dolphin shall be entitled to recover from the Customer any equipment belonging to Dolphin in the Customer’s possession or the cost of replacing such equipment in the event that it is not made available for collection by Dolphin. Dolphin shall also be entitled to recover the costs of collecting such equipment.

3.8.2 Until such time as the Customer has transferred to a new provider (where applicable), Dolphin shall be entitled to amend its Charges to its standard published usage charges.

4. CHARGES AND PAYMENTS

4.1 The Customer shall pay Dolphin the Charges in accordance with the terms of this Agreement.

4.2 The Customer shall be issued with an Invoice each month by electronic or other means. Payment is due by Direct Debit within 14 days of the date of the Invoice. The Customer may elect to pay by Credit or Debit card whereupon payment of each Invoice shall be due within 24 hours of the issue or electronic communication of such Invoice. Dolphin may levy a payment processing fee of up to £25 per invoice, in the event that the Customer pays an Invoice or Invoices other than by direct debit.

4.3 The Charges are exclusive of any applicable Value Added Tax for which the Customer shall be liable.

4.4 Dolphin may from time to time set the Customer a reasonable credit limit. In the event that the Customer exceeds such credit limit or in the event that payment for any Charges is overdue, Dolphin may withdraw or suspend the Services until such time as the overdue Charges are paid for and/or until the Customer makes payment to bring its Account within the credit limit. Dolphin may require advanced payment for future Charges before re-connecting the Customer or re-commencing the provision of any Services where such services have been suspended in accordance with this clause 4.3.

4.5 Dolphin may change or amend its Price List at any time without notice to the Customer. Any Charges incurred by the Customer are referable to the Price List that was in force at the time that the Charge or Charges were incurred.

4.6 Dolphin may refuse to accept a request for Services and/ or suspend the provision of Services if such request or provision would result in the Customer exceeding a set credit limit or if the credit limit is already exceeded.

4.7 If payment in full of any Invoice or Invoices is not received by Dolphin upon the due date, Dolphin shall be entitled to levy a monthly late payment charge at the rate of 3% above the Bank of England base rate. In addition, Dolphin shall be entitled to levy an administration fee of £25 each month that payment for an Invoice is late or where there is an overdue balance on the Account. For the avoidance of doubt the monthly administration fee for late payments shall be limited to £25 per month although such fee shall be levied in addition to any processing fees charged in accordance with clause 4.2 above.

4.8 All sums due to Dolphin under this Agreement shall be paid in full by the Customer without deduction or set-off.

4.9 Where Charges are referable to electronic or call data such Charges shall be calculated by reference to data recorded or logged by Dolphin and not by reference to data recorded or logged by the Customer.

4.10 Time shall be of the essence in respect of any payment due under this Agreement and late payment shall constitute a material breach of this Agreement whereupon Dolphin shall be entitled to terminate this Agreement with immediate effect.

4.11 Should the Customer dispute any usage charges or any other Charges, the Customer shall give written notice to Dolphin of the amount in dispute and the reason for the dispute. Such notice must be received by Dolphin prior to the payment for those Charges becoming overdue, failing which the Customer shall be deemed to accept the Charges detailed in the Invoice and the Customer shall be liable to pay the Charges irrespective of its dispute. The Customer shall remain liable to pay all amounts not in dispute in accordance with the terms of this Agreement.

5. SUSPENSION OF SERVICES

5.1 Dolphin may suspend the Services in whole or in part at any time without notice (without liability to the Customer) in the event that:

5.1.1 the Telecommunications Network, or any part of it breaks down, or requires modification or maintenance.

5.1.2 the Customer is in breach of any provision of this Agreement.

5.1.3 Dolphin considers in its absolute discretion that the Customer may be unable to pay its debts as they fall due.

5.1.4 Continued provision of the Services may result in impairment of the Telecommunications Network.

5.2 If the Customer is in breach of any provision of this Agreement or of any other agreement with Dolphin, Dolphin may suspend any Services provided under the terms of such other Agreement at any time without notice. The Customer shall indemnify Dolphin in respect of any claims, costs or legal fees suffered or incurred by Dolphin as a result of the Customer's breach of any provision of this Agreement.

5.3 The Customer remains liable for any Charges during any period of suspension.

6. LIMITATION OF LIABILITY

6.1 Nothing in this Agreement shall exclude or restrict Dolphin's liability for death or personal injury resulting from the negligence of Dolphin or its employees while acting in the course of their employment.

6.2 The liability of Dolphin or its employees arising out of its or their negligence, breach of contract or arising out of tort or otherwise shall be limited to £1,000 for any one incident or £5,000 for any series of incidents arising from a common cause in any 12 month period.

6.3 Dolphin shall not be liable to the Customer in contract, tort or otherwise, including any liability for negligence, for any loss of revenue, business, anticipated savings or profit or any indirect or consequential loss however arising.

