

Terms and conditions Smart Connect Ltd for Fixed line services, Calls, CPS, Hosted / SIP Trunks and Mobile data

1 Definitions

In this agreement:

"Act" means the Telecommunications Act 2003 and any amendments to the Act from time to time or any subsequent substitution thereof.

"SC Ltd" means Smart Connect Limited whose registered office is at **Suite A, Paceycombe House, Paceycombe Way, Poundbury, Dorchester DT1 3WB.**

"Direct Debit" means any request(s) for any payment or series of payments by bank direct debit payment method.

"Customer" means the customer detailed overleaf.

"Equipment" means any equipment or product supplied by SC Ltd or any third party on behalf of SC Ltd to the Customer.

"Minimum Term" means the period of 30 days from the Commencement Date or such other period as is prescribed for the relevant service or as detailed overleaf.

"Services" means the provision of telecom services and/or Equipment.

2. The Services and Equipment

2.1 SC Ltd shall provide the Customer with such Services and Equipment as are requested by the Customer.

2.2 The Customer shall be responsible for the safe keeping and safe and proper use of the Services and any related

Equipment after installation of the Services and the Customer undertakes in particular:

2.2.1 not to cause any attachments other than those approved for connection under the Act to be connected to any Equipment.

2.2.2 not to contravene the Act or any other relevant regulations or licences.

2.3 The Customer hereby agrees that its apparatus shall at all times conform to the standard or standards (if any) for the time being designated under the Act and SC Ltd shall not be under any obligation to connect or keep connected any Customer apparatus if it does not comply or if in the reasonable opinion of SC Ltd it is likely to cause death, personal injury, damage or to impair the quality of any Services provided by SC Ltd.

2.4 The Customer undertakes to use the Services in accordance with the Act and SC's acceptable use policy (as published from time to time at www.smartconnect.co.uk) and the Customer further undertakes not to use the Services and to procure that none of its employees use the Services:

2.4.1 as a means of communication for a purpose other than that for which the Services are provided, and

2.4.2 for the transmission or receipt of any material which is defamatory offensive or of an abusive or menacing character or otherwise is in breach of SC's acceptable use policy.

2.5 Any Equipment supplied by SC Ltd remains the property of SC Ltd and must be made available for collection on the expiry or termination of this agreement.

2.6 The Customer will not procure or be party to an agreement or arrangement to provide or receive telecommunications material, Services or services similar to the Services by way of telecommunication provision via the Equipment without the permission of SC Ltd in writing and the prior payment in full for the Equipment.

2.7 The Customer shall not publicise any number in any way or commit to any advertising or publicity until such time as it has received from SC Ltd in writing confirmation that the number is ready for service. Where SC Ltd is supplying network services (usually on behalf of BT) as part of the Services the Customer must provide to SC Ltd details of all the related services that it wishes to receive relating to any telephone number that the Customer wishes to use.

2.8 The Customer shall give SC Ltd at least 30 days' notice in the event that above average use of the Service is likely to occur. SC Ltd shall not be liable for failure of any part of the Service should such notice not be given.

2.9 SC's acceptable use policy forms part of this agreement and includes any restrictions imposed on SC Ltd by the provider to it of the Services and/or Equipment and is designed to protect the level and quality of the services that SC Ltd offers to all of its customers and permits SC Ltd to regulate the Customer's use of the Services.

2.10 The Customer hereby specifically authorises SC Ltd to send/resend CPS during the continuance of this agreement, and hereby waives SC's obligation to notify it of the same being done. If the Customer wishes to receive such notification, then it must so inform SC Ltd in writing.

2.11 Where SC Ltd provides software to the Customer as part of the Services and/or Equipment SC Ltd hereby licences the software to the Customer solely for the use of the same by the Customer in connection with the Services and/or Equipment. This licence automatically terminates on termination of this agreement. SC Ltd does not warrant that the software will be error-free and the Customer hereby agrees to make proper back-ups of all data.

