

General Terms and Conditions for the Supply of Telephony/IP Services by Shimmer Telecom Ltd.

1. DEFINITIONS AND INTERPRETATIONS

1.1 In this Agreement the following terms shall have the following meanings:

“Act” means the Telecommunications Act 1984 and amendments to the Act that may be made from time to time.

“Agreement” means the agreement between the Service Provider and the Subscriber for the supply of Network Services incorporating these terms and conditions and the Order Form.

“Connection Date” or “live date” means the date when the Service Provider is in a position to and has agreed to commence provision of the Network Service to the Subscriber.

“Number Translation Service” means any telecommunications service provided by Shimmer Telecom Limited which commences with a non-geographic code requiring translations for onward routing to the Subscriber and including services such as 0800 freephone, 0845 local rate, 0870 and 0871 national rate and premium rate telephone call facilities.

“Telephony/IP services” means installation, transfer, rental of PSTN or ISDN lines, SIP or Hosted IP connections, or per minute access to network capacity, telephony or IP based, as is required to complete voice telephone calls and data transmission domestically or internationally via the public switched telephone network, or via IP networks, by the Service Provider to the Subscriber.

“Order Form” means Shimmer Telecom Business Order Form(s) which sets out details of the Service Provider, the Subscriber and the services being provided.

“Service Provider” means Shimmer Telecom Limited, by whom this Agreement is made and the expression “Service Provider” includes the Service Provider's permitted assignees, employees and agents.

“Subscriber” means the person, firm or company specified on the Shimmer Telecom Order Form(s) with whom this agreement is made and includes where relevant the Subscriber's permitted assignees, employees and agents.

“Subscriber Details” means the service numbers of lines to be connected to the Network Services.

2. SUPPLY OF NETWORK SERVICES

The Service Provider undertakes to use all reasonable endeavours to supply the Network Services to the Subscriber as and from the Connection Date subject to and on the terms of this Agreement. All services and agreements are supplied subject to, and compliant with all relevant Ofcom rulings. Product specific Terms & Conditions are available on our website www.shimmertelecom.co.uk or by request from Shimmer Telecom.

3. DURATION/TERMINATION

This Agreement shall come into full force and effect from the date on the order form or the date the service goes 'live' whichever is the later, and shall continue for a period of twelve months thereafter, unless otherwise specified on the Order form. Where applicable, in line with Ofcom regulations, failure to give written notice of agreement cancellation/termination one month before the end date of the agreement will automatically roll the agreement over into another 12 month period. In the event of subscriber cancellation without the service provider's prior agreement during the initial period of this agreement, or any follow on

period, the service provider will charge the subscriber for any outstanding contract period using an average of the subscriber's monthly invoices to the date of cancellation to calculate the penalty. This penalty applies only in cases of unilateral subscriber cancellation, and covers both voice traffic and monthly service rental. Throughout the term of the agreement cessation of traffic by the subscriber or appointment of a new service provider for lines or to carry traffic on the telephone numbers covered by this agreement, will be viewed as de facto cancellation and will incur the penalties outlined above. In addition any subscriber who has had a free or reduced rate install and cancels in their initial contract term will be liable to repay the full cost of that installation.

4. CONDITIONS OF USE OF NETWORK SERVICES

The Subscriber agrees and undertakes:

4.1 to use the Network Services in accordance with such conditions as may be notified to it in writing by the Service Provider from time to time.

4.2 not to contravene the Act or any other relevant regulations or licences granted thereunder.

4.3 not to use the Network Services to communicate any material which is intended to be a hoax call to emergency services or is of a criminal, defamatory, offensive, abusive, obscene or menacing character.

4.4 not to use the Network Services in a manner which constitutes a violation or infringement of the rights of any other party.

4.5 to provide the Service Provider with all such information as it reasonably requests relating to the Subscriber's telecommunications apparatus.

4.6 The Subscriber shall indemnify the Service Provider against all liabilities, claims, damages, losses and expenses arising from the use by the Subscriber (or any unauthorized user) of the Network Services in breach of this Agreement.

4.7 This clause 4.7 shall apply to the Number Translation Service.

4.7.1 The service provider shall be entitled for operational or technical reasons or in order to comply with any numbering scheme or other obligation imposed on the Service Provider by the Licencors or by any other competent authority to withdraw or change any telephone or code (or group thereof) allocated to the Subscriber as part of the Number Translation Service PROVIDED THAT the service provider gives the Subscriber the maximum period of notice in writing thereof practicable in the circumstances.

