

STANDARD TERMS AND CONDITIONS OF WELCOME TELECOM LIMITED

1. **Conditions:**

- 1.1 In these terms and conditions (“the Conditions”) the following definitions shall apply:
 - 1.1.1 “Company” means Welcome Telecom Ltd (trading as Welcome);
 - 1.1.2 “Customer” means any business or other body or person using the Service by agreement with the Company and includes the Customer named in the Customer Service Agreement;
 - 1.1.3 “Act” means the Communications Act 2003 and SI 2000/730 and includes amendments to the “Act” that may be made from time to time;
 - 1.1.4 “Service” means indirect access by the Customer to the telecommunications network by means of the services provided by the Company and/or any similar system provided by its sub-contractors and/or agents;
 - 1.1.5 “Agreement” means the contract made between the Company and the Customer upon the Conditions and incorporating the Customer Service Agreement and the Specification all which together form the Agreement;
 - 1.1.6 “Customer Service Agreement” means the form overleaf, signed by the Customer requesting the Service and agreeing to and incorporating the Conditions;
 - 1.1.7 “Company’s Tariff Schedule” means the schedule of charges used to calculate value of usage of the Service by the Customer, as varied from time to time;
 - 1.1.8 “Access Code(s)” means any code which enables the Customer to access the Company’s telecommunications network;
 - 1.1.9 “Term” means the period from and including the date of commissioning of the Service by the Company or the Customer’s first use of the Service (whichever is the earlier in accordance with clause 2.1) until such time as the Agreement is terminated by either party giving to the other not less than thirty (30) days prior written notice of its intention so to terminate (or three months notice in the case of ADSL circuits) in accordance with clause 4. The Customer may opt for a Term of 12 months (“12 month Term Agreement”), a Term of 3 years (“3 year Term Agreement”) or 5 years (“5 year Term Agreement”). The Term includes any period of notice required to terminate this Agreement. Unless otherwise agreed the minimum term for agreements is 12 months;
 - 1.1.10 “Customer Equipment” means any equipment or software not supplied by the Company;
 - 1.1.11 “Company Equipment” means any equipment or software supplied by the Company to enable the Customer to use the Service;
 - 1.1.12 “Equipment” means Customer Equipment and/or Company Equipment;
 - 1.1.13 “Price” means the price payable for the Company Equipment set out in the Customer Service Agreement;
 - 1.1.14 “Charges” means the charges for the Customer’s usage of the Service calculated and charged on a monthly usage basis in accordance with the Tariff Schedule and invoiced monthly in arrears;

- 1.1.15 “Act of Insolvency” means in respect of a party the insolvency, bankruptcy or liquidation of such party or such party being unable to pay its debts, having a receiver, trustee or manager appointed in respect of any of its assets or having a bankruptcy order presented or a winding up petition or order filed in respect of it;
- 1.1.16 “Force Majeure” has the meaning in clause 9;
- 1.1.17 “Tariff Schedule” means the Company’s schedule of tariffs payable from time to time and which may be varied at any time subject to either giving the Customer 30 days written notice of such variation or posting on the Company’s website notice of such variation;
- 1.1.18 “Target Date” means the target date (if any) for installation of the Company Equipment as set out in the Customer Service Agreement; and
- 1.1.19 “Specification” means the specification section in the service proposal submitted to the Customer subject to any modifications in the Customer Service Agreement;
- 1.2 The Conditions supersede all previous conditions, including any terms and conditions of the Customer or its servants or agents and shall not be superseded, varied or waived other than by the express written consent of the Company.
- 1.3 Any order, purchase order, request for or use of the Service by the Customer shall be conclusive proof of the Customer’s acceptance of the Conditions which shall apply instead of and notwithstanding any terms and conditions of the Customer whether included in such order and whenever arising.
- 1.4 In the event of any conflict between the Customer Service Agreement and the Conditions and/or the Specification then the Customer Service Agreement will prevail.
2. **Service:**
- 2.1 By the Target Date (if any) or otherwise as soon as practicable after the Company has accepted the Customer’s order and the Customer has signed and entered into the Customer Service Agreement the Company will use all reasonable endeavours to carry out the necessary works including the installation of any Company Equipment to commission the Service in accordance with the Specification to include (where applicable) training and within 7 days of the Service being commissioned to the reasonable satisfaction of the Company it shall notify the Customer of the date of such commissioning (or, if earlier, the Customer’s first use of the Service so far as the Company is aware) and such date shall be the first day of the Term.
- 2.2 Subject to the Conditions, full payment of the Price and the Charges and the Customer’s compliance with its obligations under this Agreement the Company will use all reasonable endeavours to provide the Service by means of the Company’s telecommunications network to the Customer at the Customer’s premises set out in the Customer Service Agreement or at other premises of the Customer as may be agreed between the Company and the Customer.

