

## GPS TELECOMS'S, Mobile Airtime Services & Equipment Terms and Conditions of Agreement v2.01

### 1. Definitions

In these Terms and Conditions, the following expressions shall have the following meanings:

“GPS Telecoms” GPS Telecoms Ltd with company registration number 05504774 and registered office: Clifton House, Ashville Point, Sutton Weaver, Runcorn, Cheshire, WA7 3FW.

“Agreement” This Agreement, all sides completed, and all other associated schedules in writing.

“Bar” The act of barring the Customer from making or receiving calls on the Customer Equipment.

“Buyout” The amount paid by GPS Telecoms to release the Customer from existing Mobile Services with another Operator

“Charges” Call charge, access charge, connection charge, minimum airtime charge, value added service charge means the charges as described and at the rates (appropriate to the chosen tariff) as set out in the Schedule of Tariffs to be published by GPS Telecoms from time to time.

“Cashback” Any payment provided by GPS Telecoms to the Customer in lieu of Customer Equipment

“Connection” “Connected” The connection of the equipment or SIM card to the selected tariffs and Systems.

“Customer” The account holder responsible firstly for meeting the Charges.

“Customer Equipment” Means the approved equipment and SIM Card connected to the System.

“Discount” The reduction in a tariff agreed for a customer compared with the GPS Telecoms standard tariff applicable from time to time

“Hardware Fund” An amount of funds put aside for subsequent drawdown of Customer Equipment up to the value of the Hardware Fund

“IMEI” The International Mobile Equipment Identity number incorporated into the Customer Equipment.

“Migration” Means the transfer of a mobile number to any alternative service provider on the same network.

“Network Operators” Means the networks

“Other Services” Means services provided to the Customer by GPS Telecoms not specified by this agreement including but exclusively Fixed Line and Broadband Telephony Services

“Party/Parties” Means GPS Telecoms and the Customer either separately or together.

“Payment Date” The date determined by GPS Telecoms on which GPS Telecoms invoices fall due for payment.

“Portability” Means the transfer of a mobile number or Service to any alternative service provider and Network Operator.

“Service(s)” The provision of airtime, together with those services identified in this Agreement, by means of the Systems offered by GPS Telecoms.

“SIM Card” “SIM” A module which contains Customer Information and which, when used with GSM/UMTS equipment, enables access to the GSM/UMTS Services.

“System(s)” The public telecommunications systems/networks that GPS Telecoms makes available to the Customer.

“Upgrade” Any supply of a new handset or mobile device.

### 2. ACCEPTANCE OF APPLICATION

- 2.1. In connection with this account application GPS Telecoms will carry out credit and fraud prevention checks with a licensed credit reference and fraud prevention agency and this agency will retain a copy of the search. Information from the application and payment details of the account will be recorded and may be shared with other organisations to help make credit and insurance decisions about you and members of your company and for debt collection and fraud prevention purposes.
- 2.2. GPS Telecoms will only accept the application overleaf when the Customer passes a credit check to GPS Telecoms' satisfaction. This Agreement, together with the terms contained overleaf, constitutes the entire contract between the Customer and GPS Telecoms, and the terms of this Agreement shall apply to the exclusion of all others whether implied or proposed by the Customer orally or in writing unless expressly accepted in writing by GPS Telecoms.
- 2.3. GPS Telecoms offers mobile services to businesses and, upon accepting this application, assumes that all businesses have ten or more employees and subsidies and benefits are issued on the basis of this.

### 3. TERM

- 3.1. This Agreement will commence from the date any services requested on the Agreement overleaf are implemented and take effect and will be for a minimum of two years in any event unless stated any different overleaf.
- 3.2. Subject to Clause 9 below this shall continue for a period of twenty-four (24) months from each date of individual connection or upgrade or tariff change, unless a different term is selected under the “Initial Minimum Contract Term” provision overleaf. This Agreement shall continue thereafter until terminated by either party giving not less than ninety (90) days prior written notice, such notice not to be served prior to the expiry of the said initial minimum contract term.
- 3.3. This Agreement and the provisions of Clause 3.1 and 3.2 are applicable to all mobile numbers and/or handsets Connected to GPS Telecoms and will also apply to subsequent Connections or Upgrades from the individual Connection or Upgrade date.
- 3.4. Portability and Migration requests of mobile numbers made during the minimum contract term does not relieve the Customer from contractual obligations to pay any early termination charges due under this Agreement, and in relation to the remainder of the contract term, following termination.
- 3.5. All Tariff changes will be subject to availability and a minimum spend.

