

# Customer Agreement

Require Assistance call Customer Services on 0800 877 88 10



**merlin**<sup>®</sup>  
telecommunications

## 5 Terms & Conditions:

### All correspondence to:

Merlin Telecommunications Ltd, Unit 6 Station Road, Terrington St Clement, Norfolk PE34 4PL

e-mail: [operations@merlin-telecom.co.uk](mailto:operations@merlin-telecom.co.uk)

Company Registered in England and Wales No: 6344428

#### 1. Definition of words in this agreement:

In these terms and conditions, when the words are written in *italics* mean the following:

*Agreement* – means the contract agreed between you the customer and us the supplier, for us to provide you with *Services* to the *Numbers*, under these terms and conditions

*Signature Date* – the date you sign this contract; *Supply Date* – the date from when we first supply our *Services* to you; *Services* – the provision of telephone lines and telephone calls, support, account management and any other telecommunications services we provide to you; *Numbers* – telephone numbers and any telephone lines relating to them; *Charges* – the telephone bill we supply to you; *DD* – direct debit;

*Service Schedule* – means the schedule that has been provided on the order form to you, in which details the *Numbers* and *Services*, under these terms and conditions. *Minimum Term* – means the period of 30 days for like for like service transfers and 12 months for new service provision from the Commencement Date or such other period as is prescribed for the relevant service or as is otherwise detailed overleaf.

#### 2. Services

2.1 The *Services* are designed for businesses and you have confirmed that you are a registered trading business.

2.2 The *Services* provide you with line rental, calls and any other telecommunication services up to the line box at your property. We are not responsible for equipment at your property. It is your responsibility to ensure that this equipment is in good working order.

2.3 If, for technical reasons, we are unable to provide you with line rental on any *Numbers*, then we will endeavour to provide you with a calls only service upon our discretion.

2.4 You undertake to use the *Services* in accordance with the *Agreement* and agree not to use the *Services* in any improper or unlawful manner or in any manner that may cause offensive or of any abusive or menacing character.

2.5 You shall not publicise any *Numbers* in any way or commit to any advertising or publicity until you have received from us in writing, confirming that the *Numbers* are ready for service. We supply network services (usually on behalf of BT) as part of the *Services* to you, you must provide us details of all the related services that you wish to receive relating to any telephone number that you wish to use.

2.6 We will use our best efforts to provide high resilience *Services* in accordance with these terms and conditions.

2.7 We agree to provide your *Services* under these terms and conditions. At any time without notice we may need to vary the *Services* for operational, technical or other reasons we deem reasonable within our own discretion.

#### 3. Term

3.1 You shall be entitled to terminate this *Agreement* at the end of 30 days of supply when the service we supply you is on a like for like transfer basis. To do this you must submit in writing to our Head Office your request to end the *Agreement*, at least 30 days prior to the date you wish to terminate or transfer your *Services* from us. If you do not give us written notice, or do not arrange for another service provider to take over from us within 30 days following the notice period, then this agreement will continue on a 30-day rolling agreement. *Services* supplied on a new installation basis where detailed in the service schedule or other written confirmation are subject to an initial minimum term of 12 months. After this initial period the *Services* will then fall into a 30-day rolling agreement (Excludes Ethernet and derivative circuits see clause 3.9).

3.2 You agree to pay us by Direct Debit for all *Services* provided to you by us as set out in these terms and conditions.

3.3 You agree to give us in writing at least 30 days' notice of any changes in personal details including any address changes.

3.4 If you move premises, then we will transfer the *Services* to your new premises, and the terms of the *Agreement* will recommence with the *Services* having a new *Supply Date*, charges may apply. If this happens, we will use our best efforts to provide you with the same telephone number(s), but you accept that this may not be possible.

