

# Telnet Standard Terms & Conditions (Sales Order)

## 1.1 Introduction

These terms and conditions govern the basis we, Telnet Limited ("Telnet"), will provide to you ("You"), the customer named in the Network Services Agreement. The term "Services" means provision of (i) the telecommunication services set out in the Network Services Agreement and/or (ii) Equipment and also, includes (iii) any other services You request and Telnet agree to provide during the continuation of this Agreement.

1.2 Where you have indicated on the Network Services Agreement that such agreement is to be a "Master Agreement" these terms and conditions govern not only the telecommunications and Equipment mentioned in the Network Services Agreement but also, without the need for further reference, all other services and Equipment that may be supplied by Telnet to You whether provided prior to, or following, the date of the Network Services Agreement.

1.3 The term "Equipment" means the equipment and/or machinery required to enable telephone communication services to be provided by Telnet to You, or any other equipment and/or machinery You have requested Telnet to provide in conjunction with the provision of telecommunication services, as set out in the Network Services Agreement or mentioned in any correspondence between You and Telnet either prior to or following the date of the Network Services Agreement, and (but without limitation) includes telecommunication cable(s) and/or telecommunication machinery, and any computer hardware or software. The term "Equipment" includes all Equipment whether provided on loan by Telnet to You or whether subject to any additional rental charge.

1.4 All telecommunication services are supplied utilising the telephone lines, cabling, equipment and machinery of such third party telecommunication service provider as Telnet may from time to time select ("Service Provider").

1.5 The term "Network Services Agreement" means the separately completed agreement with the heading "Network Services Agreement" and which is made between Telnet and You which incorporates these terms and conditions and within which the Services are specifically stated and set out.

## 2. Revision

These terms and conditions are subject to review from time to time by Telnet. Telnet shall be entitled to send to you up-dated Terms and Conditions or an abstract of amended, altered or varied terms and conditions. You agree that if you continue to use the Services including, where applicable, the Equipment, following receipt of such revised Terms and Conditions you will be bound by the new/revised Terms and Conditions.

## 3. Use of the Services

3.1 You will not use the Services:

3.1.1 for the transmission of any material which is defamatory, offensive or abusive or of an obscene or menacing character; or

3.1.2 in a manner which constitutes a violation or infringement of the rights of any person, firm or company (including but not limited to rights of copyright or confidentiality); or

3.1.3 in a manner which allows third parties to interfere with or corrupt the Services and/or Equipment in any way; or

3.1.4 in breach of any statutory provision or regulation from time to time in effect relating to transmission of telecommunication services; or

3.1.5 in a way which is in any way unlawful or fraudulent, or has any unlawful or fraudulent effect; or

3.1.6 in any manner which shall contravene the requirements from time to time of any Service Provider.

## 4. Term and Duration

4.1 This Agreement commences from the date upon which the Services are available for use by You.

4.2 This Agreement continues until terminated in accordance with the provisions of this Clause.

4.3 You agree to continue to use the Services both (i) for the minimum term as stated in the Network Services Agreement ("Minimum Term"), (ii) for any additional minimum term established by clause 4.4, and (iii) thereafter for the Revised Term (as established by Clause 4.5). Where there is no Minimum Term stated in the Network Services Agreement the phrase Minimum Term shall mean three (3) calendar months. The Minimum Term is calculated from the commencement date as determined by Clause 4.1 or such later date as set out in clause 4.4.

4.4 Where during continuation of this Agreement Telnet provide a further or additional element of Services to You, notwithstanding clause 4.3 You agree that in respect solely to the further or additional Services provided, there shall be a Minimum Term equal to that stated in the Network Services Agreement, or stated in writing by Telnet to You at the time, or where no Minimum Term is stated equal to three (3) calendar months in each case commencing from the date such further and additional Service is available for use by You. On expiry of this Minimum Term, the Minimum Term applicable within clause 4.3 as extended by clause 4.5 shall be applicable.

