

CUSTOMER SERVICE AGREEMENT RELATING TO NETWORK SERVICES AND LINE RENTAL - TERMS AND CONDITIONS

1. DEFINITIONS

1.1 In these Conditions:

Additional Services: any additional services listed in the Agreement or as subsequently agreed in writing between the Customer and Supplier.
Additional Services Specification: the description or specification of the Additional Services as set out in the Agreement or otherwise set out in writing and agreed between the Supplier and the Customer.

Agreement: the Customer Service Agreement entered into by the Customer.

BT Equipment: equipment owned or provided by BT.

Call: a signal, message or other communication, spoken or visual.

Commencement Date: the date specified in the Agreement or such other date as agreed between the Supplier and Customer, which may be different dates for the different Services to be provided.

Contract: the contract between the Customer and the Supplier for the supply of the Services in accordance with these Conditions and the Agreement.
Customer: the person or company cited in the Agreement for whom the Supplier has agreed to provide the Services.

Intellectual Property Rights: all patents, rights to inventions, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection.

Customer Equipment: equipment that is not part of BT's network and which the Customer uses or plans to use with the Services.

Line Rental Services: the facility to make or receive a Call (or both) and any related services listed in the Agreement.

Line Rental Specification: the description or specification of the Line Rental Services as set out in the Agreement.

Network Services: the telecommunications service to be supplied to the Customer's telephone lines by the Supplier as outlined in the Network Specification.

Network Specification: the description or specification of the Network Services as set out in the Agreement.

Premises: the place at which the Supplier agrees to provide the Services.

Previously Paid Termination Charges: means any termination or settlement charges paid by the Supplier on behalf of the Customer to the Customer's previous line rental provider at any time before or after the Commencement Date.

Service Failure: the continuous total loss of the facility to make or receive a Call or of any related service provided to the Customer under the conditions.

Services: the Network Services, the Line Rental Services and any Additional Services (if any).

Specifications: the Network Specification, the Line Rental Specification and the Additional Services Specification.

Supplier: Berry Telecoms Limited, a company registered in England and Wales with company number 07681963 whose registered office is at Berry Group House, Old Sarum Park, Salisbury, SP4 6BU.

Supplier's Website: www.berrytelecom.co.uk

Toll Fraud: any interference or access to the Customer's PABX phone system or the Customer's telephone lines and/or the making of calls by a third party utilising the Customer's telephone lines whether fraudulent or otherwise.

Minimum Term: the agreed minimum term for the provision of the Services as specified in the Agreement.

References to legislative provisions are to be understood as a reference to that provision as amended, re-enacted or extended at the relevant time.

Headings do not affect interpretation and are provided for convenience only.

2. BASIS OF CONTRACT AND TERM

The Contract shall come into force on the date the Agreement is signed by the authorised representatives of the Customer and received by the Supplier shall continue, unless terminated earlier in accordance with the provisions of these Conditions, until the end of the Minimum Term. The term of the Contract shall extend for 3 months (Extended Term) at the end of the Minimum Term and at the end of each Extended Term, unless either party gives written notice to the other, no later than 90 days before the end of the Minimum Term or the relevant Extended Term, to terminate this Contract at the end of the Minimum Term or the relevant Extended Term as the case may be.

The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.

Any samples, drawings, description matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

These Conditions apply to the conclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

Any quotation by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

3. SUPPLY OF THE SERVICES

The Services shall be supplied by the Supplier to the Customer from the Commencement Date in accordance with the Specifications in all material respects. Additional Services can be included in the Contract at any time as agreed in writing between the Customer and Supplier.

with respect to Line Rental Services:

(a) the Supplier may at its discretion wait until a survey of the Premises has been conducted by BT before agreeing the Commencement Date with the Customer;

(b) from time to time it is possible that BT may need to change the codes or the numbers given to the Customer or otherwise interrupt the Line Rental Services for operational reasons;

(c) BT will restore the interrupted Line Rental Services as quickly as possible. Should this occur all Charges hereunder remain payable. The Customer accepts that BT may from time to time provide instructions regarding the Line Rental Services and agrees to follow any such instructions;

(d) the Line Rental Services includes a telephone number. This number will be put in the appropriate BT Phone Books, together with the Customer's details, and made available from BT's Directory Enquiries Service unless the Customer requests otherwise;

(e) BT may agree to a special entry in the BT Phone Books at an additional charge;

(f) all telephone numbers remain the property of the Supplier and the Customer has no right to sell or to agree to transfer any such telephone numbers; and

(g) the Supplier will use reasonable endeavours to provide the telephone lines/numbers specified by the Customer on the Agreement but cannot guarantee this will be possible. Consequently, the Supplier will have no liability to the Customer if such lines or numbers are unable to be transferred/provided.