4.7.2 The Subscriber acknowledges and agrees that any Number Translation Service including any telephone numbers provided as part of that service shall only be provided by the Service Provider and available for use by the Subscriber for the duration of this Agreement.

5. ACCESS TO PREMISES AND PROVISION OF INFORMATION

5.1 The Customer will notify the Supplier immediately of any illegal, fraudulent or unauthorised use of the Services. On receipt of such a notice, the Supplier shall use reasonable efforts to suspend or prevent further such use by the Unauthorised Third Party, such use being subject to clause 7.7 below.

5.1.1 The Subscriber shall permit or procure permission for the Service Provider and any other person(s) authorised by the Service Provider to have reasonable access to its premises and its telephone system and other equipment and shall provide such reasonable assistance as the Service Provider requests.

5.1.2 The Service Provider will normally carry out work, by appointment and during normal working hours but may request the Subscriber to provide access at other times but such requests shall not oblige the Subscriber to provide such access.

5.2 At the Subscriber's request, the Service Provider may agree to work outside normal working hours and the Subscriber shall pay the Service Provider's reasonable charges for complying with such a request.

5.3 If the Subscriber requests maintenance or repair work which is found to be unnecessary, the Subscriber may be charged for the work and the costs incurred. The Service Provider will give notice that work is considered unnecessary prior to completion and raising charges.

6. SUSPENSION OF SERVICE

6.1 The Service Provider may at its sole discretion elect to suspend forthwith provision of the Network Services until further notice without compensation having given the Subscriber as much notice as is reasonable under the circumstances either orally (confirming such notification in writing) or in writing in the event that:

6.1.1 The Subscriber is in breach of a material term of this Agreement including for the purposes of this Agreement its failure to pay charges to the Service Provider on the due date.

6.1.2 the Service Provider is obliged to comply with an order, instruction or request of the Government, an emergency services organisation or other competent administrative authorities.

6.1.3 the Service Provider is informed or suspects (as per clause 5.1) that the Network Services are being used fraudulently, or in a manner contrary to the conditions in Clause 4.

6.2 The Subscriber shall reimburse the Service Provider for all reasonable costs and expenses incurred by the implementation of such suspension and/or the recommencement of the provision of the Network Services as appropriate, but only where the suspension is implemented as a consequence of breach, fault or omission of the Subscriber.

6.3 Rental will continue to accrue during any period of suspension, and a reconnection fee of £99 per line or channel (ex VAT) will be charged to restart service.

7. LIABILITY

7.1 Nothing in this Agreement shall exclude or restrict the Service Provider's liability for death or personal injury resulting from the negligence of the Service Provider or of its employees while acting in the course of their employment with the Service Provider.

7.2 Neither party shall be liable to the other in contract, tort or otherwise for any loss of business, contracts, anticipated savings or profits or for any other indirect or consequential loss whatsoever.

7.3 The Service Provider's liability in contract, tort or otherwise arising out of or in connection with the performance of its obligations under this Agreement shall be limited to £1 million for any one incident or series of incidents and £2 million in aggregate.

7.4 The Service Provider shall not be liable to the Subscriber for any breach of any provision of this Agreement caused by any reason outside the control or responsibility of the Service Provider including without limitation the failure of any third party public telecommunications operator or network carrier to provide network capacity (or any element thereof) to the Service

Provider on which it was reliant for the purposes of this Agreement (whether in breach of contract or otherwise) any Act of God, inclement weather, failure or shortage of power supplies, flood, drought, lightning or fire, strike, lock-out, trade dispute or labour disturbance, any act or omission of Government, highways authorities, or other competent authorities.

7.5 The Service Provider shall not in any event be liable to the Subscriber for any indirect, consequential or incidental loss or special damages howsoever arising or for any loss of revenue, business, anticipated savings or profits and the Subscriber shall indemnify and keep the Service Provider indemnified against any claims and expenses arising out of the foregoing.

7.6 For the avoidance of doubt, the Service Provider shall not in any event be liable to the Subscriber or any third party for any claims, liabilities, damages, costs or losses, whether direct or indirect, or for any loss of revenue, business, anticipated savings or profit arising in connection with the failure of the Subscriber to comply with any or all of its obligations under this Agreement.

7.7 The subscriber shall be solely responsible for the security of their Telecommunications equipment, and will be liable for all call traffic originating from that equipment, by the subscriber or any third party, authorized or not. The service provider will not be liable for any call traffic made from the subscriber's equipment which is due to subscriber equipment security breach or failures. The subscriber is solely responsible for setting and maintaining robust and appropriate security measures on their equipment, such as complex random passwords, regular security checks and scans.