- 2.3 Delivery, installation and commissioning dates are given in good faith but the Company shall have no liability for failure to deliver promptly or at all and notwithstanding such failure the Customer shall be bound to accept and pay for the Service in full provided that commissioning is completed at any time within 30 days of the Target Date (if stipulated) or otherwise within 60 days of the date of the Customer Service Agreement.
- 2.4 The Customer shall make all arrangements necessary to take delivery of the Customer Equipment whenever tendered for delivery and risk in the Customer Equipment will pass to the Customer immediately after delivery.
- 2.5 Title to the Company Equipment shall pass to the Customer upon payment of the Price (12 month or 3 year Term Agreement) or upon commissioning (5 year Term Agreement).
- 2.6 The Customer agrees and acknowledges that the provision of the Service requires implementation of the Access Code(s) by means and use of Company Equipment provided by the Company at its sole discretion or Customer Equipment programmed by the Company with its Access Code(s) or manual dialing of the Access Code(s) by the Customer.
- 2.7 The Customer warrants that it is authorised to have any Customer Equipment connected to the public telephone network and is willing to comply with the full terms of any licence relating to such connection and further warrants that any Customer Equipment conforms to the relevant standard or approval for the time being designated under the Act including specifically regulations 4 to 8 of the Act.
- 2.8 The Customer undertakes:
- 2.8.1 to use the Service in accordance with the Company's reasonable instructions as may be given from time to time;
- 2.8.2 not to attach anything to any Equipment or modify or tamper with it in any way and to take all reasonable steps to protect the Company Equipment from breakage, interference and theft;
- 2.8.3 not to use the Service to send any communication which is unlawful, offensive, obscene, menacing or which may cause annoyance, inconvenience or anxiety to anyone nor to use the Service to violate or infringe on the rights of any person nor to use the Service in a manner which is not permitted under this Agreement; and
- 2.8.4 to permit the Company and its appointed agents full access to the Customer's premises for all purposes relating to this Agreement and the provision of the Service including delivery, installation, training and to confirm that the Customer Equipment is likely to be compatible with the Service and to ascertain what modifications may be necessary to enable the Customer to receive the Service and/or to install and/or modify the Customer Equipment and, following termination of this Agreement, to remove any Company Equipment title to which has not passed to the Customer provided always that upon termination of this Agreement the Company shall not be obliged to remove Company Equipment nor be responsible for any removal or reprogramming costs incurred by the Customer.

- 2.9 The Customer agrees and acknowledges that:
- 2.9.1 the Equipment is not infallible and may occasionally fail to route a call through the Company's telecommunications network but will not on that account be considered defective or of less than satisfactory quality;
- 2.9.2 the Company has no means of knowing whether any failure to route has occurred and the Customer will notify the Company that such an event has occurred whereupon, if the Company reasonably considers the failure to be excessive, it will use all reasonable endeavours to investigate; and
- 2.9.3 the Company shall not be liable to the Customer for the cost of calls that are routed through another carrier's network due to the failure of any Equipment.
- 2.10 The Company will use all reasonable endeavours to respond to any reported fault as soon as reasonably practicable. In the event that such a fault is caused other than by Company Equipment failure or the Company's negligence or breach of this Agreement the Company may recover all reasonable costs incurred in investigating or remedying the fault (including the cost of providing replacement Equipment where necessary).
- 2.11 The Company may suspend the Service in the event of non-payment by the Customer or for any other breach of this Agreement by the Customer or in the event that the Company has to maintain or enhance the Company's telecommunications network or to comply with an instruction or request from any governmental, emergency service or other regulatory or administrative authority.
- 2.12 In the event of any suspension of Service the Company shall give the Customer 7 days notice (in the case of non-payment or other breach of this Agreement) or (in any other event) as much notice as is reasonably practicable and will restore the Service as soon as reasonably practicable and lawful but the Company shall have no liability to the Customer for any loss or damage incurred or suffered as a result of the suspension.
- 2.13 The Customer will provide to the Company promptly and free of charge all information and co-operation that the Company may reasonably require to enable it to proceed without interruption with the performance of its obligations under this Agreement.
3. **Nature of Company Equipment:**
- 3.1 The Company Equipment shall be supplied in accordance with the description contained in the Service Proposal.
- 3.2 The Company may from time to time make changes in the specification of the Company Equipment which are required to comply with any applicable safety or statutory requirements or which do not materially impair the function of the Company Equipment.
- 3.3 All implied and express terms, conditions and warranties relating to quality and/or fitness for purpose of the Company Equipment are excluded whether made by the Company or its servants or agents or otherwise (other than the express written warranty provided by the Company to the Customer set out in clause 7).

