

## Standard Terms and Conditions

### Mobile Services

#### 1. Definitions

**'Agreement' or 'Contract'** means the Modern Networks "Customer Agreement", (including the order detail form) encompassing the terms and conditions of this Agreement and which covers all orders placed by the Customer.

**'Customer'** means the individual or company detailed in the Agreement or Order Form.

**'Data Protection Legislation'** means the Data Protection Act 1998 and all subordinate legislation;

**'Service(s)'** mean(s) any Modern Networks product(s) or Service(s) included in Modern Networks proposals, company literature and communications.

**'Modern Networks'** is defined as Modern Networks Limited Registered in England No 3881576.

**'Order Form(s)'** refers to each order detail form signed by the Customer detailing each new product or Service(s) ordered. Each signed order detail form is bound by these and any service specific terms and conditions that have been expressly agreed by the Parties and are set down in writing within the Order Form.

**'Service Provider'** – Means our partners that we use to provide the services, including but not limited to O2, Vodafone, Gamma Telecom and Total.

**'Hardware Fund'** means a credit amount in respect of any connection made under this Contract during the Term.

**'Party'** means Modern Networks or Customer; **'Parties'** means Modern Networks and Customer.

**'Personal Data'** means any data compiled and/or processed by Modern Networks pursuant to this Agreement which identifies a living individual;

**'The Act'** is the Communications Act 2003 and any amendments which may be made to it.

**'Charges' or 'Tariffs'** mean all Charges relating to connection, rental and usage of Service(s) as published in Modern Networks proposals, company literature, price lists or other communications and notified to the Customer in writing by Modern Networks from time to time.

**'Equipment'** means any Equipment which the Parties have agreed is acceptable for Modern Networks to use in relation to the Service(s) whether or not it is supplied by Modern Networks.

**'SIM Card'** means a subscriber information module, which when used with the appropriate Equipment, provides access to Service(s).

**'Term'** means the duration of this Contract until terminated in accordance with its terms.

#### 2. Service(s) supplied

2.1 This Agreement includes but is not limited to the supply of fixed line telephony over the Public Switched Telephone Network for both access and call termination and origination, the supply of mobile handset(s), access and call Charges and the supply and usage of broadband or dedicated data connectivity or Voice over Internet Protocol Service(s) either directly between two or more sites or over the internet.

2.2 Modern Networks agrees to use all reasonable endeavours to supply to the Customer the Service(s) detailed on the Order Form(s) completed by the Customer and in any other documents governed by this Agreement. Modern Networks will make the Service(s) available for the duration of the Agreement, subject to the terms and conditions of this Agreement.

2.3 Modern Networks shall agree to perform the Services under this Agreement;

(a) in accordance with the terms and conditions of this Agreement and the Order Form;

(b) Safely and with reasonable care and skill;

(c) In accordance with all Applicable Legislation;

(d) Using personnel involved in providing the Services who possess such skills and experience and qualifications as are appropriate for their role;

2.4 Unless otherwise agreed by the Parties Modern Networks shall arrange matters such that upon connection, a cellular telephone Customer will not be barred from making international and/or premium rate calls.

## **Standard Terms and Conditions**

### **Mobile Services**

#### **3. Access to premises and provision of information**

3.1 The Customer shall provide Modern Networks with all reasonable information, and assistance required enabling Modern Networks to fulfil its obligations under this Agreement.

3.2 Charges for any maintenance or repair work requested by the Customer will be agreed in advance and prior to Modern Networks undertaking any such repair work. If Modern Networks undertakes work free of charge and in the reasonable opinion of Modern Networks (based on what an independent expert in field might decide) it is found that such work was unnecessary, Modern Networks will give the Customer immediate notice of this fact and will have the right to invoice the Customer charges for the services at the current notified rates.

#### **4. Use of the Service(s)**

4.1 The Customer agrees to make appropriate use of the Services and the Equipment. Once the Service(s) have been installed the Customer undertakes that it shall:

- a) use the Services and Equipment in accordance with the terms of The Act or any other Applicable Legislation in force from time to time
- b) Not permit any parts other than those approved by Modern Networks to be connected to the Service(s).
- c) Observe the terms of any applicable licenses notified to it by Modern Networks as being applicable.

