

**CONFIDENTIAL****1. CONTRACT DEFINITIONS**

- 1.1 "DIFFERENCE" means Difference Corporation Limited in which expression shall, where it requires, include its successors and assigns and any Associated Company thereof.
- 1.2 "Application Form" means the application form relating to the provision of the Services in the form provided by Difference from time to time.
- 1.3 "Authorised Person" means an employee or subcontractor of Difference.
- 1.4 "Associated Company" means any subsidiary of Difference or other associated company as sections 736 and 736A of the Companies Act 1985.
- 1.5 "Customer" means a person or company whose Application Form is accepted by Difference.
- 1.6 "Contract" means the contract governed by these Terms and Conditions made between Difference and the Customer created upon acceptance by Difference of the Customer's Application Form and the opening of an Account for the Customer.
- 1.7 "Least Cost Routing Software" means software installed on a telephone system which automatically enables the routing of calls via different telephone networks.
- 1.8 "Services" means rerouting the Customer's telecommunications under the terms of this Contract, to include where specified Line Rental.
- 1.9 "Services Literature" means Difference literature specific to the Services and other associated Service existing from time to time.
- 1.10 "User" means the Customer and any individual or company permitted to use the Services.
- 1.11 "Account" means the Account opened by Difference in the name of the Customer upon creation of the Contract and relating to the Services.
- 1.12 "Act" means the Telecommunications Act or Acts, or any re-enactment or amendment thereof.
- 1.13 "Difference Access Equipment" means call routing apparatus supplied by Difference.
- 1.14 "Minimum Term" means the minimum duration of the Contract, which unless otherwise expressly stated on the Application Form shall be 12 months from when the Customer starts to receive the Services - known as the anniversary date.
- 1.15 "Line Rental" means the rental charge for the provision of analogue or digital lines to the Customer's premises.

2. THE SERVICES

- 2.1 a) The Customer shall complete, sign and return to Difference an Application Form or Purchase Order prior to Difference agreeing to provide the Services.
b) Difference shall use all reasonable care and skill to provide the Customer with the Services throughout the term of the Contract. Difference shall be at liberty to alter the provision of the Services.
- 2.2 The Customer undertakes to Difference that:
a) The Services will only be used in accordance with the Contract.
b) Only the Customer and the Users shall use the Services and no other person shall be permitted.
c) Upon termination of the Contract, no attempt shall be made to use the Services.
d) The Services Literature and any other instructions regarding the use of the Services as may be notified to the Customer by Difference from time to time shall be complied with promptly and deemed to form part of the Contract.
e) For the duration of the Minimum Term it will route all its inbound, non-geographic and outbound calls (including without limitation all its voice, fax and data traffic) via Difference on an exclusive basis. For the avoidance of doubt the Customer acknowledges and accepts that during the Minimum Term it shall not use any Services offered by a third party which are competitive Condition 2.2 (e) the terms of condition 4.12 shall apply.
- 2.3 The Customer agrees that at all times during the term of the Contract it shall:
a) Provide access to all appropriate sites for Authorised Persons during the Customer's normal working hours and allow the removal, installation and maintenance of any Difference Equipment.
b) Keep its telecommunications equipment in good working order and ensure that the equipment complies with all applicable standards and approvals so as to enable Difference to provide the services.
c) Provide all reasonable assistance required by Difference to enable it to provide the services.
d) Inform Difference with one month's prior notice in writing of any premises' relocation for telephone number(s) on which the Services are registered.
e) Indemnify Difference fully against all losses, liabilities, costs (including legal costs) from which Difference may incur as a result of any breach of the Customers obligations under the agreement or misuse of the Services.
f) Pay Difference (at its then current published rates) for all call-out visits required if Difference determines that the problem with the Services is not the fault of Difference or Access Equipment has been damaged by the customer.
- 2.4 The Customer undertakes to Difference to ensure that the Services are not:
a) For the transmission of any material which is intended to be a hoax call to emergency services or is of a defamatory, offensive, abusive, obscene or menacing character; or
b) Fraudulently in connection with a criminal offence; or
c) Otherwise in a manner which constitutes a violation or infringement of the rights of any other party; or
d) In a manner which allows third parties to interfere with or corrupt the Services in any way; or
e) In any other way which is in breach of the Act or Acts; or
f) Otherwise than for the purposes of a telecommunications system.