4.5 After the expiry of the Minimum Term established by clause 4.3 (and at the expiry of every "Revised Term" as defined in this Clause) this Agreement automatically renews. This automatic renewal reoccurs at the end of the Minimum Term and the end of each Revised Term and, therefore, is perpetual until this Agreement is validly terminated by Telnet or by You. This automatic renewal is on the following basis (i) if your original Minimum Term was for less than one year, this Agreement renews for a further period equal to the original Minimum Term ("the Revised Term") which shall be calculated from the date of expiry of the original Minimum Term or from the date of expiry of the Revised Term (as the case may be), or (ii) if your original Minimum Term was for a period of one year or more, this Agreement renews for a period of one calendar year ("the Revised Term") which shall be calculated from the expiry of the original Minimum Term or from the date of expiry of the Revised Term (as the case may be).

4.6 Either Telnet or You may terminate this Agreement by giving to the other not less than one calendar month's notice in writing. This notice must expire at (i) the end of the Minimum Term; or (ii) at the end of the Revised Term (calculated in accordance with Clause 4.5) and (iii) where clause 4.4 may be applicable, cannot expire in connection with the additional Service referred to in clause 4.4 prior to the expiry of the Minimum Term established by that clause – each such date being a "Termination Date". Any notice received which does not comply with the provisions of this sub-Clause will be treated as a notice to terminate at the earliest possible Termination Date established under this Clause. If you wish to terminate this Agreement otherwise than in accordance with the provisions of this Clause, You may do so if you agree to pay to Telnet the sum calculated in accordance with Clause 5.

4.7 Without limitation to the foregoing, Telnet may terminate this Agreement immediately, if

4.7.1 You breach any of the these Terms and Conditions

4.7.2 You commit an act of insolvency or an act of bankruptcy

4.7.3 You fail to make any payment when it becomes due

4.7.4 Any licence required by You to run your telecommunications system and/or connect to the telecommunication system of the Service Provider is revoked, amended or otherwise ceases to be valid and is not immediately replaced by another valid licence, or

4.7.5 Telnet, for reasons beyond its immediate control, is unable to continue to provide the Service.

4.8 Upon termination of this Agreement (however this may arise) You will allow Telnet (or those authorised by Telnet) to enter the premises where the Equipment is installed and retake possession of the Equipment. On entering such premises Telnet shall be entitled to undertake all work necessary to remove the Equipment and will not be liable for any damage or alleged damage caused.

## 5. Payment on Early Termination, Failure to Use the Service or Breach

5.1 If this Agreement is (i) terminated by Telnet under any of the grounds within Clauses 4.7, or (ii) if You cease the Services at any time without terminating this agreement in accordance with its terms, or (iii) You request cancellation of this agreement prior to a Termination Date, You will (without prejudice to any claim for damages by Telnet for the breach of this Agreement) pay to Telnet

5.1.1 all sums which have fallen due to and including the next following Termination Date, plus

5.1.2 all rental charges which would have been payable by You to Telnet from the Termination Date to the next following Termination Date, plus

5.1.3 all Standing Charges applicable to the provision of the Services (at the rate payable immediately prior to termination) which would have been payable by You to Telnet from the Termination Date to the next following Termination Date plus

5.1.4 all costs and expenses incurred by Telnet collecting or attempting to collect from You Equipment, and plus

5.1.5 if this Agreement includes (as indicated in the Network Services Agreement or as may be subsequently agreed in writing between You and Telnet) as an element of the Services a commitment to use Telnet for call routing, and You cease call routing before the expiry of the Minimum Term (or the expiry of any Revised Term), Telnet will levy a penalty charge to be calculated as follows: [the average monthly call spend by You during the duration of the Network Services Agreement up to and including the last complete month use of call routing prior to the month within which the date of termination occurs/You ceasing to use call routing] X 20% X [the number of billing months remaining until expiry of the Minimum Term or expiry of the Revised Term (as the case may be)].

## 6. Charges and Payment

6.1 Charges for the Services will be as agreed in writing between You and Telnet prior to the date of this Agreement or (where there is no written statement of charging) in accordance with Telnet's rates applicable at the time as specified in the Telnet Services Guide (a copy of which is available on request). Telnet reserves the right to vary these charges without prior notice, and nothing in this Agreement shall oblige Telnet to retain its charges for the Services at a specific rate for any specific period unless specifically agreed in writing with You.