The Supplier reserves the right to change any Specification without the prior consent of the Customer so that the Services conform to any applicable safety or other statutory requirements.

4. CUSTOMER OBLIGATIONS

The Customer agrees and undertakes:

(a) to prepare its Premises according to any instructions issued by the Supplier or BT, and to provide BT with reasonable access to the Premises;

(b) to provide at its own cost and expense a suitable location and appropriate conditions for BT Equipment including, where necessary, a continuous mains electricity supply and connection points;

(c) not to contravene the Electricity Act 1989 or any relevant regulations or licences;

(d) not to use the Services or permit the Services to be used for the transmission of any material which is intended to be defamatory, offensive, abusive or menacing in character;

(e) not to use the Services or permit the Services to be used in any way which would constitute a violation or an infringement of the rights of any other party;

(f) to maintain its telecommunications apparatus at all times in good working order in conformation with the relevant standards;

(g) that following completion of any work carried out by BT, the Customer is responsible for returning all items back to their original position and for any re-decorating which may be required as a result of the work;

(h) comply with the Supplier's and BT's reasonable safety and security requirements;

(i) to procure that the Services are not used fraudulently or in connection with a criminal offence, to make offence, indecent, menacing, nuisance or hoax Calls;

(j) to co-operate with the Supplier in all matters relating to the Services and provide the Supplier with assistance from the Customer's employees where reasonably required;

(k) permit or procure permission for the Supplier to freely and safely access its premises and service connection points;

(l) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;

(m) use the Services in accordance with such instructions/conditions as may be notified in writing by the Supplier from time to time; obtain and maintain all necessary licences, permissions, licenses, consents, registrations and approvals which may be required before the Commencement Date; and

(n) to be solely liable for any costs arising as a result of Toll Fraud in the event the Customer opts out of the Supplier's fraud monitoring service.

Should the Supplier or BT be required to cross any land belonging to any party other than the Customer or to put BT Equipment on any property which does not belong to the Customer (for example a neighbour or a landlord), the Customer will obtain the prior written permission of such party.

The Customer shall indemnify and keep indemnified the Supplier in full against all costs and losses (including loss of facilities, damages, claims, charges, damage to property, call costs charged by BT or others and expenses) incurred by the Supplier as a result of or in connection with:

(a) any breach of the Customer's obligations under the Contract;

(b) the death of any of the Supplier's employees caused by the negligence or willful misconduct of the Customer;

(c) subject to condition 4.1(i), Toll Fraud; and

(d) any claims made by third parties because the Services are faulty or cannot be used by them where the Services are used for business purposes.

The Customer shall reimburse the Supplier on written demand for any such costs and losses sustained by the Supplier pursuant to condition 4.3.

If call traffic falls significantly below the norm for 30 days or more, the Supplier reserves the right to invoice the shortfall and/or raise termination charges based upon the average of the preceding 3 months' full billing.

If the Supplier's performance under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):

(a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of all or any of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default or to relieve it from performance of any of its obligations to the extent the Customer Default prevents or delays the performance of any of its obligations;

(b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this condition 4; and

(c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

5. CUSTOMER EQUIPMENT

Where the Customer wishes to connect Customer Equipment to BT's network other than by using a BT main telephone socket, the Customer must obtain BT's prior permission. Any Customer Equipment must be technically compatible with the Line Rental Services and not harm BT's network or another customer's equipment and connected and used in line with any relevant instructions, standards or laws.

6. PRICE AND PAYMENT

The price of the Services shall be the relevant price at the time the Services are used as determined by the tariff stated in the Agreement or as otherwise stated in the Agreement ("Charges").

The Supplier shall be entitled to vary the tariff stated in the Agreement from time to time by giving not less than 30 days written notice to the Customer.

If the Customer orders a temporary Line Rental Service, the Supplier may invoice the Customer for the rental Charges in advance of the temporary Service for the whole period.

The Supplier shall invoice the Customer monthly in arrears. The Supplier may at its discretion submit invoices to the Customer via email. The Customer may also view any invoices on line via an e-mail link to a web portal.

The Customer shall pay each invoice submitted by the Supplier by direct debit by the due date detailed on the invoice. Time for payment shall be of the essence of the Contract.

All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

Without limiting any other right or remedy of the Supplier, if the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (Due Date), the Supplier has the right to charge the Customer interest on the overdue amount at the rate of 4 per cent per annum above the base rate of the Bank of England on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly or, at its discretion, a late payment fee of £35 plus VAT.