3. DIFFERENCE CORPORATION'S RIGHTS

- 3.1 Difference shall be entitled to alter any access or authorisation number or method of Services from time to time and may reprogram the Customer's equipment as a result.
- 3.2 Difference may suspend the Services to the Customer at its sole discretion including but not the following:
a) if any credit limit between Difference and the customer is breached
b) If any term of the Contract is breached (including, without limitation, in the event of a failure to make any payment or to provide any deposit required to be made or provided under the Contract)
c) In order to comply with an order, instruction or request of any government, emergency service organisation or other competent authority; or
d) Fraud or attempted fraud is suspected by Difference (in its reasonable opinion) in connection use of the Services.
- 3.3 Difference may collect data and information about the Customer's use of the Services and information to (i) companies affiliated with Difference and (ii) third parties, but solely for the purposes of providing the Services to the Customer.

4. CHARGES AND PAYMENT FOR THE SERVICES

- 4.1 All sums due to Difference under the Contract shall become due on the date of the relevant invoice and are payable by Direct Debit.
- 4.2 If the Customer fails to make payment within 14 days of the date of the relevant invoice, without prejudice to its other rights hereunder, Difference shall have the right to require the Customer to pay the sums due on demand.
- 4.3 Time of payment of all sums due to Difference under the Contract shall be deemed to be 14 days from invoice.
- 4.4 Difference reserves its right to amend its charges for the Services from time to time.
- 4.5 Difference shall use its best endeavours to bring to the attention of the Customer any variation prior to the implementation.
- 4.6 Without prejudice to Difference's rights, to treat the non-payment as a repudiative breach of the Agreement. Difference reserves the right to charge interest on outstanding amounts until payment is received in full at a rate equal to 4% per annum above the Barclay's Bank Plc base lending rate as current from time to time whether before or after judgement. Interest shall continue to accrue notwithstanding termination of the Contract for any cause whatsoever and is deemed to accrue on a day to day basis from and including the date for payment and the condition 4.1.
- 4.7 Difference reserves the right to charge for administrative costs incurred by Difference in pursuing late payers. The clients company directors guarantee for the payment of all invoices raised by the suppliers.
- 4.8 All sums due to Difference under the contract are subject to Value Added Tax ("VAT"), and any applicable taxes, levies or charges which from time to time may be introduced.
- 4.9 The Customer shall be liable for all charges arising from the use of the Services by any person utilising the Customer's registered Services (with or without the Customer's authorisation).
- 4.10 Details of the Contract and the conduct of the Account may be registered with a licensed Credit Reference Agency. Information thus registered may be used to help make credit decisions, occasionally fraud prevention or the tracing of debtors.
- 4.11 In the event of any error or omission in a Difference invoice for any period, Difference may issue a invoice at a later date.
- 4.12 In the event of the Customer obtaining any services from a third party which are competitive with or substantially similar to the Services during the Minimum Term or if there has been a material breach of the Contract, the Customer accepts that Difference shall be entitled to invoice the Customer during each month of the remainder of the Minimum Term an amount equal to either:
(a) The average of the monthly amounts invoiced by Difference to the Customer prior to the breach by the Customer of Condition 2.2 (e) or (b) The actual amount payable by the Customer, whichever is higher.

5. ACCESS EQUIPMENT

- 5.1 The Customer shall provide without charge or cost to Difference appropriate equipment space, environment and continuous stable electrical power to install and maintain the equipment at its premises.
- 5.2 Any Difference access Equipment shall remain with Difference and Access Equipment that is on the Customer's premises, the Customer shall ensure that it is kept safe and upon termination of the Contract, the Customer will ensure that Difference is allowed prompt access to all relevant premises to remove the Difference Access Equipment.

6. TERMINATION

- 6.1 The Contract may be terminated by either the Customer or Difference at any time by giving 90 days written notice prior to any anniversary of the Agreement. This must be sent to our Registered Address - Difference Corporation, Station Masters Office, South Queensferry, Edinburgh, EH30 9JP for the attention of Customer Services.
- 6.2 If neither Difference nor the Customer provide notice to termination in accordance with condition 6.1 the Customer and Difference agree that the Contract shall automatically be renewed for a further term.
- 6.3 Difference (without prejudice to its other rights) may terminate the Contract forthwith in the event:
a) The customers fails to make any payment when it becomes due to Difference or shall default in performance or observance of any obligation under the Contract or any other Contract with Difference or an Associated Company and (in the case of remedial breach) fails to remedy in a reasonable time specified by Difference in its written notice to do so.
b) An interim order is made, or a voluntary arrangement approved, or if a petition for a bankruptcy order is presented or a bankruptcy order is made against the Customer or if any circumstances arise which entitle the court or a creditor to appoint a receiver, administrative administrator or to present a winding-up petition or make a winding-up order.
- 6.4 Conditions 2.2 and 4 and 7 of the Contract shall survive termination of the Contract for any reason.
- 6.5 If the Contract is terminated by either party hereto, the customer shall:
a) Pay to Difference all arrears of charges together with any interest payable under the Contract up to date of termination.
b) Return to Difference all equipment owned or provided by Difference and/or allow the entry to the Customer's premises for the removal of any Difference Access Equipment.

