

1. Contract definition

- 1.1 'Telecom agreement' means the application/order form relating to the provision of the services in the form provided by mayflower ltd from time to time incorporating these terms and conditions.
- 1.2 'Associated company' means any subsidiary or holding company of mayflower or other associated company as defined by Sections 736 and 736A of the Companies ACT 1985.
- 1.3 'Authorised Person' means a director or authorised signatory of mayflower.
- 1.4 'Account Number' means the account opened by mayflower in the name of the customer upon creation of the contract and relating to the services.
- 1.5 'Customer' means a person, company, body corporate or other entity or association whatsoever or howsoever whose application form is accepted by mayflower and for whom mayflower has opened an account number.
- 1.6 'Contract' means the contract governed by these terms and conditions made between mayflower and the customer created upon acceptance by mayflower of the customer's application form and evidenced by the opening of an account number. Subject to Clause 1.17, the agreement becomes effective when signed by a director or authorised signatory of mayflower.
- 1.7 'mayflower' means mayflower ltd which expression shall, where the context so requires, include its successors and assigns and any associated company thereof.
- 1.8 'mayflower equipment' means any equipment supplied by mayflower
- 1.9 'Additional Provisions' means any terms additional to those outlined within the terms of this agreement as evidenced on the application form.
- 1.10 'Discount' means the amount at which any of the services are provided by mayflower to the customer during the contract at less than the full rate as outlined under additional provisions on the application form.
- 1.11 'Discount services' means any services provided by mayflower to the customer from time to time and not charged for by mayflower from time to time or charged at a discount.
- 1.12 'Least Cost Routing Software' means software installed on a telephone system which automatically enables the routing of calls via different telephone operators.
- 1.13 'Minimum Term' means the minimum duration of this contract, which unless otherwise expressly stated on the application form shall be 12 months from the date the customer first starts to receive the services.
- 1.14 'Services' means re-routing the customer's telecommunications including without limitation all calls, voice, fax and data traffic over the mayflower Network and any additional services as outlined on the application form and provided under the terms of this agreement. Services shall be deemed to include discount services where appropriate.
- 1.15 'Services literature' means mayflower's literature specific to the services and other associated services existing from time to time.
- 1.16 'User' means the customer and any individual or company utilising the services provided to the customer under the terms of this agreement.
- 1.17 'Refusal of services' means the non provision of the services outlined on the application form due to circumstances outside of mayflower's control and including, but not limited to, the customer's poor credit history, mayflower reserves the right to make a reasonable administrative charge for service thus far rendered to the customer in such instances.