*2.12 50% discounted telephone system maintenance and support when using SC Ltd Calls, lines and associated telecom/communication services under this agreement. (Both documents need to be signed)

3. Term

3.1 This agreement shall commence on the date hereof and subject to the remaining terms of this Clause 3 shall continue for the Minimum Term and thereafter for a further period equivalent to the Minimum Term until terminated by either party giving to the other not less than 30 days prior written notice (or such longer period of notice as is set out on the Customer's contract) expiring at the end of the Minimum Term or at the end of any subsequent period as appropriate, such notice to be sent by recorded delivery mail.

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

3.2.1 the other commits a continuing or material breach of this agreement and, if the breach is capable of remedy, fails to remedy it within 14 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied; or

3.2.2 an administrator takes possession or a receiver is appointed over any of the property or assets of the other party, the other party makes any voluntary arrangement with its creditors or becomes subject to an administration order, the other party goes into liquidation (except for the purposes of an amalgamation, reconstruction or other reorganisation and so that the company resulting from the reorganisation effectively agrees to be bound by or to assume the obligations imposed on the other party under this agreement); or

3.2.3 the other party ceases, or threatens to cease, to carry on business.

3.3 SC Ltd may terminate this agreement immediately if:

3.3.1 any licence or agreement under which the Customer has the right to run its telecommunications system and connect it to the SC Ltd system is revoked, amended or otherwise ceases to be valid; or

3.3.2 the Customer is suspected, in the reasonable opinion of SC Ltd, of involvement with fraud or attempted fraud in connection with use of the service or this Agreement; or

3.3.3 SC Ltd reasonably suspects that the Customer is unable to pay or is refusing to pay SC Ltd charges and/or Budget Plan payments.

3.4 For the purpose of clause 3.2, a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to the time of performance (provided that time of performance is not of the essence).

3.5 A waiver by either party of a breach of a provision of this agreement shall not be considered as a waiver of a subsequent breach of the same or another provision.

3.6 If the Customer gives less than the specified amount of written notice to terminate this agreement (as per Clause 3.1) or ceases to use the Service or a part thereof or attempts to terminate this Agreement prior to the expiry of the Minimum Term or any subsequent period equivalent to the Minimum Term, SC Ltd reserves the right to invoice the Customer for loss of revenue for the short notice given for the balance of the Minimum Term based upon an average of the Customer's last 6 full calendar month's bills (or such lesser period as is available). Upon termination SC Ltd shall be entitled to raise invoices for all sums due and all invoices (whenever raised) shall become due for payment immediately.

3.7 In the event of termination by either party for any reason SC Ltd shall be entitled to recover from the Customer the Equipment or cost thereof as appropriate, including but not limited to the cost of removing the Equipment, all liabilities, claims, costs losses and expenses incurred by SC Ltd, including the initial CPS and engineering costs and of providing the Service.

3.8 The rights to terminate this agreement given by this clause shall not prejudice any other right or remedy of either party in respect of the breach concerned (if any) or any other breach. Continued use of the Service post termination will result in SC Ltd levying its full rate charges for all Services used, which charges the Customer shall pay immediately upon demand.

4. Access to premises

4.1 To enable SC Ltd to comply with its obligations under the

Agreement:

4.1.1 the Customer shall allow or procure permission for SC Ltd and any other person(s) authorised by SC Ltd to have reasonable access to the Customer's premises and the Services' connection points or, where network connection services form part of the Services, such location on the Customer's premises and/or any neighbouring premises as SC Ltd reasonably require and shall at all times provide such reasonable assistance as SC Ltd requests.

4.1.2 SC Ltd will endeavour to carry out work by appointment and during normal working hours, but may request the Customer to provide access at other times. Such requests by SC Ltd shall not oblige the Customer to provide such access. If at the request of the Customer SC Ltd carries out work outside its normal working hours the Customer will be responsible for SC's reasonable additional charges.

4.1.3 the Customer shall carry out such site preparations as SC Ltd may reasonably require

4.2 If the Customer requests maintenance or repair work which is found to be unnecessary or results from an act or omission of the Customer, SC Ltd will charge for the work and the costs incurred.