4.2 The Customer agrees that it shall ensure that the Service(s) are not used:

- a) For transmitting any information which is obscene, offensive or defamatory in nature.
- b) Other than the purpose for which the Service(s) were intended.

4.3 Where the Equipment is supplied and subsidised by Modern Networks, ownership of the Equipment remains with Modern Networks until 30 days after the end of the full term of the contract unless terminated earlier by either Party in accordance with the terms of this Agreement in which case, ownership of the Equipment shall remain with Modern Networks until such time as any and all termination charges are paid to Modern Networks in full without set-off or deduction.

4.4 Where the Equipment is supplied by Modern Networks and title to the Equipment passes to the Customer, Modern Networks shall wherever possible ensure that the benefit of any warranty or guarantee given to Modern Networks in respect of the Equipment is transferred to the Customer immediately upon transfer of title to the Customer. All warranties, conditions and other terms implied by statute or common law (save for conditions to title and any other warranties included within this Agreement) are excluded from this Agreement.

4.5 Any SIM Cards supplied to the Customer by Modern Networks under this Agreement shall at all times remain the property of Modern Networks and in the event of termination of this Agreement must be returned to Modern Networks in good condition. If a replacement SIM Card is requested by the Customer, Modern Networks reserves the right to levy a charge as per the then current price list.

4.6 The Customer agrees that it shall notify Modern Networks of any loss, theft or damage to the Equipment or SIM Card upon its discovery of such loss, theft or damage and that it shall subsequently confirm this notification in writing to Modern Networks within 48 hours of such discovery.

4.7 The Customer undertakes to use all reasonable endeavours to keep confidential and agrees that it shall not disclose to any third party any security features in relation to any SIM Card including the electronic serial number (IMEI number), the personal unlocking key and any personal identification number issued to the Customer by Modern Networks.

4.8 The Customer agrees not to alter or re-configure any Equipment (hardware or software) provided by Modern Networks without the prior written permission of Modern Networks.

## **Standard Terms and Conditions**

### **Mobile Services**

#### **5. Term**

5.1 This Agreement will commence upon the date of signing of this Agreement, and any minimum period shall commence from the date that the service is provisioned and available for use and subject to earlier termination under the terms of this Agreement shall continue for the full contract period detailed on the relevant Order Form or as otherwise extended by the mutual written agreement of the Parties. If for whatever reason a period is not shown on the relevant Order Form, then the standard minimum contractual period for each service will be a minimum of 24 Months and being subject to minimum notice period of 30 days plus as many days thereafter as required in order to coincide with the end of the following calendar month.

#### **6. Payment terms**

6.1 Where requested by the Customer, Modern Networks may agree to allocate a credit limit which may be varied from time to time at Modern Networks sole discretion.

6.2 If required by Modern Networks at any time, the Customer shall provide a deposit to be used as security against any pending Charges, which will be returnable to the Customer only when payment of all sums due has been made to Modern Networks, or upon termination of this Agreement, whichever is later. The Customer shall not be entitled to any interest payment on any monies held by Modern Networks.

6.3 The Customer agrees to pay all outstanding Charges by the due date shown on each Modern Networks invoice. When a due date is not shown Modern Networks standard terms are 30 days from date of invoice

6.4 Usage Charges for each Service(s) supplied will be charged at the rates agreed in the relevant proposal and Order Form and will be subject to the charging rules applied to the chosen tariff.

6.5 Modern Networks shall issue invoices for usage Charges in a form agreed with the Customer. Usage Charges payable shall be calculated using data recorded or logged by Modern Networks and not by the Customer and Modern Networks agrees to provide the Customer with any breakdown or information relevant to the Charges upon the Customers reasonable request.

6.6 Modern Networks undertakes to charge daily interest at a rate equal to 2 percent per annum above the HSBC Bank Lending Rate as current from time to time on amounts outstanding 30 days after invoice, until full settlement is received. In the event of termination of this Agreement, interest shall continue to accrue until the date of payment by the Customer.

6.7 Modern Networks shall be free to exercise its right to charge for any amounts incurred in the collection of overdue balances.

6.8 Modern Networks reserves the right to insist that payment is made by direct debit or other form of automatic electronic bank transfer and further reserves the right to levy a charge when payment is not made by such means.

6.9 The Customer is responsible for the Equipment or SIM Card, including the insurance thereof and shall remain liable for all Charges including those incurred during the contract in the event of loss, theft or damage or any other reason resulting in the inability to use the Equipment or SIM Card.

