



part of the
synergy
utilities group

Terms & Conditions

TERMS AND CONDITIONS

Corporate Mobile Connections Limited (herein referred to as 'CMC') shall supply to you (herein referred to as 'the Customer') the Services and Equipment (herein referred to as 'the Services') who shall purchase the Services in accordance with the Agreement dated [insert date] which shall be subject to these Terms and Conditions.

1. "Minimum Term"

Means the period of 12 months from the commencement date of the Agreement.

2. The Services and Equipment

2.1 Save as provided in these terms and conditions CMC shall provide the Customer with such Services as are requested by the Customer and any use of the Services or payment for the Services is deemed acceptance of these Terms and Conditions. In respect of "fraud monitor" and other services the additional terms and conditions as set out on our website shall be deemed to be incorporated herein.

2.2 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 CMC in writing, confirmation that the number is live and tested. CMC will use reasonable endeavours to provide you with the Services by the dates agreed with you and to continue to provide the Services until the Agreement is terminated. CMC will not be liable for any loss or damage should the Services not commence or restart on the agreed date.

2.3 Cancellations. If as a consequence of the Customer cancelling the Agreement CMC incur provisioning, engineering or other fees associated with meeting the customer's requirements and/or subsequently the line does not become operational for any reason then CMC have the right to charge the customer fees of up to £75 per line.

2.4 All equipment provided by CMC shall remain the property of CMC until the term of the Agreement has been completed. Immediately following completion of the term of the Agreement the Customer shall pay to CMC a one-off licence fee of £200.00 to retain the future use of the equipment.

3. Term and Termination

3.1 The 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 further periods each equivalent to the Minimum Term until terminated by either party giving to the other not less than 90 days' prior written notice but not greater than 120 days prior written notice expiring at the end of the Minimum Term such notice to be sent by recorded delivery mail effective on the date the notice is received by CMC.

3.2 Should the Customer fail to give notice to terminate the Agreement in accordance with clause 3.1 of these Terms and Conditions the Agreement shall continue for a further period equivalent to the Minimum Term as set out in the Agreement until terminated by either party in accordance with clause 3.1.

3.3 Clause 3.2 above shall only be applicable to Customers with 10 or more employees.

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

3.4.1 the other commits a continuing or material breach of the Agreement and, if the breach is capable of remedy, fails to remedy it within 14 days after receipt of a written notice;

3.4.2 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 becomes bankrupt or goes into liquidation;

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

3.5 CMC may terminate the Agreement immediately if:

3.5.1 any licence or agreement under which CMC or the Customer has the right to run its telecommunications system and in the case of the Customer connect it to the CMC system is revoked, amended or otherwise ceases to be valid; or

3.5.2 the Customer is suspected, in the reasonable opinion of CMC, of involvement with fraud or attempted fraud in connection with use of the Services or the Agreement; or

3.5.3 CMC reasonably suspects that the Customer is unable to pay or is refusing to pay CMC charges and/or budget plan payments.

3.6 If the Customer gives less than the specified amount of written notice to terminate the Agreement (as per Clause 3.1) or ceases to use the Services or a part thereof (including reduced usage) or attempts to terminate the Agreement prior to the expiry of the Minimum Term or any subsequent period equivalent to the Minimum Term or fails to achieve any minimum call spend, CMC reserves the right to invoice the Customer for the loss it suffers, which includes loss of revenue for the short notice given for the balance of the Minimum Term and based upon an average of 6 calendar months bills to the Customer in which periods the Customer has made full use of the Services (or such lesser period as is available). Upon termination CMC shall be entitled to raise invoices for all sums due and all invoices shall become due for payment immediately.

3.7 Effects of Termination:

3.7.1 upon the termination of the Agreement;

3.7.2 any sum owing by either Party to the other under any of the provisions of the Agreement shall become immediately due and payable;

3.7.3 all Clauses which, either expressly or by their nature, relate to the period after the expiry or termination of the Agreement shall remain in full force and effect;

3.7.4 termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of the Agreement which existed at or before the date of termination;

3.7.5 except in respect of any accrued rights neither Party shall be under any further obligation to the other; and

3.7.6 each Party shall (except to the extent referred to in Clause 8) immediately cease to use, either directly or indirectly, any Confidential Information, and shall immediately return to the other Party any documents in its possession or control which contain or record any Confidential Information.

4. Charges and Payment

4.1 Following the expiration of a trial period that may be provided to the Customer at the sole discretion of CMC and unless otherwise specified in writing by CMC the Customer agrees to pay CMC's charges and/or budget plan payments monthly by Direct Debit, the first payment to be made at the discretion of CMC within thirty days of the start of the provision of the Services and in accordance with the applicable tariff charges shall be paid in advance.