2. The services

- 2.1
 - a) The customer shall complete, sign and return to mayflower a service agreement prior to mayflower agreeing to provide the services.
 - b) Where the customer has least cost routing software available for use at its premises, mayflower will, if necessary, and at its sole discretion, reprogram it in order to provide the services.
 - c) Where the customer does not have least cost routing software available for use at its premises, mayflower will, if necessary, and at its sole discretion supply, install and connect the customer to mayflower access equipment in order to provide the services.
 - d) mayflower shall use all the reasonable care and skill of a competent telecommunications provider to provide the customer with the services throughout the term of the contract.
 - e) mayflower shall be at liberty, where necessary, to improve, update or upgrade the services or alter the provision of the services without any notice to the customer.
- 2.2 The customer undertakes to mayflower that:
 - a) 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 mayflower 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 with or substantially similar to the services. In the event of any breach by the customer of this condition 2.2(a) the terms of condition 4.12 shall apply;
 - b) The services and the mayflower network will only be used in accordance with the contract;
 - c) Only the customer and users shall use the services and the mayflower network and no other person shall be offered or permitted to use the same.
 - d) Upon the termination of the contract:
 - (i) No attempt shall be made to make calls via the services or otherwise to use the mayflower Network and; (ii) the customer shall pay in full an amount equal to the discount for the period any of the services have been supplied as per the contract. Such payment to be in accordance with and subject to condition 4;
 - e) The services literature and any other instructions regarding the use of the services and the mayflower network as may be notified to the customer by mayflower from time to time shall be complied with promptly and such literature and instructions shall be deemed to form part of the contract.
- 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 any authorised persons during the customer's normal working hours and allow the removal, installation and maintenance of mayflower access equipment;
 - b) Keep its telecommunications equipment including without limitation the mayflower access equipment in good working order and ensure that the equipment complies with all applicable standards and approvals so as to enable mayflower to provide the services;
 - c) Only use and connect those telephones, ducting, cables, sockets and other equipment to the mayflower network that have been approved in advance by mayflower in writing and comply with all the relevant legislation relating to the use of such equipment;
 - d) Provide all reasonable assistance required by mayflower to enable it to provide the services;
 - e) Inform mayflower by one month's prior notice in writing of any premises relocation or change of telephone number(s) on which the services are registered;
 - f) Provide a safe working environment for authorised persons working on the customer's premises;
 - g) Indemnify mayflower fully against all losses, liabilities, costs (including without limitation legal costs) and expenses which mayflower may incur as a result of any breach of the customer's obligations under the contract or misuse of the services or the mayflower network;
 - h) Pay mayflower (at it's then current published rates) for all call-out visits required from mayflower where mayflower determines the problem with the services or the mayflower network is (1) not the fault of mayflower or the mayflower access equipment or (2) if the mayflower access equipment has been damaged.
- 2.4 The customer undertakes to mayflower to ensure that the services and the mayflower network are not used:
 - 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 or 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) Otherwise than for the purpose of a telecommunications system.

3. Mayflower's rights

- 3.1 mayflower shall be entitled to alter any access or authorisation number or method of accessing the services from time to time and may reprogram the customer's equipment as a result.
- 3.2 mayflower may suspend the services to the customer at its sole discretion including but not limited to the following:
 - a) In the interests of the quality of the services or the mayflower Network;
 - b) If any credit limit agreed between mayflower and the customer from time to time is exceeded;
 - c) If any term of the contract is breached (including, without limitation, in the event of a failure to make any payment or provide any deposit required to be made or provided under the contract);
 - d) In order to comply with an order, instruction or request of any government, emergency service organisation or other competent authority; or
 - e) If fraud or attempted fraud is suspected by mayflower (in its reasonable opinion) in connection with the use of the services or the mayflower Network.
- 3.3 If in mayflower's reasonable opinion it suspects the customer is offering to resell the services to any third party, mayflower may collect and store data and information about the customer and its use of the services and provide this information to companies affiliated with mayflower including without limitation any associated company and (i) third parties.

4. Charges and payments for the services

- 4.1 All sums due to mayflower under the contract shall become due on the date of the relevant invoice and are payable within 14 days (including week-ends and bank holidays) of the date of the relevant invoice. Unless otherwise stated, any rental or recurring charges are invoiced monthly in advance and call charges and any ad hoc maintenance or similar charges are invoiced monthly in arrears which will begin on the date on which the service becomes operational. Charges will be based on mayflower's records.
- 4.2 In the event of any error or omission on a mayflower invoice for any period, mayflower may issue a corrective invoice at a later date.
- 4.3 If the customer fails to make any payment within the 14 day period following the date of the relevant invoice, without prejudice to its other rights hereunder, mayflower shall have the right to require the customer to pay all sums due on demand.
- 4.4 Time of payment of all sums due to mayflower under the contract shall be of the essence.
- 4.5 mayflower reserves the right to amend its charges for the services from time to time.
- 4.6 mayflower shall use its best endeavours to bring to the attention of the customer any variation in prices prior to their implementation.
- 4.7 Without prejudice to mayflower's rights to treat the non-payment as a material breach of the contract, mayflower reserves the right to charge interest on outstanding amounts from the due date until payment is received in full. This would be at a rate equal to 4% per annum above the Barclays 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 under condition 4.1.
- 4.8 mayflower reserves the right to charge for administrative costs incurred by mayflower in pursuing late payers.
- 4.9 All sums due to mayflower under the contract are subject to value added tax (VAT), and any other applicable taxes, levies or charges, which may from time to time be introduced.
- 4.10 The customer shall be liable for all charges arising from the use of the services by any person utilising the customer's registered services telephone number(s) (with or without customer's authorisation) until such time as the customer has notified mayflower of any unauthorised use of the services. Such notice should be sent by the customer to mayflower in writing by 1st class recorded Delivery. The customer must retain the relevant receipt as proof.
- 4.11 Details of the contract and the conduct of the account will be registered with a licensed credit reference agency. Information thus registered may be used to help make credit decisions or, fraud prevention or the tracing of debtors.
- 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 mayflower 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 mayflower to the customer prior to the breach by the customer of condition 2.2(a); or
 - b) The actual amount payable by the customer for the services during such month (whichever is the higher).