### 4. CREDIT ACCOUNT

- 4.1. An account will be opened and a credit limit inclusive of VAT will be notified to the Customer and this credit limit should not be exceeded. Any increase in the credit limit must be requested in writing and will be subject to approval by GPS Telecoms, which may entail further credit checks. GPS Telecoms cannot accept responsibility for Customer overspends due to any reason including but not limited to billing cycles or delays in the availability of call data. Customers who anticipate exceeding their credit limit should contact GPS Telecoms to avoid the Services being suspended.

- 4.2. Credit limits are subject to periodic review at GPS Telecoms' discretion. GPS Telecoms may require that a deposit be placed with GPS Telecoms in cases where the Customer incurs monthly charges in excess of the credit limit

## 5. CONNECTION TO THE SYSTEM AND PROVISION OF THE SERVICE

- 5.1. Subject to these Terms and Conditions, GPS Telecoms will connect and maintain the connection of the Customer Equipment to the System and, subject to the geographical coverage of the System from time to time and other limiting factors not under GPS Telecoms' control, GPS Telecoms will endeavour to make the Services available to the Customer throughout the term of this Agreement.
- 5.2. GPS Telecoms shall be entitled, at its absolute discretion to transfer the Customer to another Network Operator, provided this incurs no additional costs to the Customer. Wherever practicable, fourteen (14) days written notice shall be given of such changes prior to their being made.
- 5.3. The Customer recognises and acknowledges that the Services depend on the availability of the Systems, which may from time to time, by their very nature, be adversely affected by physical features, atmospheric conditions, and other causes of interference may fail or require maintenance without notice.
- 5.4. The Services are provided with a bar on premium rate and international calls made whilst in the UK and overseas unless the Customer has requested GPS Telecoms to enable these calls. If enabled, the Customer should be aware that they will be charged for calls received whilst abroad (including voicemail) and that calls made and received whilst overseas may be rates and increments set by the overseas network(s) together with any additional handling & network charges. Premium rate calls can be charged at rates over £1.57pence per minute. Any such calls/text/data are not included in any bundle of inclusive calls/text/data which may form part of the tariff and billing delays of up to six months may occur for these charges and may be subject to a deposit as requested from time to time.
- 5.5. GPS Telecoms shall bear no liability to the Customer whatsoever in connection with any Service provided by an overseas network, third party or Premium Rate provider.

## 6. PAYMENT

- 6.1. The Customer will pay any agreed initial charges, the monthly access charge and any other fixed monthly charges, on or before the Payment Date.
- 6.2. The Customer will pay all call charges (used in excess of any call charges that may be comprised in the minimum airtime charge but without rebate for any unused element of call charges in such Charge) including charges incurred from other networks, virtual networks, premium rate and overseas cellular and network operators (without discount) and also any handling charges set out in the schedule of tariffs, monthly in arrears, on or before the Payment Date.
- 6.3. The Customer will pay the cost of any subsequent reconnection made necessary by suspension of the Services carried out by GPS Telecoms due to non-payment (subject to Clause 9 below), prior to reconnection.
- 6.4. The Customer will pay all sums to GPS Telecoms by Direct Debit or by such other method as GPS Telecoms shall allow on or prior to the Payment Date. The acceptance of payment by any method other than Direct Debit by GPS Telecoms may incur a monthly administration fee of £3.00 + VAT.
- 6.5. All payments other than by Direct Debit must be received within fourteen (14) days of the invoice date.
- 6.6. The Customer may be required to pay a fee of £20.00 + VAT per incident for cancelled, dishonoured or failed Direct Debits or cheques.
- 6.7. Any sums due to GPS Telecoms from the Customer which are unpaid for more than fourteen (14) days after the Payment Date shall bear interest at the rate of three per cent (3%) above the base rate of HSBC PLC calculated from the date payment was due to the date of actual payment becoming cleared funds.
- 6.8. Value Added Tax (VAT) and other taxes from time to time in force where appropriate shall be payable on all Charges
- 6.9. The Customer will promptly advise GPS Telecoms in writing of any change of name, trading style, address or bank details.
- 6.10. The Customer is solely responsible for the Customer Equipment and/or SIM Card and shall remain liable for all call charges including any incurred during a period of theft, damage or loss until such theft, damage or loss is reported to the Network Operator and GPS Telecoms, and will remain liable for the monthly access charge until the Agreement has ended.
- 6.11. GPS Telecoms will only consider billing queries from the Customer if made within fourteen (14) days of the date of invoice.
- 6.12. Raising such queries does not relieve the Customer of the obligation to pay all invoices when due without deduction, offset or withhold, but if an amount is subsequently found to be not payable, GPS Telecoms agrees to refund the Customer for the overpaid charges.