6.2 You are responsible for all charges in respect of the supply of the Services to the telephone numbers nominated by You for use. All persons using the Services are deemed to be authorised by You and You must pay all charges arising out of use of the Services whether or not arising from misuse or unauthorised use of your telephone system.

6.3 All prices quoted are exclusive of value added tax.

6.4 Charges will be calculated by sole reference to the data and records maintained by Telnet which shall be final in determining the amount payable by You except only in the case of manifest error (notified in accordance with Clause 6.5).

6.5 All Charges payable by You will be shown on a monthly statement issued by Telnet ("Account"). Any allegation as to manifest error in an Account must be notified in writing and sent by recorded delivery, by You to Telnet within 30 days of the date of the applicable Account.

6.6 Telnet will investigate with all good faith any allegation of manifest error in an Account and shall inform You of the outcome of such investigation. Any refund of any charges wrongly debited to You shall be made only where Telnet accepts manifest error, and will be paid by way of credit to your next following Account.

6.7 Where Equipment is required in connection with the provision of the Services, You will pay to Telnet any Installation Charge shown in the Network Services Agreement or any installation charge which may be levied by a Service Provider, which is a one-off charge payable by You on or before the Installation Date.

6.8 You agree to pay Telnet the total sum shown in any and all Account(s) within 14 days of the date of such Account. Telnet shall be entitled (in addition to all other remedies and rights under this Agreement) to levy a late payment charge at a rate of 1.5% per month on any unpaid overdue balance. In the case of delayed payment Telnet are entitled to require payment from You of a deposit as against your liability under this Agreement as a condition of the continuation of the Services.

6.9 You will make payment in respect of Accounts by direct debit to such bank account nominated for such purpose as Telnet shall direct, or written request to Telnet.

6.10 You shall indemnify Telnet against all costs incurred in collecting any overdue amounts owing by You.

6.11 If the Services include any free call allowance, any "unused" minutes will not be carried forward to any subsequent Account unless otherwise specified in writing between Telnet and You. Telnet have no liability to compensate You in respect of any free call allowance not used by You.

## 7. Suspension of the Services

7.1 Telnet may suspend forthwith the provision of the Services until further notice without liability to You on notifying You either orally (confirming the same in writing) or in writing in the event that:

7.1.1 You are in breach of any term of this Agreement or otherwise You have failed to pay when due any sum payable to Telnet in respect of any other contract or agreement between Telnet (or any associated company of Telnet) and You; or

7.1.2 You prevent or delay prearranged maintenance from being carried out; or

7.1.3 You are suspected, in Telnet's reasonable opinion, of involvement with fraud or attempted fraud in connection with the use of the Services; or

7.1.4 As a consequence of your use of the Services any Service Provider shall notify Telnet that your use of the Services is in breach of the terms of business imposed by such Service Provider, or otherwise they refuse to transmit telecommunication services originating from You.

7.2 Without limitation to the foregoing, Telnet may suspend the Services if required to do so by any competent authority, if it needs to carry out any maintenance operations, if Telnet receives notification from the Service Provider of their requirement to suspend the Services or if suspension is required for any other reason beyond Telnet's reasonable control.

## 8. Faults and Liability

8.1 Telnet shall use all reasonable endeavours to ensure the Services are available for use in accordance with standards for the time being set out in Telnet's Service Guide. Telnet does not warrant that the Services will be available at any particular time or continuously. Telnet have no liability to terminate any pre-existing telephone supply contract held by You. You will take all steps necessary to terminate any such agreement and You shall be responsible for all costs and expenses, including any early termination penalty, which may be payable on termination.

8.2 You will immediately notify Telnet of any fault in the Services including Equipment. Telnet shall use its reasonable endeavours, during Telnet's normal working hours, to remedy such a fault and/or reinstate the Services. This may (where this will retain provision of the Services) include provision by Telnet of an appropriate pre-fix dial code to enter prior to the making of a telephone call and You agree to enter such code until such time as Telnet may inform You that the Services are available for use without the need for such code to be entered.