6.10 Modern Networks will only respond to billing queries relating to usage of a Service by the Customer provided the query is made within three months of the date of the relevant invoice.

6.11 All Charges referred to in each proposal and Order Form is exclusive of Value Added Tax and any other taxes of a similar nature which may be introduced as a result of new or changing Legislation from time to time.

## **Standard Terms and Conditions**

### **Mobile Services**

#### **7. Suspension of Service(s)**

7.1 Modern Networks shall without notice suspend supply of the Service(s) and/or disconnect the Equipment or SIM Card from the system until further notice with no payment of compensation in the event that:

- (a) Modern Networks is obligated to fulfil a request of the Government or an emergency service organisation or other similar authority.
- (b) The Customer has breached this Agreement in some material way.
- (c) When Modern Networks has reasonable cause to believe that fraudulent use of the Customer's Service is taking place
- (d) If any SIM cards used in conjunction with a GSM mobile phone gateway or other machine that intervenes with the routing of telephone calls.
- (e) If Modern Networks has reasonable cause to believe that any Charges due from the Customer may not be paid or that the Customer's credit limit is exceeded.
- (f) the Customer notifies Modern Networks that the Equipment or SIM Card has been lost or stolen.
- (g) If the Customer's direct debit mandate or credit card continuous authority mandate is not accepted by the Customer's bank or is subsequently cancelled.
- (h) The provision of Service is suspended, discontinued or terminated for any reason beyond Modern Networks control.

7.2 In the event of the circumstances outlined in 7.1 herein arising, Modern Networks shall be entitled to make reasonable charges to the Customer for any associated costs incurred by Modern Networks through carrying out the suspension and the re-connection of the Service(s) as applicable. Notwithstanding the foregoing, the Customer shall not be liable for such costs where the suspension of the services is carried out by Modern Networks for reasons other than as a result of a breach of contract by the Customer or the negligent acts of the Customer.

7.3 All offers, discounts and subsidies extended to the Customer as part of any proposal are offered subject to:

- (a) The quantity of performing service subscriptions
- (b) Average levels of outbound call usage
- (c) Fixed minimum contract periods of one year or more, and;
- (d) Are dependent on the payment of all charges in full without off-set or deduction, and;
- (e) That hardware is used exclusively with Modern Networks Service(s) alone, and must not be re-sold. Modern Networks reserves the right to reduce, withdraw or claw-back any discount or other subsidy if any performance and / or other related condition or payment obligation is not met.

#### **8 Termination and disconnection**

8.1 Where the sale of Service(s) has been carried out in the way of distance communication, in line with statute the Customer is able to terminate a particular order without penalty within 14 days (known as the 'cooling off period') of receipt of the relevant Order Form subject to the following:

- (a) For the purposes of this contract this Agreement and related Order Form or subsequent Order Form(s) placed by the Customer are considered to have been received by the Customer on the working day following that on which they are posted to the Customer's last known postal address or on the day on which they are sent by facsimile to the Customer's last known facsimile number.
- (b) If the Customer makes use of the Service(s) supplied under this Agreement within the 14-day period, this will be considered acceptance of ownership on the Customer's behalf and in so doing, the Customer will thereafter give up the right to terminate the order under this Agreement.
- (c) The Customer must inform Modern Networks in writing of the intention to cancel this order, which is to be received at Modern Networks address as is shown on the Order Form.

## Standard Terms and Conditions

### Mobile Services

(d) The Customer is obliged to take reasonable care of any Equipment that has been supplied by Modern Networks for use under the Agreement, until such time as it is returned to Modern Networks. The Customer will be held responsible for any losses or damage to the Equipment whilst in their care.

(e) The Customer is responsible for ensuring that all Equipment provided by Modern Networks under this Agreement is returned at the Customer's own cost and that it's sent in a safe and timely manner.

(f) All monies paid by the Customer minus any Charges incurred under the terms of provision of this Agreement will be refunded after safe receipt of the said Equipment, within 30 days of termination of the Agreement.

