

# Contract Terms & Conditions for Telecom IT Limited

## 1. Contract Definition

- 1.1 'Application Form' means the application form relating to the provision of the Services in the form provided by TelecomIT Ltd (TIT) from time to time incorporating these terms and conditions.
- 1.2 'Authorised Person' means an employee or subcontractor of TIT.
- 1.3 'Associated Company' means any subsidiary of TIT or other associated company as defined by Sections 736 and 736A of the companies act 1985.
- 1.4 'Client' means a person whose application form is accepted by TIT and for whom TIT has opened a Billing Account.
- 1.5 'Contract' means the contract governed by these terms and conditions made between TIT and the client created upon acceptance by TIT of the clients Application Form and evidenced by the opening of a Billing Account for the client.
- 1.6 'Least Cost Routing Software' means software installed on a telephone system which automatically enables the routing of calls via different telephone operators.
- 1.7 'Services' means re-routing the Clients telecommunications over the TIT (Billing) Network, under the terms of the Contract, and in particular the provision of a free phone number.
- 1.8 'Services Literature' means TIT's literature specific to the Services and other associated services existing from time to time.
- 1.9 'User' means the Client and any individual or company permitted by the Client to use the Services.
- 1.10 'Billing Account' means the account number opened by TIT in the name of the Client upon creation of the Contract and relating to the services.
- 1.11 'TIT' means TelecomIT Ltd which expression shall, where the context so requires, include its successors and assigns and any Associated Company thereof.
- 1.12 'TIT Access Equipment' means call routing apparatus supplied by TIT.
- 1.13 'TIT Billing Network' means the telecommunications system TIT runs which operates on Least Cost Routing Services.

## 2. The Services

- 2.1 The Client shall complete, sign and return to TIT an application form prior to TIT agreeing to provide services.
  - b) Where the client has Least Cost Routing Software available for use at its premises, TIT will, if necessary and at its sole discretion, reprogram it in order to provide the Services.
  - c) Where the Client does not have Least Cost Routing Software available for use at its premises, TIT will if necessary, and at its sole discretion supply, install and connect the Client to TIT Access Equipment in order to provide the services.
  - d) TIT shall use all the reasonable care and skill of a competent telecommunications provider to provide the Client with the services throughout the terms of the contract.
  - e) TIT shall be at liberty, where necessary to improve, update or upgrade the Services or after the provision of the Services without any notice to the Client.
- 2.2 The Client undertakes to TIT that:
  - a) the services and the TIT (Billing) Network will only be used in accordance with the Contract
  - b) Only the Client and Users shall use the services and the TIT (Billing) Network and no other person shall be suffered or permitted to use the same.
  - c) Upon the termination of the contract, no attempt shall be made to make calls via the Services or otherwise to use the TIT (Billing) Network.
  - d) The Services literature and any other instructions regarding the use of the services and the TIT (Billing) network as may be notified to the Client by TIT from time to time shall be complied with promptly and such literature and instructions shall be deemed to form part of the contract.
- 2.3 The Client agrees that at all times during the term of the Contract it shall:-
  - a) Provide access to all appropriate sites for any Authorised Persons during the Clients normal working hours and allow the removal, installation and maintenance of TIT access equipment.
  - b) Keep its telecommunications equipment in good working order and ensure that the equipment complies with all applicable standards and approvals so as to enable TIT to provide the services.
  - c) Only use and connect those telephone, ducting, cables, sockets and other equipment to the TIT (billing) network that have been approved in advance by TIT in writing and comply with all the relevant legislation relating to the use of such equipment.
  - d) Provide all reasonable assistance required by TIT to enable it to provide the services.
  - e) Inform TIT by one month's prior notice in writing of any premises, relocation or change of telephone number(s) on which the services are registered;
  - f) Provide a safe working environment for authorised persons working on the clients premises;
  - g) Indemnify TIT fully against all losses, liabilities, costs (including legal costs) and expenses which TIT may incur as a result of any breach of the clients obligations under the contract or misuse of the services or the TIT (billing) network;
  - h) Pay TIT (at its then current published rates) for all call out visits required from TIT where TIT determines that (i) the problem with the services or the TIT (billing) network is not the fault of TIT or the TIT access equipment or (ii) the TIT access equipment has been damaged by the client.
- 2.4 The client undertakes to TIT to ensure that the services and the TIT (billing) network are not used:-
  - a) For the transmission of material which is intended to be a hoax call to emergency services or is of a defamatory, offensive, abusive, obscene, or menacing character; or
  - b) Fraudulently or in connection with a criminal offence; or
  - c) Otherwise in a manner which constitutes a violation of infringement of the rights of any other party; or
  - d) Otherwise than the purpose of telecommunication system.