8.3 Telnet will be entitled to enter Your premises at all reasonable times to inspect and carry out (where necessary) servicing or maintenance of Equipment.

8.4 Telnet shall be responsible for the cost of all preventative maintenance, and/or servicing of the Equipment required in the reasonable opinion of Telnet. You will be responsible for the cost (at Telnet's usual charging rates from time to time) for all maintenance, loss and damage arising from:

8.4.1 negligence, default or misuse of Equipment and/or the Services or use for a purpose for which the same was not supplied or otherwise as a consequence of breach of the terms of this Agreement by You; or

8.4.2 any fault, incompatibility or malfunction arising from or associated with use of the Equipment and/or the Services with any other telecommunications system or other computer or communication equipment not supplied or approved by Telnet; or

8.4.3 any other cause beyond the reasonable control of Telnet.

8.5 Telnet shall have the right to charge You at Telnet's usual charging rate for any and all costs incurred where Telnet is requested to carry out any maintenance or repair which in Telnet's reasonable opinion is unnecessary or is performed outside Telnet's usual working hours. Where the Equipment is to be maintained by Telnet, Telnet's terms and conditions of maintenance apply (available on request).

8.6 Telnet shall not be liable to You for any loss of revenue, loss of business, any purported loss of profit or any other form of consequential loss arising from breach of the terms of this Agreement. Telnet shall not incur any liability in respect of charges incurred by You in respect of any alternative telephone facilities implemented as a consequence of temporary interruption in the Services nor any liability as a consequence of matters beyond the reasonable control of Telnet.

8.7 Where there is a temporary cessation of the Services or otherwise a fault which prevents the full use of the Services arising as a consequence of a cessation or fault on the part of the Service Provider, Telnet shall use reasonable endeavours to claim on behalf of You (upon receiving notification of the fault from You and all information as Telnet may request from time to time in connection with the fault) compensation from the Service Provider. Telnet's liability under this clause shall at all times be limited to the amount of compensation as shall be payable from time to time by the Service Provider in the circumstances as shall have arisen at such time less Telnet's reasonable costs of recovery.

8.8 Telnet shall not be liable to You for any third party interference (either internal at your premises or external e.g. "hackers") with the Equipment or the Services nor as a consequence of abuse or misuse thereof.

8.9 Where the extension billing option has been requested, Telnet will use best endeavours to provide the extension information. Telnet shall not be liable to You if the extension information is not available for whatever reason.

8.10 Where call routing utilises Voice over Internet Protocol (VoIP), you acknowledge that call quality and availability can be subject to factors outside of Telnet's control e.g. bandwidth contention or quality of service (CoS). Telnet shall not be liable to You in respect to any quality or availability issues with such a service.

8.11 The security of call routing in the public network and in particular VoIP calls routed via the internet, is outside of Telnet's control and hence Telnet shall not be liable to You for any breaches of such security e.g. "Packet sniffing".

## 9. Equipment, Installation Connection and Insurance

9.1 In so far as it is necessary in connection with the commencement of the Services or continuation of the Services for Telnet to install Equipment You will

9.1.1 permit Telnet or any person authorised by the Service Provider access to your premises, your telephone system and/or Equipment to enable such installation to occur at reasonable times

9.1.2 ensure a clean and safe environment for the installation of Equipment

9.1.3 obtain all necessary consents required for the Equipment to be installed

9.1.4 provide without charge any electrical supply as shall be required

9.1.5 make such reasonable alteration to your premises (including but not limited to lifting of carpeting or other floor covering, drilling of necessary holes to permit passage of cabling to and from your telephone system, and installation of such trunking or other enclosures for the holding of Equipment).

9.2 Telnet shall use reasonable endeavours to deliver or arrange delivery of Equipment by any delivery date specified; however, such date shall be an estimate only and shall not be a condition of this Agreement. Telnet shall incur no liability for failure to meet the delivery date.