4.2 Usage charges will be such charges for the use of the Services by the Customer as CMC may notify to the Customer from time to time by e-mail or by post.

4.3 If the Customer fails to make any payment on the due date then, without limiting any other right or remedy available to CMC (such failure to pay being a material breach of the Agreement), CMC may charge the Customer an administration fee of £15 and interest (both before and after any judgment) on the amount unpaid, at the rate of 8 per cent per annum above Barclays Bank 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).

4.4 The Customer agrees to pay CMC in full without any set-off all sums due to CMC under the Agreement.

4.5 If any payment 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 the Agreement, CMC shall from the time of such failure provide the Services at the standard published usage charges and in addition the Customer agrees to pay CMC an administration fee of £25.00. For the avoidance of doubt the time of payment is of the essence of the Agreement and a failure to pay on time or the cancellation of a Direct Debit shall be a material breach of contract allowing CMC to terminate the Agreement immediately. Invoices paid by credit card incur an additional £5 or 3% charge of the transaction whichever is the greater.

4.6 Should the Customer have any dispute with regard to the usage charges or any other charges, the Customer shall give written notice to CMC of the amount in dispute and the reason for the dispute. Any rectification or amendment of such disputed charges are limited to 6 months prior to the written notification being received by CMC and remains at CMC's sole and reasonable discretion. Such notice must be received prior to the Customer not paying any amount due to CMC, failing which the Customer shall be deemed to be in breach of the Agreement and liable in respect of the entire balance. The Customer shall remain liable to pay all amounts not in dispute in accordance with the terms of the Agreement.

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

4.8 CMC retain the right to increase the charges set out in the tariff by 7% or in line with inflation, whichever is the higher at any time upon giving the Customer 7 days' notice such notice to be given on the monthly invoice. Continued use of the Services is deemed acceptance of these changes.

5. Suspension of the Services

5.1 CMC shall be entitled to suspend services, for business, operational or technical reasons.

5.2 If the Customer is in breach of a material term of the Agreement CMC 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 CMC shall recommence the provision of the Services. If the breach is not capable of remedy within the period of 14 days, then CMC shall have the option of either terminating the Agreement or of continuing the Services.

6. Liability, Indemnity and Insurance

6.1 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 save that this exclusion shall not apply to the fraudulent activities of either party nor to any claw-back or other loss suffered by CMC pursuant to the determination by an airline services provider that the Customer has used and/or provided the Services using the Equipment and/or Services which it deems a gateway.

6.2 CMC shall ensure that it has in place at all times suitable and valid insurance that shall include Public Liability Insurance.

6.3 CMC's total liability for any loss or damage caused as a result of its negligence or breach of the Agreement shall be limited to the sum defined therein.

6.4 CMC shall not be liable for any loss or damage suffered by the Customer that results from the Customer's failure to follow any instructions given by CMC or any third party engaged in the provision of the Services.

6.5 Nothing in these Terms and Conditions nor in the Agreement excludes or limits the liability CMC for:

6.5.1 death or personal injury caused by CMC's negligence;

6.5.2 any matter which it would be illegal for CMC to exclude or attempt to exclude its liability; or

6.5.3 fraud or fraudulent misrepresentation.

6.6 Subject to the remaining provisions of this clause 6:

6.6.1 CMC's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement shall be limited to the Agreement price; and

6.6.2 CMC shall not be liable to the Customer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Agreement.

6.7 CMC shall indemnify the Customer against any costs, liability, damages, loss, claims or proceedings arising out of CMC's breach of the Agreement.

6.8 The Customer shall indemnify CMC against any costs, liability, damages, loss, claims or proceedings arising from loss or damage to any equipment (including that belonging to any third parties appointed by CMC) caused by the Customer or its agents or employees.

6.9 Neither Party shall be liable to the other or deemed to be in breach of the Agreement by reason of any delay in performing, or any failure to perform, any of that Party's obligations if the delay or failure is due to any cause beyond that Party's reasonable control.

7. Fraud

7.1 For the avoidance of doubt, fraudulent activity includes but is not limited to:

7.1.1 calls made from the Customer's PBX without their knowledge;

7.1.2 calls made utilising the Customer's authentication details, or Calls made from an authenticated IP address;

7.1.3 restricted International Calls.