The Supplier reserves the right to charge an administration fee as follows:

(a) of £15 plus VAT per invoice where the Customer has cancelled its Direct Debit instruction or has insufficient funds in its bank account on the Direct Debit due date, without informing the Customer in advance; and

(b) of £80.00 upon termination of the Contract.

7. INTELLECTUAL PROPERTY RIGHTS

All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier. The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier the licensee such rights to the Customer.

8. LIMITATION OF LIABILITY

Nothing in these Conditions shall limit or exclude the Supplier's liability for death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; fraud or fraudulent misrepresentation; or breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

Subject to condition 8.1:

(a) the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and the Supplier shall have no liability whatsoever if any sum owing by the Customer to the Supplier has not been paid; and

(b) the Supplier shall have no liability whatsoever for any defect in any equipment used by the Customer or failure of such equipment to comply with any description or specification which arises as a result of the Customer's broadband connection (or lack of) other than where the broadband connection is provided by the Supplier;

(c) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed an amount equal to the aggregate price paid by the Customer to the Supplier in the three month period immediately preceding the matter giving rise to the liability in question.

The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

The Supplier's employees or agents are not authorised to make any representations concerning the Services unless confirmed by the Supplier in writing.

9. TERMINATION AND SUSPENSION

Notwithstanding condition 2.1 and subject to condition 10 (termination fee), the Customer may terminate the Contract upon 90 days written notice to the Supplier prior to the expiry of the Minimum Term.

Without limiting its other rights or remedies, the Supplier may terminate the Contract by giving written notice to the Customer if:

(a) the Customer suspends payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 288 of the Insolvency Act 1986 or (being a partnership) has any partner who whom any of the foregoing apply;

(b) a resolution is passed, or an order is made, for or in connection with the winding up of the Customer;

(c) the Customer is the subject of a bankruptcy petition or order;

(d) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

(e) an order is made for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;

(f) a floating charge holder over the assets of the Customer has appointed an administrative receiver;

(g) a receiver is appointed over the assets of the Customer;

(h) the Customer fails to pay any amount due under this Contract on the Due Date;

(i) the Customer at any time does not have sufficient financial resources to run its telecommunications system; or

(j) the Customer commits a material breach of the Contract and (if such breach is remediable) fails to remedy that breach within 14 days of being notified in writing of the breach.

Without limiting its other rights or remedies:

(a) the Customer shall continue to pay the Charges whilst the Contract continues.

(b) the Supplier shall have the right to suspend provision of all or any of the Services under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in condition 9.2 or the Supplier reasonably believes that the Customer is about to become subject to any of them.

If a Service is suspended:

(a) the Supplier will tell the Customer what needs to be done before it can be re-instated. It is at the Supplier's sole discretion whether to reconnect the Service;

(b) the Customer may still make emergency Calls;

(c) the Customer will continue to pay the Charges whilst the Contract continues.

(d) The Supplier may at its complete discretion elect to reconnect a Line Rental Service which has been terminated. In such case a reconnection charge of £120 per analogue line and £250 per pair of ISDN lines will be payable by the Customer.

10. CONSEQUENCES OF TERMINATION AND TERMINATION FEES

On termination of the Contract for any reason:

(a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied and/or all liabilities, claims, costs, losses and expenses incurred and/or accrued by the Supplier and any committed costs or losses payable to a 3rd party supplier incurred as a result of termination, but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

(b) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and

(c) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

(d) Continued use of the Service will result in the Supplier levying its standard Tariffs for all Services used.

Notwithstanding the Contract:

(a) by the Customer pursuant to condition 9.1 the Customer shall immediately pay a fee equal to the average of the price paid by the Customer to the Supplier in the three months immediately preceding the notice of termination multiplied by the number of months remaining within the Minimum Term at termination, if:

(i) less than three months has elapsed prior to the date of the notice of termination an average of the price paid by the Customer from the Commencement Date to the date of the termination notice shall be used multiplied by the number of months remaining within the Minimum Term at termination; or

(ii) by the Supplier pursuant to condition 9.2 the Customer shall immediately pay such proportion of the Charges in respect of the remainder of the Minimum Term after the date of termination as the Supplier calculates (acting reasonably) represents a genuine estimate of the loss suffered as a result of the breach. Such amount shall never exceed the amount equal to the Charges for the remainder of the Minimum Term; or

(c) by the Customer pursuant to condition 9.1 or by the Supplier pursuant to condition 9.2 prior to the expiry of the Minimum Term, the Customer shall on demand in addition to its payment obligations in this condition 10.2, reimburse the Supplier the Previously Paid Termination Charges.