3.5 Either party shall be entitled to terminate the *Agreement* by giving written notice to the other if:

3.5.1 the other commits a continuing or material breach of the *Agreement* or

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

3.6 We may terminate the *Agreement* immediately if you materially breach any of the terms on this *Agreement* specifically if you are refusing to pay for legitimate charges or do not pay any invoices by Direct Debit within 14 days of date of invoice in accordance with clause 3.2 or if you transfer to another supplier not in accordance with clause 3.1 above. If we end the *Agreement* due to breach of terms then we will charge you a termination fee of £150 per line detailed within the *Schedule of Supply*.

3.7 If we increase our overall charging rates that apply to you for your *Services* by more than 10% in any calendar year, then you are able to end the *Agreement* without penalty by writing to us within 14 days of being advised of our increased charging rates by arranging for another service provider to take over from us during the 30 days following the notice being given by you. If you do not give us written notice within 14 days, or you do not arrange for another service provider to take over from us within 30 days of your notice, then you will have accepted our increased charging rates and this *Agreement* will continue.

**3.8 Ethernet, EFM, EoFTTC circuits or their derivatives, 120 days' notice to terminate is required. This can be given in advance of end of contract date, or once the circuit is out of contract.**

#### 4. Liability

4.1 If the *Services* fail to operate or you divert traffic to another carrier, we will not be responsible for that carrier's charges.

4.2 Neither party shall be responsible to the other in connection with this *Agreement*, for any loss of business, contracts, anticipated savings or profits or for any other indirect or consequential loss whatsoever.

4.3 Nothing in this *Agreement* shall exclude or restrict neither party's liability for death or personal injury resulting from the negligence affected by anything in this *Agreement*.

4.4 We shall not be liable to pay any termination fees or any other relating charges payable to your previous supplier(s) of telecommunication services.

4.5 Neither party shall be liable for breach of its obligations under this *Agreement* if the breach is caused by flood, fire, accident, strike, war, Government restriction, act of God or other telecommunication operators or other competent authorities, or supply of services by third parties.

#### 5. Charges and Payment

5.1 We will invoice you on a monthly basis and you agree to pay us monthly by Direct Debit 14 days after date of invoice as in accordance with clause 3.2 the first payment is to be made at the discretion of us within thirty days of the *Supply Date* of the *Services* where network connection and/or line rental services form part of the *Services* the charges shall be invoice one month in advance.

5.2 Invoices are issued monthly and are due for payment by Direct Debit 14 days after the invoice date. If any Direct Debit is cancelled or returned unpaid by your bank or if you fail to discharge any invoice within 7 days of its due payment date, then we have the right under this *Agreement*, to provide the services at the standard published rates and in addition you agree to pay us an administration fee of £25.00.

5.3 If you fail to make any payment on the due date then we may charge you interest (both before and after any judgement) on the unpaid invoices, at the rate of 8 per cent per annum above HSBC 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 you shall be additionally liable to pay to us.

5.5 We shall be entitled from time to time where we see fit, require you to pay a deposit in respect of future usage charges and you shall pay the amount so required within 7 days of a request.

5.6 Usage charges will be such charges for the use of the *Services* by you, and we may notify you from time to time. Usage charges are payable and shall be calculated by reference to any data recorded or logged by us or its service carrier, and not by reference to any data recorded or logged by you. We shall be entitled to estimate the usage charges in circumstances where the relevant data is not available to us in a timely manner, and any estimated usage charge shall be reconciled on a subsequent invoice.

5.7 You agree to pay us in full without any set-off, all undisputed sums due to us under this *Agreement*.

5.8 You authorises us to vary the amount, frequency and time of any Direct Debit to such a level as we deem reasonably appropriate (a) to take account of either an increase or decrease in usage of the *Services* by you (b) to reduce such indebtedness of you to us and/or (c) to such other operational matter affecting the *Services* as we shall in its discretion deem reasonable.

5.9 If you have any dispute with regards to the usage charges or any other charges, you shall give written notice to us of the amount in dispute and the reasons for the dispute. Such notice must be received prior to you not paying any amount due to us. Failing which you shall be deemed to be in breach of contract and clause 3.6 shall apply together with clause 5.8 and clause 5.3 in respect of the entire balance. You shall remain liable to pay all amounts not in dispute in accordance with the terms of this *Agreement*.