3.4 The specifications and designs of the Company Equipment (including the copyright, design right or other intellectual property in them) shall as between the Company and the Customer be the property of the Company. Where any software or specifications have been supplied by the Customer in connection with the provision of the Service then the Customer warrants that its use for all purposes shall not infringe the rights of any third party.

4. **Term and Termination:**

4.1 Subject to the provisions for early termination in clauses 4.2 and 4.3 this Agreement shall continue for the Term (namely a 12 month, 3 year or 5 year term as stipulated in the Customer Service Agreement) and thereafter unless and until terminated by either party giving to the other not less than 30 days prior written notice of termination (or, in the case of ADSL circuits, 3 months prior written notice) expiring at any time on or after the last day of the Term.

4.2 Notwithstanding clause 4.1 either party may terminate this Agreement at any time by [7 days] prior written notice of termination in the following circumstances:

4.2.1 the other party is in material breach of this Agreement and (if capable of remedy) fails to remedy such breach within 7 days of written notice to so remedy it; and/or

4.2.2 the other party suffers an Act of Insolvency; and/or

4.2.3 the Service is materially disrupted due to an event of Force Majeure continuing for more than 30 consecutive days.

4.3 Notwithstanding clauses 4.1 and/or 4.2 the Company may terminate this Agreement at any time by 7 days prior written notice of termination in the event of the Price, any Charges or any other sums due under this Agreement remaining outstanding more than 14 days after the due date for payment and/or in the event that the Company reasonably anticipates non-payment by the Customer and in each case irrespective of whether such outstanding sums are subsequently paid.

5. **Consequences of Termination:**

5.1 The Customer acknowledges that the pricing model of the Company involves provision of Company Equipment (including the cost of delivery, installation and training) without charge or at a reduced charge with the Company's income and profit derived from the Charges and other ongoing charges throughout the Term and accordingly in the event of early termination of this Agreement (except where properly terminated by the Customer in strict accordance with clause 4.2) the following provisions of this clause 5 shall apply.

5.2 The Company will be entitled to liquidated damages in accordance with the following formula:

5.2.1 average monthly invoice during the Term (up to the date of termination) x number of months remaining of the Term x 25%; or (at the sole option of the Company)

5.2.2 the Price that the Company would have charged for the Company Equipment had the Customer entered into a 12 month Term Agreement (less the Price (if any) actually paid by the Customer).

- 5.3 For the avoidance of doubt the parties agree and acknowledge that in this clause 5 and clause 6.2 the following apply:
- 5.3.1 “average monthly invoice” means the average monthly invoice raised by the Company in respect of provision of the Service (Charges) and all other related fees, costs and charges (excluding VAT) or where no invoices have been raised the Company’s reasonable estimate as to the likely level of such invoice.
- 5.3.2 “the remaining period of the Term” means the period from the date of early termination until what would have been the last day of the Term (assuming that the early termination had not occurred and appropriate notice had been given in accordance with clause 4.1).
- 5.4 The Company may agree to re-program Customer Equipment but will not be obliged to do so and will not in any event re-program Customer Equipment until such time as the Customer has paid in full all amounts due to the Company under this Agreement (including liquidated damages and any other sums arising from termination of this Agreement) or where there is, in the reasonable opinion of the Company, any continuing dispute. Any such re-programming will be without liability on the part of the Company and the terms of clause 6 shall apply.
- 6. General Exclusion and Limitation:**
- 6.1 The Company shall be under no liability whatever to the Customer for any consequential or indirect loss and/or expense (including loss of turnover and profit) suffered by the Customer arising out of a breach of this Agreement or negligence by the Company.
- 6.2 In the event of a breach of this Agreement or negligence by the Company the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of the Company exceed the Price (in respect of a 12 month Term Agreement) or 3 months x average monthly invoice (in respect of a 3 year or 5 year Term Agreement).
- 6.3 The Company shall be under no liability whatever in respect of the following which are hereby expressly excluded, except insofar as such exclusions may be unlawful:
- 6.3.1 for injury, damage of any kind or nature, direct, indirect, consequential or contingent to personal property howsoever caused;
- 6.3.2 for any costs incurred by the Customer without the prior written approval of the Company to repair, replace, or carry out any work on any of the Equipment, defective or otherwise;
- 6.3.3 for any other damage, losses, costs, (including loss of goods or any other delays, loss arising from delay or due to or incurred by way of labour supplies, substitute equipment rental, liabilities to customers and third parties and all other such losses of any nature) whether direct or indirect and whether or not resulting from or contributed to or aggravated by the default or negligence of the Company, or its servants or agents or by any defect in the Company Equipment.
- 6.4 Nothing in this Agreement shall exclude any liability for personal injury or death caused by the negligence of the Company.