.3 Wherever appropriate the Customer hereby duly authorises SC Ltd, its dealers and agents to reprogram and/or remove existing access equipment in order to provide the Services.

5. Charges and Payment

5.1 Unless otherwise specified in writing by SC Ltd the Customer agrees to pay SC's charges and/or budget plan payments monthly by Direct Debit billed and collected by a third party, the first payment to be made at the discretion of SC Ltd within thirty days of the start of the provision of the Services. Where network connection and/or line rental services form part of the Services the charges shall be paid in advance.

5.2 Usage charges will be such charges for the use of the Services by the Customer as SC Ltd may notify to the Customer from time to time. There will be a minimum monthly usage charge for each Service as set out in SC's price list from time to time. Usage charges payable shall be calculated by reference to any data recorded or logged by SC Ltd or its service carrier and not by reference to any data recorded or logged by the Customer. SC Ltd shall be entitled to estimate the usage charges in circumstances where the relevant data is not available to SC Ltd in a timely manner, and any estimated usage charge shall be reconciled on a subsequent invoice.

5.3 If the Customer fails to make any payment on the due date then, without limiting any other right or remedy available to SC Ltd (such failure to pay being a material breach of this agreement), SC Ltd may charge the Customer interest (both before and after any judgement) on the amount unpaid, at the rate of 8 per cent per annum above Royal Bank of Scotland base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

5.4 The price for the Services is exclusive of any applicable value added tax, which the Customer shall be additionally liable to pay to SC Ltd.

5.5 The Customer agrees to pay SC Ltd in full without any set-off all sums due to SC Ltd under this Agreement.

5.6 SC Ltd shall be entitled to require the Customer to pay a deposit in respect of future usage charges and the Customer shall pay the amount so required within 7 days of a request for the same.

5.7 The Customer authorises SC Ltd to vary the amount, frequency and time of any Direct Debit to such level as SC Ltd deem reasonably appropriate (a) to take account of either an increase or decrease in usage of the Services by the Customer (b) to reduce such indebtedness of the Customer to SC Ltd and/or (c) to such other operational matter affecting the Service as SC Ltd shall in its discretion deem reasonable.

5.8 If any Direct Debit is cancelled or returned unpaid by the Customer's bank or if the Customer fails to discharge any invoice within 7 days of its date, then without prejudice to any right or remedies under this Agreement, SC Ltd shall from the time of such failure provide the services at the standard published usage charges and in addition the Customer agrees to pay SC Ltd an Administration fee of £25.00. For the avoidance of doubt the time of payment is of the essence of this Agreement and a failure to pay on time or the cancellation of a Direct Debit shall be a material breach of contract allowing SC Ltd to terminate this Agreement immediately.

5.9 Should the Customer have any dispute with regard to the usage charges or any other charges, the Customer shall give written notice to SC Ltd of the amount in dispute and the reason for the dispute. Any rectification or amendment of such disputed charges are limited to the 6 months prior to the written notification being received by SC Ltd and remains at SC Ltd's sole discretion such discretion not to be unreasonably withheld. Such notice must be received prior to the Customer not paying any amount due to SC Ltd, failing which the Customer shall be deemed to be in breach of contract and clause 3.3.3 shall apply together with clause 5.8 and clause 5.3 in respect of the entire balance. The Customer shall remain liable to pay all amounts not in dispute in accordance with the terms of this agreement.

5.10 The Customer remains liable for all charges whether the Customer or someone else used the services and whether the services were used with the Customer's knowledge and consent or otherwise including and not limited to calls made by a rogue callers and calls made by any third party who has gained unauthorised access to the Customer's system.

5.11 SC Ltd retain the right to vary the charges set out in the tariff at any time upon giving the Customer 7 days' notice such notice to be given either on the monthly invoice, email or post and continued use of the Service is deemed acceptance of these changes.

5.12 Any calls that are routed by any means beyond the control of SC Ltd and for which you are invoiced by another provider will remain the responsibility of the customer.

