

AdaptiveComms Terms & Conditions

For the supply of Mobile Telecommunications for 3rd Party Networks

1. INTRODUCTION AND DEFINITIONS

1.1 The Customer understands that in order to receive the Equipment and/or Services and the Airtime Services it is required to enter into two separate agreements. These are

1.1.1 The agreement with Adaptive Communication Solutions Limited or any organisation that may succeed it as assignee of this contract hereinafter referred to as "the Company" which governs the supply of the Equipment and/or services from the Company to the Customer; and

1.1.2 The Airtime Agreement with the relevant network or service provider.

1.2 In this agreement the following words and expressions shall have the meaning set out below

1.3 "Airtime Agreement" means the agreement which governs the provision of Airtime Services from the relevant network or service provider;
"Airtime Services" means services provided by a network or service provider;
"Company" means Adaptive Communication Solutions Ltd or any organisation that may succeed it as assignee of this contract;
"Connection" means the provision of Airtime Services to an identifiable telephone number allocated to a Customer under an Airtime Agreement;
"Customer" means the legal entity ordering Equipment and/or services from the Company and/or Airtime Services whose full details are set out in the Order Form or Airtime Agreement;
"Downward Migration" means in respect of a Connection, the transfer at the request of the customer from one tariff provided by the network or service provider to another tariff provided by that same network or service provider which results in the Customer being charged a lower monthly line rental;
"Equipment" means mobile telecommunications handsets and any other item provided in consideration of the agreement;
"Minimum Term" means the minimum period of time which the Customer has agreed to maintain a Connection or connections under the Airtime Agreement;
"Order Form" means any document used to describe the services or Equipment supplied by the Company to the Customer including but not limited to emails, purchase orders, written orders, written receipts, telephone orders and verbal orders;
"Services" means any services ordered by the Customer and provided by the Company;
"Subsidy" means the sum payable by the Company to the Customer as is determined by the Company in its sole discretion, taking into consideration the number of Connections which the Customer is taking out and the applicable tariffs and the Minimum Term which the Customer is entering.

2. APPLICABLE TERMS

Unless other terms and conditions are expressly accepted by the Company by means of a specific written amendment signed by a director of the Company the supply of Equipment and/or the provision of Services will be on the terms and conditions set out in this Agreement to the exclusion of any other terms and conditions whether or not the same are endorsed upon delivered with or referred to in any purchase order or other document delivered or sent by the Customer to the Company.

3. SUPPLY OF CUSTOMER EQUIPMENT

3.1 In consideration of the Customer entering into the Airtime Agreement the Company undertakes to supply to the Customer the agreed Equipment and/or Services subject to the Customer complying with all other clauses and parts of this agreement.

3.2 The Company shall use its reasonable endeavours to deliver the Equipment on 6.7.1 the date agreed by the parties but the Customer acknowledges that time shall not be of the essence

3.3 Notwithstanding delivery and acceptance of the Equipment to the Customer, title to the same will not pass to the Customer but will be retained by the Company until all of following conditions have been met;

- Expiry of the Minimum Term of the Airtime Agreement and
- All conditions of the Airtime Agreement have been met in full and
- All conditions of this Agreement have been met in full and
- All monies due to the Company including VAT have been paid in full to the Company.

3.4 The risk in the Equipment will pass to the Customer upon delivery and the Customer will be liable for any loss or damage of the same as and from the time when Equipment is delivered to the address notified by the customer

3.5 The customer undertakes to notify the Company as to any alleged defect, shortage or discrepancy in any Equipment within 3 days of delivery of the Equipment to the Customer. In the event that the customer fails to notify the Company within this period then the Customer will be deemed to have accepted the Equipment and the Company shall have no liability to the Customer whatsoever in respect of such Equipment

4. PROVISION OF THE SERVICES

4.1 The Company shall use its reasonable endeavours to provide the Services on the dates agreed by the parties and to ensure that the services are provided with reasonable skill and care.

5. CHARGES AND PAYMENT

5.1 The Customer hereby agrees to pay the Company for each item of Equipment and any Services ordered by and provided to the Customer within 14 days from the date of a the Company's invoice.

5.2 The Company reserves the right at its absolute discretion to levy a surcharge for all credit card transactions in accordance with the Company tariff applicable from time to time, a copy of which will be available at the Company's principal place of business.

5.3 Interest at an annual rate of 8% above Barclays Bank plc base rate from time to time will accrue daily and be calculated on a daily bases on overdue amounts from the due date until payment

6. PAYMENT AND RECLAMATION SUBSIDIES

6.1 Subject to the remaining provisions of this clause 6, the Company may, acting in its sole discretion, provide the Customer with a Subsidy as a result of the Customer entering into the Airtime Agreement with the network or service provider.