6.4 In the event of any failure in the provision of any Services, Dolphin shall not be liable to the Customer for any charges incurred by the Customer should the provision of such Services be diverted to another carrier or supplier at the request of the Customer or Dolphin.

6.5 The provisions of this clause (6) shall continue to apply notwithstanding the termination of this Agreement.

6.6 Dolphin shall not be liable in any circumstances for making good, Customer premises in the event of the removal of any of Dolphin's equipment.

6.7 Where Network Services are provided by third parties Dolphin shall not be liable for any faults or Service interruptions arising out of the acts or omissions of such third parties.

6.8 Time shall not be of the essence in relation to the provision of Services. Any dates quoted by Dolphin in relation to the provision of Services are estimates only.

6.9 A third party which is not party to this Agreement has no rights under the Contracts (Rights to Third Parties) Act 1999 to enforce any term of this Agreement.

7. FORCE MAJEURE

7.1 Dolphin will not be liable for failure to comply with its obligations as set out in this Agreement due to matters beyond its reasonable control including but not limited to lightning, flood, or exceptionally severe weather, fire or explosion, terrorism, civil disorder, riot, war, or military operations, national or local emergency anything done by government or other competent authority or industrial disputes of any kind or in respect of any acts or omissions of Ofcom or any other Public Electronic Communications Network Providers as defined in the Act.

8. GENERAL

8.1 This Agreement is the complete and exclusive statement of the Agreement between Dolphin and the Customer. It supersedes all understandings or prior arrangements whether oral or written and all representations or other communications between the Customer and Dolphin.

8.2 Dolphin may amend the terms and conditions of this Agreement at any time and the amended version shall be published online and shall be available to the Customer upon written request. Changes to the Agreement shall be effective and the Customer will be bound by the amended Agreement after the expiry of 14 days following publication online.

8.3 The Customer may not assign or try to assign any or all of its rights or obligations

under this Agreement. The Customer hereby consents to Dolphin assigning any or all of its rights and obligations without further consent of the Customer.

8.4 Orders placed for the Services are business to business transactions to which the Consumer Protection (Distance Selling) Regulations 2000 as amended by the Consumer Protection (Distance Selling) (Amendment) Regulations 2005 do not apply.

8.5 The Customer agrees to disclose and agrees that Dolphin may disclose to any telecommunications company, debt collection agency, credit reference agency, security agency, or financial institution, any information relating to this Agreement and the Account.

8.6 Dolphin will address all bills and any notices under this Agreement to the address shown on the Order Form or such other address as is notified for this purpose.

8.7 The Customer shall immediately inform Dolphin in writing of any change in its address or any changes to the information provided in the Order Form and the Customer warrants that all information provided in the Order Form is correct and the Customer shall indemnify Dolphin in the event that such information is incorrect or if changes are not notified to Dolphin. Dolphin or an agent of Dolphin may undertake a credit search with a credit reference agency to verify the identity of the Customer at any time during the existence of this Agreement whereupon Dolphin may charge to the Customer a verification fee of £25.

8.8 At the commencement of this Agreement the Customer is required to provide payment details and may provide debit or credit card details or a bank account number and sort code for the purposes of direct debit payments. Where such payment details relate to an individual, the Customer shall be such individual irrespective of whether that individual person intended for legal relations to be created between Dolphin and a third party company or entity.

8.9 Subject to clauses 8.7 and 8.8 above, where the Customer wishes to transfer the Account to a third party or wishes to pay for Services on behalf of a third party, at its discretion Dolphin may transfer the Account to the nominated third party on payment of a transfer fee of £395.95.

8.10 Where any sums, Charges or fees whatsoever remain payable or owing under this Agreement and notwithstanding any termination of this Agreement, this Agreement shall remain in full force for the purposes of Dolphin recovering any such sums, Charges and fees from the Customer and in particular the fees detailed in clause 4 above shall continue to accrue each month until all sums, fees and Charges have been paid in full. Dolphin shall also be entitled to recover from the Customer all, legal fees, agent's fees and costs in connection with enforcing this Agreement or recovering overdue Invoices.

8.11 Unless otherwise agreed or specified by Dolphin, any notice given under this Agreement must be in writing and may be delivered by hand or sent by pre-paid post to the addressees specified in this Agreement or the Order Form or such other address provided in accordance with clause 8.7 of this Agreement.

8.12 No failure to exercise or any delay in exercising on the part of Dolphin any rights under this Agreement shall operate as a waiver of or otherwise in any way prejudice those rights except where such a waiver is given in writing. Any waiver given is limited to its specific circumstances and does not affect Dolphin's rights under this Agreement in any other way. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies otherwise provided by law.

8.13 If at any time any term or provision in this Agreement is held to be illegal, invalid or unenforceable, in whole or in part, under any rule of law or enactment, such term or provision or part shall to that extent be deemed not to form part of this Agreement and all other parts of this Agreement shall continue to apply.

9. LAW AND JURISDICTION

9.1 This Agreement or any term of this Agreement will be governed by English Law and the English courts will have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.