6. Suspension of the Services

6.1 SC Ltd shall be entitled, for business, operational or technical reasons or in order to comply with any numbering scheme or other obligation imposed on SC Ltd by its licence or by any other competent authority (including any network provider), to withdraw or change any telephone number or code or group of numbers or codes allocated to the Customer whether on a temporary or permanent basis provided that SC Ltd gives the Customer the maximum period of notice in writing thereof practicable in the circumstances.

6.2 If the Customer is in breach of a material term of this agreement SC Ltd may at its sole discretion and upon giving the Customer written notice elect to suspend without compensation the provision of Services for a period not exceeding 14 days. If the breach is capable of remedy and is remedied by the Customer within the 14-day period, then SC Ltd shall recommence the provision of Services. If the breach is not capable of remedy or if so capable is not remedied within the period of 14 days, then SC Ltd shall have the option of either terminating this Agreement under the provision of clause 6.1 or of continuing the Service.

6.3 If the Customer's call charges exceed the estimated call spend or the credit limit given to the Customer by SC Ltd, whichever is the lower, then SC Ltd reserves the right to request immediate payment of the excess amount and to demand a deposit be paid in such amount as SC Ltd shall deem to be reasonable. If payment is not made forthwith by the Customer, SC Ltd shall be entitled to suspend all or any of the Services until payment of the excess amount is made in full.

6.4 Notwithstanding and without prejudice to any of its rights under this Agreement, SC Ltd reserve the right to withdraw the Services or any part thereof at any time if the monthly charges to the Customer are not, in the opinion of SC Ltd, sufficient to make provision of the Services viable for SC Ltd.

7. Liability

7.1 Nothing in this agreement shall exclude or restrict the liability of either party for death or personal injury resulting from its negligence.

7.2 If the Service fails to operate or the Customer diverts traffic to another carrier, SC Ltd will not be responsible for that carrier's charge.

7.3 Neither party shall be responsible to the other in contract, tort or otherwise for any loss of business, loss of data, contracts, anticipated savings or profits or for any other indirect or consequential loss whatsoever.

7.4 Each party's liability in tort, contract or otherwise arising out of or in connection with the performance of either party's obligations under this Agreement shall be limited to £500,000 for any one incident or series of incidents and £1,000,000 in aggregate.

7.5 Neither party shall be liable to the other for any damage or loss which may be incurred by the other party due to any cause beyond the first party's reasonable control including without limitation any act of God failure or shortage of power supplies, trade dispute, any act or omission of Government, highways, regulatory bodies, another public telecommunication operators or other competent authority, or supply of services by third parties.

8. General

8.1 SC Ltd reserves the right to change the provider of the Services to it at any time; further SC Ltd reserves the right to change these terms and conditions at its sole discretion by giving the Customer not less than 14 days' notice (usually on the front page of the monthly bill and/or on its website at www.smartconnect.co.uk), and continued use of the Service thereafter will be deemed acceptance of such changes.

8.2 A notice required or permitted to be given by either party to the other under this agreement shall be in writing addressed to that other party at its principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice and shall be deemed served on the second after the same has been posted.

8.3 If any provision of this agreement is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of this agreement and the remainder of the provision in question shall not be affected.

8.4 This agreement constitutes the entire agreement between the parties, supersedes any previous agreement or understanding and, subject to clause 8.1 and 5.2, may not be varied except in writing and signed by SC Ltd or varied orally confirmed in writing by SC Ltd. All other terms, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law. In entering into this agreement the Customer acknowledges that it does not rely on any representations which are not confirmed in the terms of this agreement, but nothing in this agreement affects the liability of either party for fraudulent misrepresentation.

8.5 The Customer shall not assign sub-license, delegate or otherwise deal with all or any of its rights and obligations under this agreement without SC's prior written consent, such consent not to be unreasonably withheld. Nothing in this agreement shall be deemed to grant to the Customer a licence to use any software or other intellectual property right other than strictly in accordance with the terms of this agreement. For the avoidance of doubt, the Customer shall not be entitled to sub-license any such software or other intellectual property right.

8.6 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall not apply to this agreement.

8.7 The laws of England shall govern this agreement, and the customer agrees to submit to the exclusive jurisdiction of the English Court.