6.2 In the event that the Company does provide the Customer with a Subsidy this may be provided to the Customer at the sole discretion of the Company, using the following methods set out below or any combination of them;

- Deducting the Subsidy or part thereof from the price of Equipment or Services which the Customer orders from the Company
- The payment of monies representing the amount of the subsidy either in full or in instalments to the Customer.
- Using such amount to discharge any termination charges levied upon the Customer by the relevant network or service provider for terminating their previous airtime agreement subject to the Company being provided with a copy of the relevant invoice from such network or service provider.

6.3 The value ascribed to any Subsidy under clauses 6.2(a), 6.2(b) and 6.2(c) may differ and a change from one type of Subsidy to another may change the value of the Subsidy. Any change in value shall be at the sole discretion of the Company. If a Customer wishes to convert the value of a Subsidy under 6.2(a) into monies under 6.2(b) the Company may at its discretion limit the monies payable to instalments of 25per cent of the value under 6.2(a) or £2000.00 whichever is the lower.

6.4 Any Subsidy or instalment payment of a Subsidy shall be payable by the Company after 90 days from the date that the Customer presents an invoice the Company save that no invoice shall be necessary where the Subsidy is being deducted from the price of the Equipment and/or Services ordered by the Customer pursuant to clause 6.2.a.

6.5 The Customer shall not raise the invoice pursuant to clause 6.4 until all the Connections covered in the agreement have been completed by the network or service provider and if the Customer does raise an invoice prior to this it shall be disregarded by the Company.

6.6 The Customer must raise the invoice pursuant to clause 6.4 during the Minimum Term and no later than 124 days prior to the end of their contract with the network or service provider. The Customer's claim to a Subsidy shall cease 123 days prior to the end of the Minimum Term and any claim made on or after 123 days prior to the end of the Minimum Term shall not be paid. For the avoidance of doubt, where the Customer has more than one Connection the rule will be applied to all Connections in the name of the Customer and will use the earliest Minimum Term of those Connections for the calculation of the relevant date.

6.7 The Customer acknowledges that:

- the payment of the Subsidy is conditional upon;
- the Customer maintaining each Connection for the Minimum Term; and
- the Customer not downward migrating any Connection during the Minimum Term; and
- the following suppliers having been paid all sums due in full; the network or service provider, the Company, 21st Century Network Solutions Ltd, any leasing or hire purchaser company involved in the quotation or agreement;
- such other conditions as are notified to the Customer from time to time by the Company.

6.8 The Company shall be entitled to reclaim from the Customer the value of the Subsidy already paid to the Customer or permanently withhold payment of any Subsidy to be paid to the Customer in the event that;

- a Connection is for whatever reason disconnected prior to the expiry of the Minimum Term; or a Connection is for whatever reason Downward Migrated during the Minimum Term; or the relevant network or service provider (for whatever reason) reclaims or withholds in full or in part from the Company any of the Connection commission paid to the Company by the network or service provider in respect of that Connection; or
- In the event that any action by the Customer has caused a loss of income to the Company; or
- the Customer goes into administration, receivership, voluntary agreement or ceases to trade in any way; or
- The Company at its sole discretion believes any of the situations described in 6.8 is likely to happen.