In the event that the Customer fails to comply with condition 10.2, the Supplier shall have no obligation or liability to the Customer to transfer the Customer to another service provider until condition 10.2 has been complied with in full.

11. MANAGING THE LINE RENTAL SERVICE

The Supplier does not warrant or guarantee that the Line Rental Service will be free of faults or interruptions.

The Customer shall promptly report all Service Failures to the Supplier. Without prejudice to condition 11.1, the Supplier shall use reasonable endeavours to repair or procure that BT repair a Service Failure by midnight on the first weekday (not including public and bank holidays) after the day the Service Failure is reported to the Supplier; or where the Customer has paid for an additional care level package, in accordance with the response times set out in those packages, which will form part of the Line Rental Specification;

keep any appointment BT makes with the Customer under the Contract.

The Supplier's obligation under condition 11.2 does not apply in circumstances where:

(a) the Service Failure is caused by any party other than BT;

(b) BT is rejected access to the Premises by the Customer;

(c) BT reasonably asks for other help and the Customer does not provide it; or

(d) the Customer is in breach of the Contract.

In the event that it is not possible to repair a Service Failure by the time period referred to in 11.2(a), the Customer may elect to use call diversion (as described in condition 12 below). This service will only be made available to the Customer if it is reasonably practicable to do so, and the Customer acknowledges that technical restrictions may prevent the Supplier/BT from providing this service.

In the event that the Line Rental Service fails to operate and the Customer makes use of another service provider, the Supplier will not be liable for that service provider's charges or fees.

The Customer may be charged for any maintenance or repair work carried out in the event that the Customer reports a Service Failure and the Supplier finds that no Service Failure exists, or that the Customer has caused the Service Failure.

To the extent that repairs are required outside of the timeframes referred to in condition 11.2(a) and are agreed to be provided by the Supplier or BT as appropriate, the Customer shall pay any additional charges incurred as a result.

12. CALL DIVERSION

If the Supplier diverts the Customer's calls to another terminating number at the Customer's request, or if the Customer diverts their calls to another terminating number (UK Geographic or UK Mobile), the person calling the Customer will not have to pay any additional costs for making that call, however, the charges for the diverted part of the call will be billed to the Customer at a higher rate.

13. GENERAL

Calls relating to customer services and telemarketing are monitored and recorded by the Supplier. This is done for training purposes and to improve the quality of its customer services.

The Supplier may disclose any information concerning the Customer to licensed credit reference agencies for the purpose of credit checks. The Supplier and the credit reference agencies may retain a record of the results of the credit check.

The Supplier shall not be liable or deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform the Services or any of the Supplier's obligations under the Contract if the delay or failure was due to a Force Majeure Event. A Force Majeure Event means any event beyond the Supplier's reasonable control including (without limitation) flood, fire, war or threat of war, sabotage, civil disturbance or governmental action. In such circumstances the Supplier will endeavor to provide the Customer with a call diversion service where the Force Majeure Event impacts the Line Rental Services.

The Supplier may disclose any information concerning the Customer to licensed credit reference agencies for the purpose of credit checks. The Supplier and the credit reference agencies may retain a record of the results of the credit check.

The Supplier reserves the right to change any term of the Contract at any time. This includes the ability to separately charge for Services which may be currently included in the Service as set out. The Supplier will publish details on line on the Supplier's Website at least 30 days before the change is to take effect and will give the Customer reasonable notice of any variation before it takes place.

If any dispute arises in connection with the Contract then the parties will attempt to settle it. The Customer is referred to the Supplier's complaint procedure, which can be found at the Supplier's Website www.berrytelecom.co.uk.

The parties agree that the terms of the Contract are not enforceable by a third party under the Contracts (Rights of Third Parties) Act 1999.

The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract. The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Supplier.

Any notice shall be in writing and, unless otherwise specified in the relevant paragraph, be addressed to the addressee at its registered office or principal place of business or such other address as may at the relevant time have been notified to the party giving the notice. Any notice of termination of the Contract served by the Customer must be marked for the attention of the Managing Director of the Supplier and sent by recorded delivery.

No delay or failure by the Supplier in enforcing any provision of the Contract shall constitute a waiver of that provision or any other provision. No waiver by the Supplier of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision. No waiver by the Supplier shall be effective unless in writing.

If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part then the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.

The Supplier's rights and obligations under the Contract shall survive the termination, suspension or expiry of the Contract.

Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by the Supplier.

The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formulation (including non-contractual duties or claims) shall be governed by and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.