8.2 Aside from anything to the contrary expressed or implied in this Agreement, either party may terminate this Agreement without delay in the event that:

a) As set out in section 123 of the Insolvency Act 1986, the Customer does not meet with the test of solvency and is not able to pay its debts or the Customer is declared bankrupt, insolvent, has a receiver, liquidator or administrator appointed or enters into any agreement with its creditors or other circumstances arise which entitle a court or creditor to appoint a receiver or administrator.

b) Either party is in breach of this Agreement and the breach has not been remedied within 14 days of the date of the other party's written notice of such a breach and requirement for such breach to be remedied.

8.3 Modern Networks may terminate this Agreement forthwith in the event that any entitlement under which the Customer may be permitted to run an electronic communication system and connect it to the Modern Networks system is revoked or otherwise becomes invalid.

8.4 If the Customer cancels this Agreement in whole or in part at any time, either before or after connection, Modern Networks will accept such cancellation provided that a minimum of 30 days' written notice is supplied and the Customer agrees to pay the cancellation Charges as below, or alternatively in the case that Modern Networks and the Customer have agreed a minimum contract period for the Service(s), Modern Networks will accept cancellation at the end of the agreed minimum period on the basis that a minimum of 30 days' written notice is given and the Customer agrees to pay the cancellation Charges as detailed in section 8.5. Where cancellation takes place prior to the end of the Agreement the Customer agrees to return any and all Equipment to Modern Networks.

8.5 For any Order Form relating to any Service(s) the Customer must pay:

(a) All Charges outstanding on their account(s).

(b) All line and other rental Charges and Service(s) costs for each month and proportionally for each part-month, for the remaining period of the Agreement with a minimum charge of £25.00 per line per month

(c) An amount equal to 25% of their total average monthly usage Charges prior to termination of the Service(s), for each month and proportionally for each part-month, for the remaining period of the Agreement.

(d) The pro rata proportion of any equipment subsidy that was provided to the customer according to the length of the outstanding period of the contract

(e) All Porting Authorisation Codes Administration fees (PAC's) at the then current rate.

(f) Any buy-out fees paid by Modern Networks to previous service provider(s).

(g) An early termination charge per line or SIM or service disconnected at the then current rate.

8.6 Modern Networks reserves the right to charge any administrative costs directly associated with any cancellation fees charged by BT or any other communication supplier involved.

8.7 The termination of an order for Service(s) under this Agreement, howsoever arising is without prejudice to the duties, rights and obligations of either party existing prior to termination. The clauses in this Agreement which impliedly or expressly have effect after termination shall continue to apply in spite of termination.

8.8 Should for whatever reason the Customer request termination of the Agreement and the transfer of any telephone number to any other provider, Modern Networks shall be within its rights to levy a reasonable

## **Standard Terms and Conditions**

### **Mobile Services**

administration fee for each number or may decline to transfer any number until such time that the Customer has complied with all of the obligations within the Agreement.

#### **9 Liability**

9.1 Nothing in these terms shall restrict or exclude Modern Networks liability for personal injury or death as a result of negligence on behalf of Modern Networks or of its employees in relation to the provision of the Services under this Agreement.

9.2 Should a Service(s) provided by Modern Networks fail to operate and the Customer diverts traffic to an alternative carrier, Modern Networks will not be held responsible for that carrier's charges.

9.3 Neither of the parties shall be liable to the other in contract, tort or otherwise for any loss of contracts, business, anticipated profits or savings or for any other consequential or indirect loss.

9.4 Modern Networks liability in contract, tort or otherwise in connection with or arising out of the performance of its obligations under this Agreement shall be a maximum of £500,000 for any single incident or series of incidents and £1,000,000 in total.

9.5 Modern Networks will not be liable to the Customer for breach of the terms and conditions of this Agreement where such breach is by virtue of Force Majeure.

#### **10. Force Majeure**

Modern Networks will not be liable to the Customer or be deemed to be in breach of this Agreement by reason of any delay in performing or failure to perform any of its obligations under this Agreement if such delay or failure was beyond Modern Networks reasonable control including, without limitation, fire, flood, strike or other industrial action or any externally introduced computer related viruses or malicious cyber attack of whatever nature. If Modern Networks is unable to perform its obligations under this Agreement it will promptly notify the Customer of the nature and extent of the circumstances in question.

#### **11. Variation**

Modern Networks may with immediate effect vary any of the terms and conditions of the Agreement as a direct result of Government regulations, new legislation, and statutory instruments. Any variation of the terms of this Agreement shall be by written amendment to this Agreement which shall be notified to the Customer by post or electronic mail and any such amendments shall have immediate effect.