9.3 All Equipment shall at all times remain the property of Telnet and/or the Service Provider. You will retain all distinguishing marks and labels on the Equipment and advise third parties the Equipment does not belong to You. You will not carry out or permit any third party to carry out any maintenance, alteration, modification, replacement, extension, place any attachment or addition to or otherwise carry out any works to the Equipment.

9.4 All equipment used in connection with the Services (whether or not comprising Equipment) must be connected and used in accordance with all instructions and/or safety/security procedures as Telnet and/or the Service Provider may communicate to You from time to time.

9.5 Without limitation to any of the foregoing, the Equipment shall be at your risk during the continuation of this Agreement and You will effect a fully comprehensive policy of insurance with Telnet's interest properly noted indemnifying Telnet and/or the Service Provider against all loss or damage to the Equipment however caused. Risk passes to You at the time of delivery of the Equipment to your premises. You will notify Telnet immediately of any loss or damage to the Equipment. The only exceptions to this clause are reasonable wear and tear and damage caused as a direct consequence of negligence by Telnet and/or the Service Provider or their respective agents. You will be solely responsible for and hold Telnet fully indemnified against any loss or damage to property occurring in connection with the Equipment or as a result of the use thereof.

9.6 Where there is a "Rental Charge" shown in the Network Services Agreement or specified in correspondence between Telnet or where Equipment is subsequently installed at the request of You during the continuation of this Agreement, or is required during the continuation of this Agreement for the proper provision of the Services, and Telnet require You to pay a Rental Charge for the Equipment, You will pay to Telnet the Rental Charge stated or agreed, which will be shown on each Account. Payment will be made in accordance with the provisions of this Agreement relating to payment of Accounts.

9.7 If required by Telnet, You will enter into a service and maintenance agreement with Telnet in connection with the Equipment so as to provide for the proper servicing, maintenance and performance of the Equipment. Such a service and maintenance agreement will be subject to Telnet's standard terms and conditions applicable from time to time and subject to Telnet's standard charges from time to time. Such a service and maintenance agreement will be maintained by You throughout the duration of this Agreement.

9.8 All Equipment will be inspected by You within 48 hours of delivery and unless You notify Telnet within 48 hours of the date of commencement of the Services or (in the case of Equipment supplied during the continuation of this Agreement) within 48 hours of the date of installation of the Equipment of any defects in or other proper objections to the Equipment it shall be conclusively presumed that the Equipment is in good condition, repair and working order to the satisfaction of You.

## 10. General

10.1 This Agreement may not be assigned in whole or in part by You without the prior written consent of Telnet, such consent not to be reasonably withheld. Telnet shall have the right without notice to assign, sub-contract or otherwise deal with all or any of its rights and obligations under this Agreement.

10.2 This Agreement represents the entire Agreement and understanding of the parties and supersedes all prior agreements, whether written or oral. This Agreement may only be altered or amended in writing and signed by both parties.

10.3 Failure by Telnet 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.

10.4 Any notice or other correspondence which needs to be given to You, will be deemed to be given if sent by post to the address to which Telnet submits Accounts for the Services. You will inform Telnet of any change to this address. Any notice or other correspondence which needs to be given by You to Telnet will be deemed to be given if sent by post to the address as appears on the last invoice rendered to You or such other address as may be prescribed by Telnet for that purpose in writing to You during the continuation of this Agreement.

10.5 By signing this Agreement You authorise Telnet to communicate on your behalf with any Service Provider and to supply to such Service Provider for the purposes of arranging performance of the Services, any information which You may have passed to Telnet in connection with the Services. You also authorise the Service Provider to disclose any relevant information to Telnet.

10.6 You acknowledge by entering into this Agreement that Telnet cannot exercise any control over the internal workings or industrial relations within BT plc or any other Service Provider or connection of the telephone service to the Equipment. Telnet shall make all reasonable endeavours to assist You in the connection arrangements for the Equipment but cannot be held responsible for any delays or loss or damage caused on the part of any Service Provider or any other contractor involved in the provision of related goods or services.

10.7 This Agreement 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.

10.8 If, for any reason, a provision of this Agreement proves to be void or unenforceable, this will not affect the validity or enforceability of the remaining provisions of this Agreement, which will remain in full force and effect.