5. mayflower access equipment

- 5.1 The customer shall provide without charge or cost to mayflower appropriate equipment space, ducting, environment and continuous stable electrical power to install and maintain the mayflower access equipment at its premises and to enable mayflower to provide the services.
- 5.2 It is deemed that title to any mayflower access equipment shall remain with mayflower and whilst the mayflower access equipment is on the customer's premises, the customer shall ensure that it is kept safe, secure and fully insured and is not interfered with by any person.
- 5.3 Upon termination of the contract, the customer will ensure that mayflower is allowed prompt access to all relevant premises to remove the mayflower access equipment (if applicable).
- 5.4 On termination of this contract, the customer must return all mayflower access equipment supplied by mayflower within 14 days and in good working order. If the customer fails in this respect, they will be liable for any costs mayflower incur in recovering the equipment. If mayflower are prevented from recovering the equipment, or if the customer fails to return it to mayflower, the customer will be liable to pay to mayflower on demand a reasonable sum commensurate with the value of the equipment (If applicable).

6. Termination

- 6.1 The contract may be terminated by either mayflower or the customer at the expiry of the Minimum Term by giving at least 90 days prior written notice in accordance with clause 14. Thereafter the contract may be terminated on any successive anniversary of the agreement by giving at least 90 days prior written notice in accordance with clause 14.
- 6.2 If neither mayflower nor the customer provide notice to terminate in accordance with condition 6.1 the client and mayflower agree that the contract shall automatically be renewed for the same period as the original Minimum Term on each successive anniversary where notice to terminate hasn't been served;
- 6.3 mayflower (without prejudice to it's other rights) may terminate the contract forthwith in the event that:
 - a) The customer fails to make any payment when it becomes due to mayflower or shall default in due performance or observance of any obligation under the contract or any other contract with mayflower or an associated company and (in the case of remedial breach) fails to remedy the breach within a reasonable time specified by mayflower in its written notice so to do; or
 - 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 receiver or administrator or to present a winding-up petition or make a winding-up order.
- 6.4 The terms of this contract shall continue to bind the parties hereto to such extent and for so long as may be necessary to give effect to the rights and obligations embodied in it including without limitation conditions 2.2, 4, 7 and 8.
- 6.5 If the contract is terminated by either party hereto, the customer shall:
 - a) Pay to mayflower all arrears of charges, termination fees and any interest payable under the contract and;
 - b) Return to mayflower all equipment owned or provided by mayflower and/or allow mayflower or its agent access forthwith to the customer's premises for the removal of any mayflower access equipment and pay any reasonable charges mayflower may have incurred in so doing;
 - c) Undertake and comply with the provisions of condition 2.2(d); and
 - d) Cease being provided the services and have no right to use the same.

