

# General Terms and Conditions for the provision of telecommunications Connections or Services

## 1 Definitions

1.1 In these conditions (unless the context otherwise requires):

**"Acts"** means the Telecommunications Act 1984 and the Communications Act 2003 and any amendments, modifications, re-enactments or replacements of the Acts that may be made from time to time;

**"Contract"** means the contract between you and us for the provision of the Connection or Services;

**"CCS Network"** means Connection or Services provided to you on the CCS Telecom network or the public switched telecommunications network;

**"Recurring Charges"** includes line and data circuit rentals, Connection or Service fees and any other fees which are charged monthly as part of the Connection or Service;

**"Connection or Services"** means the telecommunications Connection or Services to be supplied by us pursuant to the Contract;

**"we", "us" and "our"** means CCS Mobile Ltd and its successors in title and assigns from time to time; and **"you" and "your"** means the individual, partnership, limited company or other legal entity with whom the Contract is made, its successors in title and assigns.

**"Connection or Service Commencement Date"** means the date set out in the contract in respect of each Connection or Service, or where no date is specified means the earlier of:

1. The date such Connection or Service is available for use by the customer; or
2. The date the customer first uses a Connection or Service; or
3. The date in which equipment is ordered and provisioned in preparation for installation

**"Minimum Contract Period"** means the term of the agreement as stated on the contract; in the event no term is listed the minimum term of 12 months would apply.

**"Customer"** means the end user / client for whom the contract has been agreed

1.2 Words in the singular shall include the plural and vice versa and references to one gender shall include the others.

1.3 The headings in these conditions are intended for reference only and shall not affect their construction.

## 2 General

2.1 These conditions shall apply to the Contract to the exclusion of any other terms and conditions contained or referred to in any order, letter, form of contract or other communication and the provisions of these conditions shall prevail unless expressly varied in writing and signed by a director on the behalf of CCS. Where CCS specifically agree terms with the customer in writing those terms shall prevail over any conflicting terms in these conditions.

2.2 Any waiver of the rights of CCS under these conditions applies only to the circumstances for which it is given. Any failure or delay by CCS in exercising any right or remedy under these conditions or at law shall not constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise.

2.3 If any provision of these conditions is found to be invalid, illegal or unenforceable, that provision shall be deemed not to form part of these conditions, and the validity and enforceability of the other provisions shall not be affected.

## 3 The Connection or Service Provision

3.1 CCS undertake to provide the customer with the Connection or Services in accordance with these conditions using reasonable skill and care. Except as otherwise provided in these conditions all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

3.2 If appropriate, the customer authorises CCS, agents of CCS, employees or other authorised personnel, to reprogram and/or install access equipment on your premises, in order to provide the Connection or Services.

3.3 If required, the customer will give consent to CCS obtaining details of any incompatible equipment from their current telecoms Connection or Service providers or the owners of such equipment.

3.4 Unless otherwise agreed in writing, equipment CCS install/supply at the customer premises shall remain the property of CCS, and/or the Leasing Company and the customer shall not obtain any rights or title to it. The customer is responsible for ensuring that all equipment is returned to CCS, or the Leasing Company in good condition. If the equipment becomes damaged or unusable (unless damaged by CCS or it becomes faulty) the customer agrees to meet the reasonable costs for replacement or repair of the equipment.

3.5 All times, dates and periods given for performance of the Connection or Services are given in good faith and are estimates only, CCS shall not be liable for failure to meet such estimates.

3.6 The customer acknowledges that if (in respect of telecommunication Connection or Services) the Connection or Services and equipment are fully operational, 999/112/101/111 public emergency calls can be accessed. However, the customer acknowledges that if there is a Connection or Service interruption or power failure for any reason, such outage or failure may prevent access to these numbers, and therefore accepts that they should always maintain alternative means of accessing 999/112/101/111 emergency Connection or Services.

3.7 For Connection or Services provided through Hosted technology, the customer acknowledged that if the broadband connection fails, the voice Connection or Service will also fail. The Connection or Service may cease to function if there is a power cut or failure and these failures may be caused by reasons outside of the control of CCS.