#### **12. Severability**

If any provision of this Agreement is found by a court of law to be unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect.

#### **13. Assignment**

The Customer may not assign, transfer, charge, make the subject of a trust or deal in any other manner with any of its rights under this Agreement or purport to do any of the same nor sub contract any or all of its obligations under this agreement without the prior written consent of Modern Networks such consent not to be unreasonably withheld or delayed. Modern Networks may assign this contract at any time.

## **Standard Terms and Conditions**

### **Mobile Services**

#### **14. Data Protection**

14.1 Modern Networks shall process any Personal Data in accordance with this Agreement and shall ensure that it has in place the appropriate technical and organisational measures in relation to its obligations under the Data Protection Legislation.

14.2 Modern Networks warrants that it shall comply in all respects with its obligations under the Data Protection Legislation as the Customer's data processor (as defined in the Data Protection Legislation) in respect of any Personal Data.

14.3 Modern Networks shall ensure that there is no unauthorised or unlawful processing of any of the Personal Data.

#### **15. Hardware Fund**

15.1 The Hardware Fund (where applicable) is offered on the following terms:

15.2 We may vary the terms of this clause 15 at any time by giving you notice. The variations will apply after the effective date of the notice of change.

15.3 We reserve the right at any time during the Contract to withdraw the Hardware Fund including any remaining credit amount of the Hardware Fund and the right to any future credits against the Hardware Fund in respect of new Connections (if applicable).

15.4 You may drawdown from the Hardware Fund by sending a Hardware order form (which are available through Customer Product) to us or by providing us with a pre-authorised (by a duly authorised representative) purchase order.

15.5 On receipt of an order in accordance with clause 15.4 above, the value of the order will be offset against the Hardware Fund (where applicable) and any amount over and above the available Hardware Fund shall be treated as a Charge payable in accordance with Clause 6.

15.6 Unless otherwise agreed by Modern Networks in writing, the Hardware Fund can be used solely for the purposes of offsetting Charges for Equipment listed on the Price List.

15.7 In the event that this Contract is suspended for any reason, we reserve the right to suspend the Hardware Fund or any terms thereof.

15.8 In the event that this Contract is terminated for any reason or the contract is in force beyond the Minimum Period without being renewed, the Hardware Fund will be withdrawn and any residual credit balance of the Hardware Fund will be retained by us. For the avoidance of doubt, any residual credit balance of the Hardware Fund shall have no monetary value and you shall have no right to any payment, future use or credit in relation to such residual balance.

15.9 We reserve the right to offset any credit amount of the Hardware Fund against any monies due and payable by you to us, (i) No VAT is applied to the Hardware Fund or any drawdown from the Hardware Fund and no invoice or credit note will be issued by us in respect of any VAT in this regard.

15.10 Any credits in the Hardware Fund accrued in the Hardware Fund may be used solely for the purposes of offsetting Charges for Equipment and do not have any monetary value, and you are not entitled to use any

## **Standard Terms and Conditions**

### **Mobile Services**

credits against any outstanding debt or any payments from any credits accrued in the Hardware Fund, or any future use of credits accrued in the Hardware Fund upon termination of this Contract.

15.11 We will calculate the value of the Hardware Fund from time to time, or upon request and will pro-rata this value based on any connections added or removed during the Term of this Contract.

#### **16. General**

16.1 This Agreement contains all of the terms of the agreement between Modern Networks and the Customer and supersedes all other previous Agreements whether made orally or in writing.

16.2 The Customer must notify Modern Networks providing at least 7 days' written notice of any change of address or payment details.

16.3 Any invoice or other documentation given to the Customer by Modern Networks shall be considered received if delivered to the address provided on this Agreement or any updated address subsequently provided to Modern Networks in writing as per section 16.2.

16.4 Failure by either party to exercise or enforce any right conferred by this Agreement shall not be considered a waiver of any such right nor shall it bar the exercise or enforcement thereof or of any other right at any later date.

16.5 This Agreement shall be governed, construed and interpreted in accordance with English law and both parties hereby submit to the exclusive jurisdiction of the English courts.

16.6 Where the Customer is more than one person, the obligations under this Agreement are joint and several.