## 3. TIT's rights

- 3.1 TIT shall be entitled to alter any access or authorisation number or method of accessing the services from time to time and may reprogram the client's equipment as a result.
- 3.2 TIT may suspend the services to the client at its sole discretion including but not limited to the following:-
  - a) If any credit limit between TIT and the client from time to time is exceeded;
  - b) If by any term of the contract is breached (including, without limitation, in the event of a failure to make any payment or provide any deposit required to be made or provided under the contract);
  - c) If fraud or attempted fraud is suspected by TIT (in its reasonable opinion) in connection with the use of the services or the TIT (billing) network.
  - d) If in TIT's reasonable opinion it suspects the client is offering to resell the services to any third party.
- 3.3 TIT may collect and store data and information about the client and its use of the services and provide this information to (i) companies affiliated with TIT including without limitation any associated company and (ii) third parties.

## 4. Charges and Payments for the Services.

- 4.1 All sums due to TIT under the contract shall become due on the date of the relevant invoice and are payable within 14 days (including weekends and bank holidays) of the date of the relevant invoice.
- 4.2 If the client fails to make any payment within the 14 day period following the day of the relevant invoice without prejudice to its other rights hereunder, TIT shall have the right to acquire the clients to pay all sums due on demand.
- 4.3 Time of payment of all sums due to TIT under the contract shall be of the essence.
- 4.4 TIT reserves the right to amend its charges for the services from time to time.
- 4.5 TIT shall use its best endeavours to bring to the attention of the client any variation in prices prior to their implementation.
- 4.6 Without prejudice to TIT's rights to treat the non-payment as a material breach of the contract, TIT reserves the right to change interest on outstanding amounts from the due date until payment is received in full at a rate equal to 4% per annum above the Barclays Bank Plc base lending rate as current from time to time whether before or after judgement. Interest shall continue to accrue not withstanding termination of the contract for any cause whatsoever and is deemed to accrue on a day to day basis from and including date of payment under condition 4.1.
- 4.7 TIT reserves the right to charge for administrative cost incurred by TIT in pursuing late payers.
- 4.8 All sums due to TIT under the contract are subject to V.A.T and any other applicable taxes, levies or charges which may from time to time be introduced.
- 4.9 The client shall be liable for all charges arising from use of the services by any person utilising the clients registered services telephone number(s) (with or without clients authorisation) until such time as the client has notified TIT of any unauthorised use of the service.
- 4.10 Details of the contract and the conduct of the billing account will be registered with a licensed credit reference agency. Information thus registered may be used to help make credit decisions or, fraud prevention or the tracing of debtors.

## 5. TIT Access Equipment

- 5.1 The client shall provide space without charge or cost to TIT appropriate equipment space, ducting, environment and continuous stable electrical power to install and maintain the TIT access equipment at its premises and to enable TIT to provide the services.
- 5.2 It is deemed that title to any TIT access equipment shall remain with TIT and whilst the TIT access equipment is on the clients premises, the client shall ensure that it is kept safe and secure and is not interfered with by any person.
- 5.3 Upon termination of the contract, the client will ensure that TIT is allowed prompt access to all relevant premises to remove the TIT access equipment.