3.8 The summary of overall costs is a guide line only, and could increase or decrease dependant on additional Connection or Services and market place price fluctuations.

3.9 The customer acknowledges that CCS is entirely dependent on its suppliers in relation to the quality of Connection or Services, including line clarity and call interference, availability to the networks and the extent of Connection or Service coverage. CCS cannot be held liable in the event of a Connection or Service failure arising from any network or connection infrastructure including equipment.

3.10 Where a customer requests additional Connection or Services, these will be subject to additional charges to CCS as agreed with CCS and be subject to any applicable contract term.

3.11 CCS will provide the level of Connection or Service set out in the contract throughout each minimum period for the charges set out in the contract.

3.12 In respect of 3.11 the customer acknowledges that the charges for Connection or Service care do not include work necessary to repair or reinstate the equipment where loss of damage has occurred.

## 4 Length of the Contract

4.1 The Contract shall come into force on and with effect from the **"Connection or Service Commencement Date"** for each Connection or Service and shall continue to be supplied for the minimum period of 12 months or as stated on the contract.

Thereafter, the Contract may be terminated by giving us written notice terminating the Contract no less than 30 days prior to expiry of the **"Minimum Contract Period"**. You may terminate the Contract early on payment of early termination fee set out in condition 4.2.

4.2 (a) Landline: The early termination fee is an amount equal to: (a) 50% of the total amount of Recurring Charges that would be paid until the end of the **"Minimum Contract Period"** plus; (b) 50% of the average monthly call spend until the end of the **"Minimum Contract Period"**.

(b) Mobile: The early termination fee is an amount equal to the amount of recurring rental for the remainder of the term.

4.3 Where Installation was provided free of charge as part of the agreement, CCS reserve the right to re-coup these charges, should the agreement be terminated prior to the **"Minimum Contract Period"**.

4.4 If CCS are unable to provide a Connection or Service which is the subject of the contract for any reason then this shall not entitle the customer to terminate the provision of any other Connection or Services that are the subject of the contract.

## 5 Customers use of the Connection or Services /Responsibilities

5.1 The customer acknowledges that provision of specific telephone numbers in respect of telecommunication Connection or Services is not guaranteed until connection to the relevant network is completed and the provision of the Connection or Service has commenced. The customer also acknowledges that it does not own any telephone number provided by the network. CCS shall not be liable for any costs incurred by the customer in respect of such telephone numbers prior to commencement of the relevant Connection or Service including (but not limited to) the use of such telephone numbers in advertising or promotional matters, or directories.

5.2 Where the customer has requested that its existing numbers or other telecommunications Connection or Services be ported or migrated from an alternative network, the customer shall be responsible for obtaining a PAC (Port Authorisation Code) and/or MAC (Migration Authorisation Code).

5.3 The customer undertakes not to contravene the Acts or any other relevant regulations or licenses regarding the provision and use of the Connection or Services particularly, and telecommunications Connection or Services generally.

5.4 The customer is responsible for terminating their existing agreement with the current supplier, and for the payment of any termination fee where applicable, unless otherwise agreed and stated within the contract.

5.5 The customer shall ensure that their telecommunications equipment shall at all times conform to the relevant standard or standards (if any) for the time being designated under the Acts and CCS shall not be under any obligation to connect or keep connected any of the customers equipment if it does not conform or if in our reasonable opinion it is liable to cause death, personal injury or damage to property or impair the quality of any of the Connection or Services, or any other Connection or Services, CCS provide or to put CCS in breach of their obligations to any third party. You shall also comply with all relevant statutes, regulations or other legislation in force from time to time.

5.6 The customer undertakes to use the Connection or Services in accordance with the Acts, and any licence granted thereunder. The customer further undertakes not to use the Connection or Services:

- (a) as a means of communication for a purpose other than that for which the Connection or Services are provided;
- (b) for the transmission of any material which is defamatory, offensive or of an abusive or obscene or menacing character or is of a nature which if transmitted would constitute a criminal offence or would infringe the rights of any third party including but not limited to contractual rights and intellectual property rights; or
- (c) for any purpose which CCS may notify to the customer from time to time by reason of any relevant legislation which comes into force.