8. CHARGES AND PAYMENTS

8.1 The Subscriber shall be invoiced monthly by the Service Provider and agrees to pay charges, by Direct Debit, within 14 days of receipt of invoice. Line and service rental charges will be payable monthly in advance, usage charges in arrears.

8.2 Usage charges will be as detailed in the Service Provider's price list, and will cover all calls made from the subscriber's equipment.

8.3 The Service Provider shall have the right to alter charges in the Service Provider's price list, by giving the Subscriber not less than 28 days' notice, in writing or by publishing the details at www.shimmertelecom.co.uk.

8.4 Usage charges payable shall be calculated by reference to data recorded or logged by or on behalf of the Service Provider and not by reference to any data recorded or logged by the Subscriber.

8.5 The Service Provider reserves the right to charge daily interest on amounts outstanding 14 days after invoice until payment in full is received, at a rate equal to 4% per annum above the Lloyds TSB Bank Plc Base Lending Rate as current from time to time, whether before or after judgement. Interest shall continue to accrue notwithstanding termination of this Agreement. Re-present of any failed DD will also incur a £5 re-present fee

8.6 All sums referred to in this Agreement are exclusive of Value Added Tax and any taxes of a similar nature which may from time to time be introduced.

8.7 Payment of all sums due to the Service Provider shall be made without any set-off whatsoever.

9. EARLY TERMINATION

9.1 This Agreement may be terminated forthwith by the Service Provider either orally (confirming such notification

in writing) or in writing if there is a material or persistent breach by the Subscriber of any of the Subscriber's obligations under this Agreement (including, without limitation, non-payment of charges due) and in the case of breaches which are capable of remedy the Subscriber fails to remedy the same within 7 days of such notice.

9.2 Notwithstanding anything to the contrary expressed or implied in this Agreement, either party (without prejudice to its own rights) may terminate this Agreement forthwith in the event that a liquidator (other than for the purpose of amalgamation or reconstruction), trustee in bankruptcy, administrator or receiver and manager is appointed in respect of the whole or part of the assets of the Subscriber, or the Subscriber enters into an arrangement or composition with its creditors, or other circumstances arise which entitle a court or creditor to appoint a receiver or administrator or to make a winding up order.

9.3 If the Subscriber wishes to cancel this Agreement in whole or in part prior to the Connection Date the Service Provider will agree to accept such cancellation upon written notice on the basis that the Subscriber shall reimburse to the Service Provider any outstanding charges, including, where relevant, installation charges: (i) cancellation 1-5 working days prior to notified install date 90% of full install charge (ii) cancellation 5-14 days prior to notified install date 65% of full install charge

10. ASSIGNMENT

The Service Provider may, but the Subscriber shall not (without the prior written consent of the Service Provider such consent not to be unreasonably withheld or delayed), assign or delegate or otherwise deal with all or any of its rights or obligations under this Agreement.

11. GENERAL

11.1 This Agreement supersedes all other agreements and representations made by either party, whether oral or written. This Agreement may be modified upon the Service Provider giving to the Subscriber not less than 30 days prior written notice thereof.

11.2 Failure by either party to exercise or enforce any right conferred by this Agreement shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof or of any other right on any later occasion.

11.3 By signing the Order Form the Subscriber thereby agrees to the total exclusion of all its (the Subscriber's) terms and conditions of business from this Agreement.

11.4 Any notice, invoice or other document which may be given by either party under this Agreement shall be in writing (except as provided otherwise) and shall be deemed to have been duly given if **addressed to** the party to which it is to be given and if left at or delivered by pre-paid recorded delivery mail or facsimile (provided that such facsimile is then confirmed by pre-paid mail) to that party's address as shown on the Order Form or in either case at such other address as has been notified by one party to the other.

11.5 This Agreement shall be governed by and construed and interpreted in accordance with English law, and the parties hereby submit to the jurisdiction of the English courts.

11.6 Any director or representative of a limited company who signs on behalf of the Subscriber will be deemed an authorised signatory and thereby guarantee the Subscriber's acceptance of its obligations under this Agreement.

11.7 Any terms that would be implied herein by statute or common law shall be excluded to the fullest extent permitted by law.

11.8 It is the Subscriber's responsibility alone to ensure they are not in a legally binding contract with another provider of services which they contract to have supplied by Shimmer Telecom. Any cancellation fees, early termination charges, or other fees, penalties or charges that are incurred as a result shall be the sole responsibility of the subscriber.

Shimmer Telecom Terms & Conditions 2014

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