## 6. Termination

- 6.1 The contract may be terminated by TIT or the client at any time by 14 days notice in writing to the other (including weekends and bank holidays)
- 6.2 TIT (without prejudice to its other rights) may terminate the contract if forthwith in the event that:
  - a) the client fails to make any payment when it comes due to TIT or shall default in due performance or observance of any obligation under the contract or any other contract with TIT or an associated company and (in the case of remedial breach) fails to remedy the breach within a reasonable time specified by TIT in its written notice so to do: or
  - b) An interim order is made, or a voluntary agreement approved, or if a petition for a bankruptcy order is presented or a bankruptcy order is made against the client or if any circumstances arise which entitles the court or a creditor to appoint a receiver, administrative receiver or administrator or to present a winding-up petition or make a winding-up order.
- 6.3 Save as set out in this condition 6 the rights, liabilities and obligations of the client and TIT shall cease on termination of the contract save in respect of any accrued rights or liabilities and the coming into force of the continuance in force of any provision hereof which is expressly or by implication intended to come into force continue in force on or after such termination including without limitation conditions 2.2, 5.5 and 7 of the contract.
- 6.4 If the contract is terminated by either party hereto the client shall:
  - a) Pay to TIT all arrears of charges together with any interest payable under the contract up to the date of termination;
  - b) Return to TIT all equipment owned or provided by TIT and/or allows TIT accesses forthwith to the clients premises for the removal of any TIT access equipment.

## 7. Limitation of Liability

- 7.1 The following provisions set out TIT's entire liability (including any liability of the acts and omissions of its employees, agents, officers, associated companies or sub contractors) to the client in respect of:
  - a) Any breach of its contractual obligations arising under this contract; and
  - b) Any representation, statement act or omission, given, made or carried out under or in connection with this contract whether such liability arises in contract, tort, negligence, misrepresentation, breach statutory duty or otherwise howsoever.
- 7.2 Any act or admission on the part of TIT or its employees, agents, officers, associated companies, or sub contractors falling within condition 7.1 above shall have for the purposes for this condition 7 be known as an "event of default"
- 7.3 TIT's liability to the client for death or injury resulting from its own or that of its employees, agents, officers, associated companies, or sub contractors negligence shall not be limited.
- 7.4 The client shall indemnify TIT against any liability TIT may incur to its employees, officers, or sub contractors or any employee, officer or sub contractors of any associated company for death, personal injury, damage to property or consequential loss arising out of work carried out at the clients premises or site from time to time unless caused by TIT's negligence as set out in condition 7.3 above.
- 7.5 Subject to the limit set out in condition 7.6 below TIT shall accept liability to the client in respect of damage to the tangible property of the client resulting from the negligence of TIT or its employees, officers, agents or sub contractors.
- 7.6 Subject to the conditions of 7.3 above TIT's entire liability in respect of an event or default or series of events of default shall be limited to damages of an amount equal to £5,000.
- 7.7 Subject to condition 7.3 above TIT shall not be liable to the client in respect of any event of default in relation to but not limited to:
  - a) Any consequential or indirect loss or damage howsoever arising and of whatsoever nature;
  - b) Any loss of anticipated savings; or
  - c) Any loss of goodwill; or
  - d) Any loss of profits, revenue or business; or
  - e) Any loss whatsoever arising in connection with the interruption of the services where such interruption is not due to TIT's negligence.
  - f) Any loss of use of any equipment or process; or
  - g) Any loss arising from a claim made against the client by a third party even if such loss was reasonably foreseeable or TIT had been advised of the possibility of the client incurring the same.
- 7.8 If a number of events of default give rise substantially to the same loss then they shall be regarded as giving rise to only one claim under this contract.
- 7.9 Except in the case of an event of default arising under condition 7.3 above TIT shall have no liability to the client in respect of any event of default unless the client shall have served notice of the same upon TIT within 6 month of the date it became aware of the circumstances give or rise to the event of default or the date when it ought reasonably to become so aware.
- 7.10 TIT shall not be responsible for complying with statutory regulations, or local by-laws, or the fulfilment of any special regulations affecting the client.
- 7.11 TIT shall not be liable for faults in the clients telecommunications equipment, which result in TIT being unable to provide the services.
- 7.12 TIT shall not be liable for any damages whatsoever to property at the clients premises resulting from:
  - a) The installation, repair or removal of TIT access equipment or associated wiring carried out by TIT or by TIT contractors or
  - b) Any reprogramming of the clients existing leased cost routing software unless such damage is caused by TIT or its contractors willful misconduct or negligence subject to condition 8.2.
- 7.13 Dates and times for provision of the services shall be estimates only and no liability shall accrue to TIT for failure to meet any such dates or times.
- 7.14 TIT will not be held responsible for loss due to programming errors or omission made by authorised persons.
- 7.15 In the event of any failure in the services TIT shall not be liable to the client for any charges incurred by the client should it direct its telecommunication traffic to another carrier.
- 7.16 TIT reserves the right without liability not to provide the services due to any technical limitations in the clients telephone system, telephone exchange or TIT access equipment.
- 7.17 The obligations set out in this condition 7 as to the limitations of the liability shall remain in full force and effect notwithstanding any termination of this contract for any reason whatsoever.