## 7. OBLIGATIONS OF THE CUSTOMER

- 7.1. The Customer acknowledges that the System is operated under License and by agreement with the Network Operators and that the provisions of the said Licenses and agreements apply to the use of the Service. The Customer hereby undertakes:
- 7.2. Not to use or permit the use of the System for any unlawful, immoral or improper purpose including the use of unlawful GSM SIM gateways or any purpose not recommended by the equipment manufacturer or the Network Operators or GPS Telecoms;
- 7.3. To comply with any reasonable instructions issued by GPS Telecoms relating to the System, the equipment or the Service and to use only the Customer Equipment approved by the Network Operators and the British Approvals Board of Telecommunications;
- 7.4. Not to reverse, or permit anyone else to reverse, the charges on any telephone call;
- 7.5. Not to act, or omit to act, in any way which may injure or damage any persons, property or the System or cause the quality of the Service to be impaired.
- 7.6. Not to directly or indirectly be involved, or knowingly, recklessly or negligently permit any other person to be involved, in any fraud, illegal or immoral activity and shall notify GPS Telecoms immediately upon becoming aware of any such activity.
- 7.7. Should GPS Telecoms incur additional claims, damages, losses (including loss of profit, other economic loss or legal fees) due to Customer breach of this Agreement the Customer could be liable for these.
- 7.8. The Customer will promptly advise GPS Telecoms, by phone and in writing in the event of loss or theft of the Customer Equipment and/or the SIM Card.
- 7.9. The tariff chosen at the acceptance of this Agreement will remain the minimum tariff selected for the initial contract term and the terms and conditions of the selected tariff apply.

- 7.10. The rates/tariffs/equipment subsidies that GPS Telecoms makes available to the Customer are subject to the length of contract chosen and its terms and are based upon the predicted or anticipated revenue over the contract term including notice period. The Customer is therefore expected to honour the contract, revenue and its terms. In the event that the Customer fails to do so, GPS Telecoms reserves the right to invoice the predicted or anticipated revenue, at full retail price without discount, over the full contract term including notice period and to recover in full any benefits received including Discounts, Hardware Funds, Buyouts and losses incurred, and should the contract not proceed to full term a cancellation charge will be incurred.
- 7.11. The Customer acknowledges that GPS Telecoms will accept, and act on behalf of, any instruction received from the Customer, and accept and act on behalf of any additional orders, regardless of authority and/or position, unless otherwise pre-advised to GPS Telecoms in writing with the Customers bespoke ordering procedures.

## **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 GPS Telecoms or the Customer 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 GPS Telecoms in contract, tort or otherwise (including negligence) shall, in respect of all claims under this Agreement, not exceed the total amounts paid to GPS Telecoms by the Customer 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), GPS Telecoms shall not be liable hereunder, in contract, tort or otherwise (including negligence) for any indirect or consequential losses whatsoever or otherwise howsoever arising including without limitation, loss of profits, revenues, business, contracts, anticipated savings or any other indirect or consequential losses whatsoever and "anticipated savings" means any saving that the Customer anticipated making as a consequence (whether directly or indirectly) of entering into this Agreement.
- 8.4. Where the Customer deals as a consumer, nothing in this Agreement shall affect the Customer's statutory rights.