7.2 The Customer acknowledges that the Service known as "fraud monitor" is not a fraud prevention system and does not prevent unauthorised access to the Equipment. It is the sole responsibility of the Customer to setup and maintain their own security independently of CMC and therefore CMC accepts no liability whatsoever for any costs incurred as a result of a breach of security.

7.3 For the avoidance of any doubt, the Customer's responsibilities include but are not limited to;

7.3.1 secure implementation and management of their systems including any hardware not provided by CMC such as firewalls or PBX.

7.3.2 maintaining security and confidentiality of authentication details for online service portals and other services.

7.3.3 mitigate exposure to any suspected or known security breach by resetting passwords, requesting that accounts are disabled and reporting the incident to CMC.

7.3.4 reporting the incident to the Police.

7.4 The Customer accepts full and complete liability for any costs, losses or damages incurred as a result of fraud and agrees to indemnify CMC against any costs, losses or damage suffered by CMC arising from any fraudulent activity including any costs and expenses reasonably incurred by CMC in investigating any such fraudulent activity.

7.5 CMC reserves the right to invoice the Customer for any loss incurred by CMC as a result of fraudulent activity.

7.6 CMC recommends that the Customer obtains professional security advice with regard to PBX, trunking or other equipment or resource

7.7 CMC reserves the right to automatically restrict the Customer from making international calls i.e. calls made from the system and lines to countries outside of the United Kingdom unless a specific request from the customer is made to CMC to have these calling capabilities unrestricted. In which case the Customer accepts all liability for call charges incurred as a result of fraudulent activity. CMC will not be held accountable or liable for all restricted calls and costs incurred as a result.

7.8 The Customer hereby accepts that they are liable for ALL call charges that occur on their lines and calls in line with agreed charges prior to the Agreement.

8. Confidentiality

8.1 Confidential information means all confidential information however recorded or preserved disclosed by a party or its Representatives (as defined below) to the other party and that party's Representatives whether before or after the date of the Agreement in connection with the provision of the Services in accordance with the Agreement included but not limited to:

8.1.1 the terms of the Agreement;

8.1.2 any information that would be regarded as confidential by a reasonable business person relating to;

8.1.2.1 the business affairs, customers, clients, suppliers, of disclosing party belongs; and

8.1.2.2 the operations, processes, product information, know how, designs, trade secrets or software of the disclosing party (or any member of the group of companies to which the disclosing party belongs;

8.1.3 any information developed by the parties in the course of carrying out the Agreement;

8.1.4 Representatives means, in relation to a party, its employees, officers, representatives and advisers.

8.2 The provisions of this clause shall not apply to any Confidential Information that:

8.2.1 is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause);

8.2.2 was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;

8.2.3 was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party; or

8.2.4 is developed by or for the receiving party independently of the information disclosed by the disclosing party.

8.3 Each party shall keep the other party's Confidential Information confidential and shall;

8.3.1 use such Confidential information except for the purpose of exercising or performing its rights and obligations under or in connection with the Agreement (Permitted Purpose); or

8.3.2 disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 8.

8.4 A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:

8.4.1 it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and

8.4.2 it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this clause as if they were a party to this agreement, and at all times, it is liable for the failure of any Representatives to comply with the obligations set out in clause 8.

8.5 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any government or other regulatory authority or by a court or other authority of competent jurisdiction provided that to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 8 it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

8.6 A party may, provided that it has reasonable grounds to believe that the other party is involved in activity that may constitute a criminal offence under the Bribery Act 2010, disclose Confidential Information to the Serious Fraud Office without first informing the other party of such disclosure.

8.7 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in the Agreement are granted to the other party or to be implied from the Agreement.

8.8 On termination of the Agreement each party shall:

8.8.1 destroy or return the other party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information;

8.8.2 erase all the other party's Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically and legally practicable); and

8.8.3 certify in writing to the other party that it has complied with the requirements of this clause, provided that a recipient party may retain documents and materials containing, reflecting, incorporating or based on the other party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority. The provisions of this clause shall continue to apply to any such documents and materials retained by a recipient party, subject to clause 3.

8.9 Except as expressly stated in the Agreement, no party makes any express or implied warranty or representation concerning its Confidential Information.

8.10 The provisions of this clause 8 shall survive for a period of five years from termination of the Agreement.

9. Force Majeure

9.1 No Party to the Agreement shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the 'reasonable' control of that Party. Such causes include but are not limited to: failure or negligence of any third party engaged in the provision of the Services, power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

9.2 In the event that a Party to the Agreement cannot perform their obligations hereunder as a result of force majeure for a continuous period of 2 months the other Party may at its discretion terminate the Agreement by written notice at the end of that period. In the event of such termination, the Parties shall agree upon a fair and reasonable payment for all Services provided up to the date of termination. Such payment shall take into account any prior contractual commitments entered into in reliance on the performance of the Agreement.