5.7 The customer shall indemnify CCS, and keep CCS indemnified, from all losses, fines, damages, claims, costs and expenses suffered or incurred by CCS arising from or in connection with the customers use of the Connection or Services in breach of the provisions of this condition 5 or in breach of any other provision of the Contract.

5.8 The customer acknowledges that CCS shall have no liability where any inability to use the Connection or Services is due to incompatibility between the customers equipment and the equipment or Connection or Services, or for any loss or damage arising directly or indirectly from the use of the customers equipment whether or not the supplier shall have recommended the use and/or performance of such customer equipment.

5.9 The customer agrees and accepts that the provision of telecommunications Connection or Services are not guaranteed to be fault free, and that optimal Connection or Service provision will only be achievable by using the equipment provided (or otherwise recommended) by the supplier in the manner recommended by the supplier.

5.10 CCS shall not be responsible for any charges relating to Connection or Services as a result of fraudulent activity either by the customer or a 3<sup>rd</sup> party. The customer agrees to pay for all charges arising from such fraud.

## 6 Access to premises and provision of information

6.1 To enable CCS to perform our obligations under the Contract the customer shall permit or procure permission for CCS, CCS agents, employees and any other authorised persons to have access to the customer premises (and any equipment located there) the customer shall provide such reasonable assistance and information as CCS shall request from time to time. Access will usually be arranged by appointment.

6.2 If the customer requests maintenance or repair work which is found to be unnecessary or report a fault with the CCS Connection or Service, but the fault turns out to be with the customer equipment or the equipment of a third party, the customer may be charged for that work and the reasonable costs CCS incurred in doing that work or investigating that fault. Where possible, CCS will give notice that work is considered unnecessary prior to the completion of the work.

## 7 Suspension of Connection or Service

7.1 CCS may at their sole discretion upon giving the customer written notice elect to immediately suspend the provision of the Connection or Services to the customer until further notice (without compensation) if:

- (a) breach of any term of the Contract has occurred;