## **9. TERMINATION AND SUSPENSION OF THE SERVICE**

- 9.1. GPS Telecoms shall have the right to, without prejudice to any other claims or remedies which it may have against the Customer, forthwith terminate or suspend the Service and this Agreement without liability upon the occurrence of any of the following events:
- 9.2. If payment of the Charges is not made on the due Payment Date or Payment for Other Services is not made by the appropriate Payment date;
- 9.3. If the Customer commits a breach of this Agreement (and where that breach is capable of remedy, does not correct this breach within 7 days of GPS Telecoms requesting the Customer in writing to correct such breach) or if any information given to GPS Telecoms by the Customer is false or misleading;
- 9.4. If the Customer makes or offers to make any composition with creditors or commits any act of bankruptcy, or if any petition or receiving order in bankruptcy is made against the Customer, or (in the case of a Customer being a Limited Company) the Customer is unable to pay its debts as they fall due within the meaning of the Companies Act 1985; or
- 9.5. If a petition or resolution to wind up the Customer is passed or presented (otherwise than for reconstruction or amalgamation); or
- 9.6. If any administrative receiver or receiver/manager is appointed over any of the Customer's assets, property or undertaking, or if any such power of appointment arises.
- 9.7. GPS Telecoms may, from time to time, without notice or liability on its part (notwithstanding the foregoing provisions and at its absolute discretion), suspend or disconnect the Service in any of the following circumstances:
- 9.8. If the Customer fails to comply with any of the terms contained herein; or
- 9.9. If the Customer does, or allows to be done, anything which in the Network Operator's or GPS Telecoms' reasonable opinion may have the effect of jeopardising the operation of the Service; or
- 9.10. If the Customer permits the use of the Service or uses the Service for illegal purposes including the use of illegal GSM SIM Gateways (or the Network Operator or GPS Telecoms believes the same), GPS Telecoms, without any liability whatsoever, reserves the right at its absolute discretion to immediately suspend the Service. In such a case the Customer will be charged during the month in which such suspension of Service takes place at the GPS Telecoms Standard Business Tariff rate, no bundled minutes being applied during that month. For the remainder of the contract term the Customer will be liable for the tariff initially agreed at full retail price without discount, subject to Clause 9 above; or
- 9.11. If, in GPS Telecoms' or the Network Operator's absolute discretion, the call charges incurred in any given period show unreasonable or excessive usage of services or unusual calling patterns such as a disproportionate percentage of incoming calls or zero usage per number of 10 minutes or less of outbound voice calls or charges including data of less than £1.00 per month, or cause network congestion; or
- 9.12. If GPS Telecoms is unable, for whatever reason, to provide the Service or if GPS Telecoms is required to terminate this Agreement by a competent regulatory authority and/or Network Operator; or
- 9.13. If the Customer exceeds the credit limits set.
- 9.14. Termination, suspension, disconnection or barring shall be without prejudice to GPS Telecoms' rights accrued up to and beyond the date of termination, suspension, disconnection or barring.
- 9.15. In the event of termination of the Service and this Agreement by GPS Telecoms in accordance with the provisions of Clauses 9.1 and 9.2, the Customer shall, within fourteen (14) days of receipt of the notice of termination, pay to GPS Telecoms all outstanding Charges including, where termination is for any of the reasons specified in Clauses 9.1 and 9.2, the amount due as set out in Clause 7.5 above or which would have been payable for the remainder of the term of this Agreement had the Customer given notice of termination at the earliest date possible in accordance with Clause 3.
- 9.16. Upon termination of this Agreement if the Customer made a deposit, GPS Telecoms will only return any surplus to the Customer after deduction of all unpaid charges. Any request for repayment must be made in writing.
- 9.17. After disconnection, suspension or barring of the equipment from the System and/or consequent upon the termination of this Agreement, the Customer shall pay on demand all Charges outstanding at the time of disconnection, suspension or barring including any reasonable disconnection or barring fee that GPS Telecoms may wish to charge in its sole discretion.