10. General

CMC reserves the right to change the provider of the Services to it at any time; further CMC 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.synergyutilities.net) and continued use of the Services thereafter will be deemed acceptance of such changes.

11. No Waiver

No failure or delay by either Party in exercising any of its rights under the Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of the Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

12. Further Assurance

Each Party shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of the Agreement into full force and effect.

13. Costs

Subject to any provisions to the contrary each Party shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of the Agreement.

14. Set-Off

Neither Party shall be entitled to set-off any sums in any manner from payments due or sums received in respect of any claim under the Agreement or any other agreement at any time.

15. Assignment and Sub-Contracting

15.1 The Agreement shall be personal to the Parties. Neither Party may assign, mortgage, charge (otherwise than by floating charge) or sub-licence or otherwise delegate any of its rights thereunder, or sub-contract or otherwise delegate any of its obligations thereunder without the written consent of the other Party, such consent not to be unreasonably withheld.

15.2 CMC shall be entitled to perform any of the obligations undertaken by it through any other member of its group or through suitably qualified and skilled sub-contractors. Any act or omission of such other member or sub-contractor shall, for the purposes of the Agreement, be deemed to be an act or omission of CMC.

16. Time

All times and dates referred to in the Agreement shall be of the essence of the Agreement.

17. Relationship of the Parties

Nothing in the Agreement shall constitute or be deemed to constitute a partnership, joint venture, agency or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in the Agreement.

18. Non-Solicitation

18.1 Neither Party shall, for the term of the Agreement and for a period of 5 years after its termination or expiry, employ or contract the services of any person who is or was employed or otherwise engaged by the other Party at any time in relation to the Agreement without the express written consent of that Party.

18.2 Neither Party shall, for the term of the Agreement and for a period of 5 years after its termination or expiry, solicit or entice away from the other Party any customer or client where any such solicitation or enticement would cause damage to the business of that Party without the express written consent of that Party.

19. Third Party Rights

19.1 No part of the Agreement shall confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Agreement.

19.2 Subject to Clause 21 the Agreement shall continue and be binding on the transferee, successors and assigns of either Party as required.

20. Notices

20.1 All notices under the Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.

20.2 Notices shall be deemed to have been duly given:

20.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or

20.2.2 when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or

20.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or

20.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.

20.3 In each case notices shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

21. Entire Agreement

21.1 The Agreement contains the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

21.2 Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement or these Terms and Conditions.

22. Counterparts

The Agreement may be entered into in any number of counterparts and by the Parties to it on separate counterparts each of which when so executed and delivered shall be an original, but all the counterparts together shall constitute one and the same instrument.

23. Severance

In the event that one or more of the provisions of the Agreement and/or of these Terms and Conditions is found to be unlawful, invalid or otherwise unenforceable, that / those provision(s) shall be deemed severed from the remainder of the Agreement and/or these Terms and Conditions. The remainder of the Agreement and/or these Terms and Conditions shall be valid and enforceable.

24. Dispute Resolution

24.1 The Parties shall attempt to resolve any dispute arising out of or relating to the Agreement through negotiations between their appointed representatives who have the authority to settle such disputes.

24.2 If negotiations do not resolve the matter within 7 days of receipt of a written invitation to negotiate, the parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution ("ADR") procedure.

24.3 If the ADR procedure does not resolve the matter within 1 month of the initiation of that procedure, or if either Party will not participate in the ADR procedure, the dispute may be referred to arbitration by either Party.

24.4 The seat of the arbitration shall be England and Wales. The arbitration shall be governed by the Arbitration Act 1996 and Rules for Arbitration as agreed between the Parties. In the event that the Parties are unable to agree on the arbitrator(s) or the Rules for Arbitration, either Party may, upon giving written notice to the other Party, apply to the President or Deputy President for the time being of the Chartered Institute of Arbitrators for the appointment of an arbitrator or arbitrators and for any decision on rules that may be required.

24.5 Nothing in Clause 24 shall prohibit either Party or its affiliates from applying to a court for interim injunctive relief.

24.6 The decision and outcome of the final method of dispute resolution shall be final and binding on both Parties.

25. Law and Jurisdiction

25.1 The Agreement and these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.

25.2 Any dispute, controversy, proceedings or claim between the Parties relating to the Agreement or these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the exclusive jurisdiction of the courts of England and Wales.