7. CONFIDENTIALITY

The Customer and any User shall at all times keep confidential the terms of this Contract and all matters relating to the Services, and shall not disclose the same to any third party without the prior written consent of Difference.

8. LIMITATION OF LIABILITY

- 8.1 Difference shall have no liability under this Contract for the acts and omissions of other telecommunications operators.
- 8.2 Save only as is otherwise specified in this condition 8.2, the entire liability of Difference in with the Services or this Contract, whether in contract, tort or otherwise or for consequential or indirect loss, is excluded. Non exhaustive illustrations of consequential or indirect loss would include loss of profit, revenue, contracts or business, damage to property of the Customer or anyone else and anticipated savings or profits. Difference accepts liability for death or personal injury resulting from its negligence and, where the Customer deals as a consumer, Difference accepts liability for death or personal injury and for any breach of its obligations implied by statute.
- 8.3 Difference shall not be liable for faults in the Customer's telecommunications equipment.
- 8.4 Difference shall not be liable for any damages whatsoever to property at the Customer's premises from (i) the installation, repair or removal of Difference Access Equipment or associated wiring carried out by Difference or by Difference's contractors or (ii) any reprogramming of the Customer's existing Least Cost Routing Software unless such damage is caused by Difference or its negligence subject to condition 8.2.
- 8.5 Dates and times for provision of the Services shall be estimates only and no liability shall accrue to Difference for failure to meet any such dates.
- 8.6 Difference will not be held responsible for any loss due to programming errors or omissions made.
- 8.7 In the event of any failure in the Services, Difference shall not be liable to the Customer for any charges incurred by the Customer should it direct its telecommunications traffic to another carrier.
- 8.8 Difference reserves the right not to provide the Services due to any technical limitations in the telephone system, telephone exchange, or Difference Access

9. DEPOSIT

- 9.1 Difference may at any time before or after the provision of the Services require a payment specified by Difference, a sum to be held by way of a deposit as and against any charges arising from the use of the Services and Difference shall be entitled to offset such deposit against this Contract from time to time including interest due or owing.
- 9.2 Any deposit held by Difference will not accrue interest whatsoever although any deposit (or part which is held by DIFFERENCE for over one year and which is subsequently repaid to the Customer may, at Difference's discretion, attract interest at an amount determined by Difference

10. ASSIGNMENT

- 10.1 The Customer shall not assign or delegate or otherwise deal with all or any of its rights under the Contract.
- 10.2 Difference shall have the right to assign or otherwise delegate all or any of its rights or hereunder to an Associated Company or other person upon serving one month's notice in writing to the Customer.

11. FORCE MAJEURE

Neither Difference or the Customer shall be liable to the other for any loss or damage which may be suffered by the other party due to any cause beyond the first party's reasonable control including drought, lightning or fire, strike, lock-out, trade dispute or labour disturbance, the act or omission of Government, highway authorities, public telecommunication operators or other competent authority, war, military operations, or riot, difficulty, delay or failure in manufacture, production or supply by third parties of the Services or any part thereof.

12. NO WAIVER

Failure by either Difference or the Customer 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 or of any other right on any later occasion.

13. ENTIRE CONTRACT

The Contract represents the entire understanding between the parties in relation to the subject matter of the Contract and supersedes all other agreements and representations made by either party, whether oral or written.

14. SERVICE OF NOTICE

Any notice or invoice or other document which may be given under the Contract shall be deemed to be duly given if Left or sent by post (whether by letter, or, where the parties agree, by magnetic tape or any other form), telex or facsimile transmission (subject to the sender's machine producing confirmation that all pages have been sent) or, where the parties expressly agree, by electronic mail to the registered office of the party to be served or any other address notified by the party to be served to the other party in writing as an address to which notices, invoices and other documents may be sent.

15. GOVERNING LAW

The Contract shall be governed and construed and interpreted in accordance with Scottish law and the parties submit to the jurisdiction of the Scottish courts as regards any claim, matter or dispute arising out of or relating to the Contract or any document entered into pursuant to the Contract.

Registered Office - Difference Corporation Ltd, Station Masters Office, South Queensferry, Edinburgh, EH30 9JP
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