5.10 We reserve the right to increase non hosted telephone system maintenance charges in line with the Retail Price Index measure of inflation on the anniversary of any maintenance agreement.

#### 6. Suspension of the Services

6.1 We will be entitled, for business, operational or technical reasons or in order to comply with any numbering scheme or other obligation imposed on us by our 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 you whether on a temporary or permanent basis provided that we give you notice in writing in these circumstances.

6.2 If you are in breach of any term of this *Agreement*, **excluding 3.6**, we may at our sole discretion and upon giving you written notice and allowing 14 days to remedy the breach 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 you within the 14-day period then we 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 we shall have the option of either terminating this *Agreement* under the provision of clauses 3.6, 6.1 and 6.3 or of continuing the *Services*.

6.3 If your monthly spend exceeds the credit limit given to you by us as advised by our use of credit reference agencies and your payment history with us, whichever is the lower, then we reserve the right to request immediate payment of the excess amount and to demand a deposit be paid that reflects the difference between the monthly spend and the credit limit we have applied to your account. If payment is not made forthwith by you, we shall be entitled to suspend all or any of the *Services* until payment of the excess amount is made in full.

6.4 We reserve the right to withdraw the *Services* or any part thereof after **giving you 30 days' notice** if the monthly charges to you are not, in the opinion of us, sufficient to make provision of the *Services* viable for us.

#### 7. General

7.1 We reserves the right to change these terms and conditions at our sole discretion by giving you no less than **30 days' notice** (usually in writing) and continued use of the *Services* thereafter will be deemed acceptance of such changes.

7.2 Any notice given by you to us under this *Agreement* shall be in writing addressed to us at our Head Office and sent by registered post. Any notice given by us to you under this *Agreement* shall be made in writing and addressed to you at a principal place of business or such other address as we may see fit at the relevant time, and be sent by post, email or fax.

7.3 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.

7.4 You shall not assign sub-license, delegate or otherwise deal with all or any of your rights and obligations under this agreement without us having prior written consent. Nothing in this agreement shall be deemed to grant you 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, you shall not be entitled to sub-license any such software or other intellectual property right.

7.6 You may not assign or transfer this agreement or any rights hereunder to any third party, without our prior written consent. We may assign or transfer this agreement or any rights hereunder.

7.7 No waiver by either party shall constitute any variation to this agreement.

7.8 You agree that the Contracts (Rights of Third Parties) Act 1999 shall not apply to this agreement.

7.9 The laws of England shall govern this agreement, and you agree to submit to the exclusive jurisdiction of the English courts.

#### 8 Fraud

8.1 For the avoidance of doubt fraudulent calls include but not limited to; a) Calls made from the customers PBX without their knowledge b) Calls made utilising customers authentication details c) Calls made from an authenticated IP address. Customers setup and maintain their own security independently of us and therefore we are unable to accept liability for any costs accrued as a result of a breach in their environments. Each customer has a unique service and therefore we are unable to template a fraud alerting system for all our customers.

#### 8.2 Customer Responsibility

a) Customer is responsible for the secure implementation and management of their Systems including but not limited to any hardware not provided by us i.e. Firewalls, PBX etc.

b) Maintaining confidentiality and security of authentication details for both Merlin Telecommunications Ltd PRO-iPBX Portal and SIP Services.

c) In the event of any suspected or known security breach the following processes should be actioned by the customer immediately to mitigate exposure - Immediately notify us on our published numbers as detailed above, and email us at the above email address, and we will take action to prevent further fraudulent activity on the account. We do not want to make money from the proceeds of crime and therefore where possible fraudulent calls will be charged at cost price. The customer agrees that we on occasion may instigate a limited network port scan against the IP address the customer registers from in order to assist the customer with improvements to their security setup. By agreeing to these terms the customer will accept full and complete liability for any costs incurred as a result of Fraud.