6.5 The Customer may not withhold payment of any invoice for Charges or any other amount due to the Company by reason of any right of set-off or counterclaim which the Customer may have or allege to have or for any reason whatever.

7. **Warranty:**

7.1 The Company shall free of charge repair or, at the Company's option, replace defective Company Equipment where the defects appear under proper use within 12 months from the date of delivery, provided that:

7.1.1 notice in writing of the defects complained of shall have been given to the Company as soon as reasonably practicable and in any event within 7 days of their first appearance; and

7.1.2 such defects shall be found to the Company's reasonable satisfaction to have arisen solely from faulty design, workmanship or materials; and

7.1.3 the defective Company Equipment shall be returned to or made available for collection by the Company if so requested.

7.2 Any repaired or replaced Company Equipment shall be delivered by the Company free of charge to the original point of delivery but otherwise in accordance with and subject to the Conditions.

7.3 Alternatively the Company shall be entitled at its absolute discretion to refund the Price of the defective portion of the Equipment to the extent that such Price shall already have been paid by the Customer to the Company.

8. **Terms of Payment:**

8.1 Payment of the Price (for the Company Equipment) shall be made by the Customer in full on the date of the Customer's order (12 month and 3 year Term Agreements only).

8.2 Payment of the Charges (and all other sums, other than the Price, due to the Company including for additional equipment) shall be paid within 14 days of the date of invoice, time being of the essence.

8.3 Interest shall accrue on unpaid overdue amounts from the due date until payment (whether before or after judgment) at the rate of four percent (4%) per annum over the base lending rate of HSBC Bank plc calculated daily and compounded annually and such interest shall accrue notwithstanding termination of the Agreement for whatever reason.

8.4 All sums invoiced by the Company shall be subject to Value Added Tax at the prevailing rate.

9. **Force Majeure:**

The Company shall not be liable for any claims, costs, damages or other losses suffered by the Customer to the extent resulting from any failure on the part of the Company, its servants and / or agents caused by or directly or indirectly due to war, terrorism, act of any government or other competent authority, civil unrest, embargo, computer system failure, storm, fire, accident, industrial action including strikes or lockouts, acts of God, illness, prevention from or hindrance in obtaining raw materials, energy or other supplies, or any other similar cause or matter beyond the reasonable control of the Company.

10. **Rights of Third Parties:**

It is acknowledged and agreed by the Customer that this Agreement is not intended to be and shall not be enforced by any person other than the Customer under the Contracts (Rights of Third Parties) Act 1999, but this does not affect any right or remedy of a third party which exists or is available apart from the said Act.

11. **Confidentiality:**

During the Term and thereafter neither party shall disclose to any person (other than to its professional advisors where necessary) or use for any purpose (other than in order to provide the Service or as otherwise contemplated by this Agreement) any information coming to its knowledge in the course of effecting this Agreement concerning the business affairs of the other party, except to the extent that:

- 11.1 the information is in the public domain at the time of disclosure;
- 11.2 the information comes lawfully into its possession from another person otherwise than through a breach of this Agreement; or
- 11.3 the disclosure is reasonably necessary to implement the terms of this Agreement and is made to a sub-contractor, agent or assignee, who shall be bound by the same obligations of confidentiality as are the Company and the Customer.

12. **Assignment:**

- 12.1 The Customer may not assign or transfer this Agreement or any rights hereunder without the prior written consent of the Company.
- 12.2 The Company may assign or transfer this Agreement or any rights hereunder at its sole discretion. In particular, the Company may assign its right to receive payment under this Agreement and any invoice shall be payable to the assignee by the Customer in full without deduction or set-off.

13. **General:**

- 13.1 If any part of this Agreement shall be invalid, unlawful or unenforceable all of the remaining provisions shall remain in full force as if such provisions had been omitted from the original Agreement.
- 13.2 This Agreement embodies all the terms and conditions agreed between the parties relating to the provision of the Company Equipment and the Service to the Customer.
- 13.3 No waiver by either party of any failure by the other to observe or perform any provision of this Agreement shall be deemed a waiver of a preceding, succeeding or continuing breach of such provisions or of any other provisions of this Agreement.
- 13.4 Any notice given under this Agreement shall be made in writing and sent by post, electronic mail (and confirmed by post) or delivered by hand.

14. **Jurisdiction:**

This Agreement is subject to the laws of England and the non-exclusive jurisdiction of the English courts.

Without prejudice to the rights and remedies of the parties under this Agreement if any dispute or difference shall arise between the Customer and the Company, then it shall be referred to the determination of an arbitrator to be appointed by the agreement of the parties or (in default of agreement within 21 days the service upon one party of the written request to concur to such an appointment) by the President for the time being of the Chartered Institute of Arbitrators.