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- (b) CCS are obliged to comply with an order, instruction or request of the UK Government, an emergency Connection or Services organisation or other competent administrative authority; or
- (c) the customer has failed to pay when due any amounts due to CCS under the Contract.
- 7.2 Where CCS suspend the Connection or Services as a consequence of the customers breach, the customer shall reimburse CCS for all reasonable costs and expenses incurred implementing such suspension or recommending the provision of the Connection or Services, or both.
- 7.3 If CCS exercise their right to suspend the Connection or Services this shall not restrict the right to terminate the Contract.
- 7.4 CCS reserves the right to claim interest and compensation for debt recovery costs under the late payment or commercial debts (interest) act 1998 and the late payment of commercial debts regulations 2002.
- 7.5 In addition to rights of CCS as stated in condition 7.4, any default in payment will be subject to a late penalty fee per invoice, and will be included in the customer's next invoice.
- ## 8 Liability and Limitation
- 8.1 Nothing in these conditions excludes or restricts the liability of CCS for: (a) death or personal injury resulting from the negligence of CCS; (b) fraud or fraudulent misrepresentation; (c) breach of the condition as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Connection or Services Act 1982; or (d) any other matter for which liability cannot be excluded or restricted under law.
- 8.2 In the event that the Connection or Services fail and the customer's calls are diverted to another carrier, CCS shall not be obliged to pay any charges incurred by the customer with that carrier.
- 8.3 Nothing in these conditions shall impose any liability upon CCS in respect of non-performance or the non-performance of the Connection or Services in accordance with the Contract where such non-performance is as a consequence, whether directly or indirectly, of the customer's acts, omissions, negligence or default.
- 8.4 Subject to condition 8.1, CCS shall not be liable to the customer for loss of profit, loss of revenue, loss of business, depletion of goodwill and/or similar losses, loss of anticipated savings, loss of contract, loss of use, loss or corruption of data or information (in each case whether the same is direct, indirect or consequential) or any special losses, costs, damages, charges or expenses.
- 8.5 Subject to condition 8.1, our total liability in contract, tort (including negligence or breach of statutory duty) misrepresentation, restitution or otherwise to you arising in connection with the performance, or contemplated performance, of the Contract shall be for direct loss only and shall be limited to, and in no circumstances shall exceed, a sum equal to one (1) month's billing for the Connection or Services by CCS to the customer based on the average billing for the Connection or Services over the previous three (3) months or, if the Connection or Services commenced within three (3) months of the date of the claim concerned, since the commencement of the Connection or Services.
- ## 9 Charges and payment
- 9.1 Unless otherwise agreed by a director of CCS in writing, the customer agrees to pay for the Connection or Services by direct debit mandate within 14 days of the date of our bill, such bill to be rendered once in each calendar month. If CCS agree with the customer to accept payment by cheque CCS reserve the right to make a reasonable monthly handling charge to defray our additional costs.
- 9.2 CCS reserve the right to terminate the customer's use of the Connection or Services without notice upon rejection of any direct debit mandate or payment or if the customer's bank (or its agent or affiliate) notices return of payments previously made to CCS, or an agent of CCS, when CCS, in good faith, believe the customer is liable for the charges. Such rights are in addition to and not in lieu of any other legal rights or remedies available to CCS.
- 9.3 The customer shall pay the price for the Connection or Services as set out in the quotation or tariff. CCS shall be entitled to decrease prices at any time, such decrease to apply to all Connection or Services provided after the date of the decrease and to be reflected in the next bill. CCS shall be entitled to increase charges at any time provided that 30 days written notice has been provided. Without limitation such notice may be contained in billing information provided to the customer. The customer may terminate the contract within 30 days of being notified, by providing 30 days written notice and would not be held to the "Minimum Contract Period" or be liable for termination charges.
- 9.4 CCS shall prepare and send bills for telephone call charges each calendar month in arrears or in such other form and manner as shall be determined by CCS. Call charges payable shall be calculated solely by reference to data recorded or logged by CCS whether or not the Connection or Services have been used by the customer or with the customers authority and irrespective of any fraud and such data shall, in the absence of manifest error, be final and binding.
- 9.5 CCS shall bill you monthly in advance for recurring charges and any other network or ancillary Connection or Services for which the customer has contracted with CCS.
- 9.6 The time of payment shall be of the essence of the Contract.
- 9.7 Without prejudice to any other rights CCS may have, CCS are entitled to claim interest on overdue invoices under the Late Payment of Commercial Debts (Interest) Act 1998.
- 9.8 If it is necessary for CCS to send correspondence to the customer in order to obtain payment for overdue accounts, CCS reserve the right make a charge of £20 per letter sent to the customer.
- 9.9 All sums referred to in the Contract are exclusive of value added tax and any other taxes of similar nature which may from time to time be introduced which shall (if applicable) be charged and are payable by the customer in the same manner as the usage charges.
- 9.10 The price for the Connection or Services shall be due in full to CCS in accordance with the terms of the Contract and the customer shall not be entitled to exercise any set-off, lien or any other similar right or claim.
- ## 10 Termination of the Contract
- 10.1 Notwithstanding any other provision of these conditions, CCS (without prejudice to our other rights) may terminate the Contract with immediate effect by giving you notice in writing, in the event that:
- (a) the customer is in breach of any provision of the Contract and (where such breach is remediable) the customer fails to remedy that breach within 14 days of a written notice specifying the breach;
- (b) the customer is subject to any form of bankruptcy or insolvency proceedings, including, taking steps towards bankruptcy, becoming insolvent, making any composition or arrangement with the customer creditors or making an assignment for their benefit, or having any execution, distress or seizure of your assets;
- (c) any licence under which the customer has the right to run their telecommunication system and connect it to the CCS system is revoked, amended or otherwise ceases to be valid; or
- (d) the customer fails to make any payment when it becomes due to us.
- 10.2 The customer shall be deemed to have terminated the Contract if during the period of the Contract they switch all or part of the call traffic or line rental provision or Connection or Services from CCS to another telecoms provider.
- 10.3 On termination of the Contract for any reason the customer must pay CCS any outstanding charges for the Connection or Services up to the date of termination plus any other amounts that may apply as per clause 4.2 and 4.3
- ## 11 Matters beyond reasonable control
- 11.1 Neither CCS nor the customer shall be liable to the other for any loss or damage which may be suffered by the other due to any cause beyond its reasonable control including without limitation any act of God, inclement weather, failure or shortage of power supplies, flood, drought, lightning or fire strike, lock out, trade dispute or labour disturbances, any act or omission of Government, highways authorities, other public telecommunication operators or other competent authority, or production or supply Connection or Services of third parties.
- ## 12 Representations
- 12.1 No statement, description, information, warranty, condition or recommendation contained in a catalogue, price list, advertisement or communication or made verbally by any CCS agent or employee shall be construed to enlarge, vary or override in any way any of these conditions.
- ## 13 Assignment
- 13.1 The customer shall not assign or delegate or otherwise deal with all or any of their rights or obligations under the Contract without prior written consent of CCS.
- ## 14 Data protection
- 14.1 Both parties agree to comply with their respective obligations under the Data Protection Act 1998 and related regulations and obtain and maintain all relevant notifications and consents.
- 14.2 The customer acknowledges and agrees that CCS may put their name and other details obtained from the customer into a computerised directory for internal use and for the purposes of providing the Connection or Services.
- ## 15 Dispute Resolution
- 15.1 Any disputes between the parties arising out of or in connection with the contract shall in the first instance be considered by representatives of CCS and the customer having authority to resolve such dispute, and failing a resolution of such dispute CCS and the customer shall seek to resolve such dispute by reference to an agreed mediation procedure, provided always this in the event of a failure to agree the terms of mediation, either party shall have the right to refer such dispute to the ordinary court process.
- 15.2 If the dispute cannot be resolved in accordance with condition 15.1 within 12 weeks of the customer raising the Dispute with CCS, then the customer may refer the matter to:
- (a) The Telecommunications Ombudsman, via the website [www.otelo.org.uk](http://www.otelo.org.uk) or by telephone on 08450501614
- (b) Ofcom, the communications regulator via the website [www.ofcom.org.uk](http://www.ofcom.org.uk), or by telephone on 02079813040 or 03001233333
- 15.3 The contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the law of England and Wales.
- 15.4 Subject to condition 15, the parties irrevocably agree that the courts of England and Wales shall have exclusive Jurisdiction to settle any dispute or claim that arises out of, or in connection with, the contract or its subject matter or information (including non-contractual disputes or claims)
- 15.5 Condition 15.4 is for the benefit of the supplier only and as a result the supplier shall not be prevented from Taking proceedings in any other courts with jurisdiction, whether concurrently or not.
- ## 16 Miscellaneous
- 16.1 The Contract represents the entire understanding between the customer and CCS in relation to the subject matter hereof and supersedes all other agreements and representations made by either the customer or CCS, whether oral or written.
- 16.2 Failure by either the customer or CCS to exercise or enforce any right conferred by the Contract shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof of any other right on any later occasion.
- 16.3 All equipment which is supplied by CCS will remain our property until paid for in full.
- 16.4 All equipment is ordered on completion of site survey, initiating the 'Connection or Service Commencement date' should the customer wish to cancel prior to the installation of the equipment they will be subject to a re-stocking fee equating to 25% of the invoice value or FULL price of bespoke equipment.
- 16.5 ALL subsidies, technology funds, credits and any other benefits issued by CCS are held by CCS in order to supply associated hardware whilst the Customer remains under the management of CCS which will correspond directly with the tenure and dates of the associated mobile phone airtime contract. If the Customer terminates or cancels the contract before the termination date or enters into any formal liquidation, or for whatever reason ceases the Management relationship with CCS, all technology funds and or devices which had been subsidised and supplied for the purpose of the contract and associated with the contract, remain the property of CCS.
- 16.6 Any notice, bill or other document which may be given by either the customer or CCS under these conditions shall be deemed to have been duly given if left at or sent by first class post to the other's usual or last known place of business and such notice shall be deemed to be served immediately if left at the address for notice or 48 hours after posting if posted as aforesaid.
- 16.7 The Contract shall be governed by and construed and interpreted in accordance with English law and the parties hereby submit to the exclusive jurisdiction of the English courts.