- 9.18. Customer will pay any costs, including legal fees, reasonably incurred by GPS Telecoms in collecting any payments due.
  - 9.19. Should termination take place part way through a month, no credit will be given for the post termination part of the month's access charge(s).
  - 9.20. The Customer will remain liable for all call charges incurred prior to termination regardless of when they are invoiced.
  - 9.21. Termination, porting, or migration of mobile numbers is subject to a charge of £30.00 + VAT per number.
  - 9.22. If the Customer is unable to use all of the Services for a continuous period of more than three days due to any technical failure (including power cuts, improvement, modification or maintenance of the Service or the Systems) and if the Network Operator offers this to GPS Telecoms, on application the Customer may receive a credit for their line rental which will represent that part of the line rental for the period of suspension.
- 10. FORCE MAJEURE**
- 10.1. GPS Telecoms shall not be liable for any breach of this Agreement, nor any damage resulting there from whether direct, indirect, consequential, financial or otherwise, if and to the extent that such breach arises as a result of any Act of God, acts or omissions by any Government, other Administrative Body or Network Operators, sabotage, riot, explosion, acts of terrorism, controls, restrictions, prohibitions or other Acts of any Local or National Government (including any requirement connected to the Licensing Arrangements) or industrial disputes of any kind or any act beyond the direct control of GPS Telecoms.
- 11. ASSIGNMENT**
- 11.1. This Agreement shall not be assignable by the Customer without written consent of GPS Telecoms, which will not be unreasonably withheld. GPS Telecoms may at any time assign this Agreement to any third party it considers suitable in its sole opinion.
- 12. VARIATION**
- GPS Telecoms shall be entitled, from time to time and at its absolute discretion, to:
- 12.1. Make such variations to the tariff as it deems appropriate, so long as such changes are not disadvantageous to the Customer.
  - 12.2. Make such modifications to the Service and make, or agree to, such changes to the System as it may reasonably consider necessary.
  - 12.3. Wherever practicable, fourteen (14) days written notice shall be given of such changes prior to their being made;
  - 12.4. Make such alterations to this Agreement and its terms and conditions as the Network Operators may reasonably require GPS Telecoms to
  - 12.5. Make or as are necessary as a result of changes to GPS Telecoms' license from the Network Operators or otherwise as a consequence of any regulatory or legal requirement.
- 13. DATA PROTECTION**
- 13.1. The information the Customer provides will be used by GPS Telecoms to supply the Services and will not be otherwise disclosed without the Customer's prior written permission, except as set out in Clause 14.1 below, or if required by law.
  - 13.2. GPS Telecoms does not share Customer information with other organisations for marketing purposes, however GPS Telecoms may invite the Customer to take part in market research and inform the Customer of GPS Telecoms goods and services which may be of interest unless the Customer informs GPS Telecoms that they do not wish to receive this information.
  - 13.3. The Customer has the right to ask for a copy of the data held about them by making application in writing to the Customer Services Manager at GPS Telecoms' registered office address. There may be a charge for this service.
  - 13.4. GPS Telecoms may disclose information about the Customer's account to its agents.
- 14. CONFIDENTIALITY**
- 14.1. Neither Party will disclose to any third party without the prior written consent of the other Party any confidential information which is received from the other Party as a result of this Agreement. Both Parties agree that any confidential information received from the other Party will only be used for the purposes of providing or receiving the Services. Confidential information includes business plans, concepts, methodologies and structures, product specifications, technical information, new product information, methods of product delivery, and any other technical and commercial information, inventions or ideas (whether patentable or not) of either Party which is not in the public domain.
  - 14.2. The Customer agrees to the disclosure to any radio or telecommunications operating company of its name, address & details of the Service and Customer Equipment provided to it pursuant to this Agreement.
- 15. CUSTOMER EQUIPMENT**
- 15.1. Where Customer Equipment is provided to the Customer by GPS Telecoms, then notwithstanding delivery and acceptance of the Customer Equipment, title in the Customer Equipment shall not pass to the Customer until completion of the contract, including notice period. The Customer must insure that all Customer Equipment is appropriately insured. If the contract is terminated early, for whatever reason, the Customer Equipment remains the property of GPS Telecoms.
  - 15.2. Following any non completion of the contract, GPS Telecoms reserves the right to request the safe return of such Customer Equipment undamaged and in good repair (except for reasonable wear and tear) to GPS Telecoms at the Customer's expense. Failure to comply with such request shall incur a full replacement charge plus VAT as quoted in GPS Telecoms' published SIM free price list for any mobile device, data-card or modem, of up to £300 + VAT, unless the equipment falls under the pricing stipulated in clause 15.3
  - 15.3. In the case of Blackberry, PDA or SMART phones, the full replacement charge of up to £850 + VAT will be incurred.
  - 15.4. Equipment must be returned to GPS Telecoms within 14 days of any disconnection, Porting or Migration.
  - 15.5. Risk of damage to or loss of the Customer Equipment shall pass to the Customer upon receipt of the Equipment by the Customer. The Customer shall be liable for the repair of Equipment connected under this Agreement which becomes faulty or