## 8. Deposit

- 8.1 TIT may at any time before or after the provision of the services require payment by the client in a manner specified by TIT of a sum to be held by way of a deposit as and against any charges arising from use of the services by the client and TIT shall be entitled to offset such deposit against any sums due under this contract from time to time including interest due or owing to TIT.
- 8.2 Any deposit held by TIT will not accrue interest whatsoever although any deposit (or part thereof) which is held by TIT for over one year and which is subsequently repaid to the client may, at TIT's discretion, attract interest at an amount determined by TIT.

## 9. Assignment

- 9.1 The client shall not assign, transfer, sub-contract, delegate or otherwise deal with all or any of its rights under the contract.
- 9.2 TIT shall have the right to assign or otherwise transfer sub-contract, delegate all or any of its rights any obligations hereunder to an associated company or other person.

## 10. Force Majeure

Neither TIT or the client shall be liable to the other for any loss or damage which may be suffered by the other party due to any cause beyond the first parties reasonable control including without limitation any act of god, inclement weather, failure or shortage of power supply, flood, drought, lightning of fire, strike, lock-out, trade dispute or labour disturbance, the act or omission of government, high-way authorities, public telecommunication operators or other competent authority, war, military operations, or riot, difficulty, delay or failure in manufacture, reduction or supply by third parties of the services or any part thereof.

## 11. No Waiver

Failure by either TIT or the client to exercise or enforce any right conferred by this contract shall not be deemed to be a waiver of any such right not operate so as to bar the exercise or enforcement thereof or of any other right on any later occasion.

## 12. Entire Contract

The contract represents the entire understanding between the parties in relation to the subject matter of the contract and super seeds all other agreements and representation made by either party, whether oral or written.

## 13. Service of Notice

- 13.1 Any notice or invoice or other document which may be given under this contract shall be in writing and shall be deemed to be duly given if left or sent by post (whether by letter, or, where the parties agree, by magnetic tape or any other form), telex or fax transmission (subject to the senders machine producing confirmation that all pages have been sent) or, where the parties expressly agree, by electronic mail to their registered office of the party to be served or any other address notified by the party to be served to the other party in writing as an address to which notices, invoices and other documents may be sent.
- 13.2 Any notice sent by first class post shall be deemed to have been received two business days after posting. Any notice sent by telex, fax or e-mail shall be deemed to have been received on the day of its receipt by the addressee.

## 14. Governing Law

The contract shall be governed, construed and interpreted in accordance with English Law and the parties submit to the exclusive jurisdiction of the English courts as regards any claim, matter or dispute arising out of or relating to the contract or any document entered into pursuant to the contract.