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- 6.9 In the event that a Customer cancels prior to connection, disconnects a Connection prior to the expiry of the Minimum Term or a Connection is Downward Migrated during the Minimum Term then the Company shall be entitled to charge the Customer an administration charge of £250 for each connection.
- 6.10 Any sum reclaimed pursuant to clause 6.9 shall be invoiced to the Customer and such sum shall be payable within 5 days of the date of the Company's invoice.
- 7. WARRANTIES**
- 7.1 The Customer acknowledges that the Company is not the manufacturer of the Equipment, and accordingly, that the warranty given by the Company is limited as follows. If any Equipment is proved to the reasonable satisfaction of the Company to be defective in material or workmanship then:
- 7.1.1 If the Equipment is returned to the Company within 14 days of the date of delivery then the Company will at its option (a) repair the Equipment or (b) replace the Equipment or; (c) substitute substantially equivalent goods or (d) credit the Customer in respect of any such Equipment. For the avoidance of doubt, where the Company replaces Equipment or provides substitute goods the original Equipment returned by the Customer will belong to the Company. The Customer will be responsible for the care and return of that Equipment and may be charged for any loss or damage to the Equipment whilst in the Customer's care.
- 7.1.2 The obligations set out in clause 7.1 will not apply where;
- (a) the Equipment has been altered in any way whatsoever or has been subjected to misuse or unauthorised repair; or
- (b) the Equipment has been improperly installed or connected unless the Company carried out such installation or Connection; or
- (c) the Customer has failed to observe any maintenance requirements from either the manufacturer or the Company relating to the Equipment or;
- (d) The Equipment has been expressly sold on a "no warranty" basis or in respect of any promotional items supplied from time to time or in connection with the Equipment.
- 7.2 Save as provided in this Agreement the Company hereby excludes all conditions, warranties and stipulations express or implied, statutory, customary or otherwise which but for such exclusion would or might subsist in favour of the Customer.
- 7.3 The Company will not accept any liability for incompatibility of mobile network service with any device or other Equipment used by the Customer which has not been supplied by the Company nor for any Equipment which has been supplied by the Company but which is being used for anything other than that which it was expressly intended.
- 8. Limitation of Liability**
- 8.1 Nothing in this agreement shall limit or restrict or be deemed or construed so as to limit or restrict the liability of the company or the subscriber for death or personal injury to any person caused by its negligence.
- 8.2 Subject always to the provisions of Clause 8.1 above, the total liability hereunder of the company in contract, tort or otherwise (including negligence) shall, in respect of all claims under this Agreement, not exceed the total amounts paid to the company by the subscriber under this Agreement for the 12 months immediately prior to the period in which the claim or claims are made, or £5,000 whichever is the lower amount.
- 8.3 Subject to the provisions of clause 8.1 (above). The company shall not be liable hereunder, in contract, tort otherwise (including negligence) for any indirect or consequential losses whatsoever or otherwise howsoever arising including without limitation, loss of profits, revenues, business, contacts, anticipated savings or any other indirect consequential losses whatsoever and in this Clause 8.3 "anticipated savings" means any savings that the subscriber anticipated making as a consequence (whether directly or indirectly) of entering into this agreement.
- 8.4 Where the subscriber deals as a consumer, nothing in this agreement shall affect the subscribers statutory rights.
- 9. GENERAL**
- 9.1 The Company will be entitled to assign, sub-contract or sub-let this Agreement or any part thereof. The Customer shall not be permitted to assign or sub-let this Agreement or any part thereof without the written consent of the Company.
- 9.2 Failure by the Company to enforce any of the provisions of this Agreement will not be construed as a waiver of any of its rights hereunder.
- 9.3 The Company shall be entitled to amend any of the terms of this Agreement upon the giving of 7 days written notice to the Customer.
- 9.4 In relation to all obligations of the Customer under this Agreement, the time of performance is of the essence.
- 9.5 The illegality, invalidity or unenforceability of any clause or part of the Agreement will not affect the legality, validity or enforceability of the remainder. If any such clause or part is found by any competent court or authority to be legal, invalid or unenforceable the parties agree that they will substitute provisions in a form as similar to the offending provisions as is possible without thereby rendering them illegal, invalid or unenforceable.
- 9.6 Each of the parties hereto is an independent contractor and nothing contained in this Agreement shall be construed to imply that there is any relationship between the parties or partnership or of the principal/agent or of employer/employee.
- 9.7 The legal construction of these clauses shall not be affected by their headings which are for convenience of reference only.
- 9.8 Any demand, notice or communication shall be deemed to have been duly served.
- 9.8.1 If delivered by hand, when left at the proper address for service
- 9.8.2 if given or made by prepaid first class post, 48 hours after being posted (excluding Saturdays, Sundays and public holidays)
- 9.8.3 If given or made by fax at the time of transmission subject to receipt of the appropriate "clear" transmission report provided that
- 9.8.4 where in the case of delivery by hand or transmission by fax such delivery or transmission occurs either after 4.00 p.m. on a Business Day service shall be deemed to occur at 10:00 a.m. on the next following Business Day. For the purpose of this clause a "Business Day" is a day when the English banks are open for a full range of banking transactions. Any demand, notice or communication shall be made in writing or by fax addressed to the recipient as its registered office or its address stated in this Agreement.
- 9.9 No variation of this Agreement may be made unless set out in writing and signed by a director of the Company.
- 9.10 This agreement shall be governed by the English law and the parties submit to the exclusive jurisdiction of the English Courts.
- 9.11 Non-Solicitation. During the term of this Agreement and for 36 months after any termination of this Agreement, the customer will not, without the prior written consent of the AdaptiveComms, either directly or indirectly, on the customer's own behalf or in the service or on behalf of others, solicit or attempt to solicit, divert or hire away any person employed by the AdaptiveComms.
- 9.12 You shall indemnify 21st Century Network Solutions Ltd and Adaptive Communication Solutions Limited against all costs, damages, expenses and losses and reasonable professional costs and expenses suffered or incurred by 21st Century Network Solutions Ltd and Adaptive Communication Solutions Limited arising out of or in connection with breach by you or other act or omission by you under or in relation to this agreement.
- 10. COMPLAINTS**
- 10.1 The Company endeavours to provide the best possible customer service. If however you are not satisfied with us for any reason please let us know. We will try and resolve your concern as soon as possible to our mutual satisfaction. You can always ask to speak to a manager who will try and resolve the issue but if you remain unsatisfied you are free to make a formal complaint in writing which will be dealt with formally. If you are not happy with the way we deal with any complaint and you want to take court proceedings, you must do this in England.