damaged and is outside the manufacturer's warranty. All Customer obligations under this Agreement shall remain in force during any period where equipment is undergoing repair.

- 15.6. Any Hardware Fund Provided may only converted to Customer Equipment up to the value of one quarter of the value of the agreed Hardware Fund in any calendar quarter.
- 15.7. All SIM Cards supplied to the Customer, for use on the Network Operator's Systems, shall at all times remain the property of the Network Operator, and shall be returned to GPS Telecoms upon termination of the Agreement. Failure to return any SIM card shall incur a charge of £30.00 +VAT for each card.

#### **16. BARRING AND DISCONNECTION**

- 16.1. Should GPS Telecoms elect to disconnect and/or reconnect the Customer Equipment from or to the System pursuant to Clause 9 above, then GPS Telecoms having regard to the circumstances at the time of disconnection or reconnection may elect to charge a fee of up to £30.00 + VAT for each occurrence of such disconnection or reconnection.
- 16.2. Should GPS Telecoms elect to bar and/or unbar the equipment from the System pursuant to Clause 9 above, GPS Telecoms may, in its absolute discretion, charge an unbarring fee of up to £25.00 + VAT for each such occurrence of barring or unbarring.

#### **17. INTELLECTUAL PROPERTY**

- 17.1. The Customer shall not obtain any Intellectual Property Rights in relation to the System, the Service or the Customer Equipment as a result of this Agreement or the use of the System, Service or Customer Equipment.

#### **18. GENERAL**

- 18.1. Any notice hereunder sent by either party to the other party shall be deemed served within forty-eight (48) hours.
- 18.2. Additional services may be added to this Agreement subject to the Customer's written confirmation and acceptance by GPS Telecoms.
- 18.3. The Customer is responsible for any services and their associated costs that may be accessed via the Network Operator or GPS Telecoms and the terms and conditions that relate to those services
- 18.4. No delay, neglect or forbearance on the part of GPS Telecoms in enforcing any provision of this Agreement shall be deemed to be a waiver or create a precedent or in any way prejudice GPS Telecoms' rights under this Agreement.
- 18.5. Where there is a conflict between this Agreement and any other terms and/or conditions mentioned in or printed on any correspondence exchanged between the parties, this Agreement shall prevail unless expressly agreed otherwise and in writing
- 18.6. If any non-fundamental provision of this Agreement shall be held to be void, illegal, unenforceable or conflict with any Statute, that clause or provision shall be severed from this Agreement; the validity and enforceability of the remaining clause(s) and provision(s) shall not be affected thereby.
- 18.7. References in this Agreement to persons shall include, but not be limited to, bodies Corporate, Unincorporated Associations and Partnerships. References to the singular shall include the plural and vice versa.
- 18.8. This Agreement shall be governed by and construed in accordance with English Law. Clause headings are for ease of reference only and do not govern, or affect the construction or interpretation of this Agreement