7. Confidentiality

- 7.1 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 mayflower.
- 7.2 The confidentiality obligations set out in condition 7.1 shall survive the termination of the contract.
- 7.3 Nothing in the agreement shall prevent mayflower disclosing any of the customer's confidential information to a service provider's employees, sub-contractors, advisers and other consultants on a 'need to know' basis provided those persons are aware of the confidential nature of the information.

8. Limitation of liability

- 8.1 The following provisions set out mayflower's entire liability (including any liability for the acts and omissions of its directors, officers, employees, agents or sub-contractors) to the customer in respect of:
 - a) Any breach of its contractual obligations arising under this contract; and
 - b) Any representation statement or tortious act or omission including negligence arising under or in connection with this contract.
- 8.2 Any act or omission on the part of mayflower or their directors, officers, employees' agents or sub-contractors falling within condition 8.1 shall for the purposes of this condition 8 be known as an "event of default".
- 8.3 mayflower's liability to the customer for the tort of deceit and for death or injury resulting from their own or that of their directors', officers', employees', agents' or sub-contractors' negligence shall not be limited.
- 8.4 Subject to the provisions of condition 8.3, mayflower's entire liability in respect of any event of default shall be limited to damages not exceeding the sums paid by the customer to mayflower for the services pursuant to this agreement in the preceding twelve month period in the case of a single event of default and twice the sums paid by the customer to mayflower for the services pursuant to this agreement in the preceding twelve month period in the case of all events of default or series of connected events of default occurring in any twelve month period.
- 8.5 Subject to condition 8.3, mayflower shall not be liable to the customer in respect of any event of default for loss of profits, goodwill, contracts, opportunity or any other type of special, indirect or consequential loss whatsoever or howsoever even if such loss was reasonably foreseeable or mayflower had been advised of the possibility of the customer incurring the same.
- 8.6 If a number of events of default give rise substantially to the same loss then they shall be regarded as giving rise to only one claim under the contract.
- 8.7 Except in the case of an event of default arising under condition 8.3, mayflower shall have no liability to the customer in respect of any event of default unless the customer shall have served notice of the same upon mayflower within six months of the date the customer became aware of the circumstances giving rise to the event of default or the date when it ought reasonably to have become so aware.
- 8.8 mayflower shall not be responsible for complying with statutory regulations, or local by-laws, or the fulfillment of any special regulations affecting the customer.
- 8.9 Save as set out in condition 8.3, mayflower shall have no liability under this contract of the acts and omissions of other public telecommunication operators or the breakdown total or partial of the mayflower Network or any other network.
- 8.10 To the extent that all or any part of the services are faulty, unavailable or interrupted, the customer's sole and exclusive remedy shall be to be compensation in accordance with compensation schemes that may be introduced from time to time by mayflower.
- 8.11 mayflower shall not be liable for faults in the customer's telecommunications equipment which result in mayflower being unable to provide the services.
- 8.12 Dates and terms for provisions of the services shall be estimates only and no liability shall accrue to mayflower for failure to meet any such dates or times. mayflower will not be held responsible for any loss due to programming errors or omissions made by any person.
- 8.13 In the event of any failure in the services, mayflower shall not be liable to the customer for any charges incurred by the customer should it direct its services to another carrier.
- 8.14 mayflower reserves the right not to provide the services due to any technical limitation in the customer's telephone system, telephone exchange or mayflower access equipment.
- 8.15 The obligations set out in this condition 8 as to limitations of liability shall remain in full force and effect notwithstanding the expiration or any termination of this contract for any reason whatsoever.

9. Deposit

- 9.1 mayflower may at any time before or after the provision of the services require payment by the customer in a manner specified by mayflower of a sum to be held by way of a deposit as and against any charges arising from use of the services by the customer and mayflower shall be entitled to offset such deposit against any sums due under this contract from time to time including interest due or owing to mayflower pursuant to condition 4.7.
- 9.2 Any deposit held by mayflower will not accrue interest whatsoever although any deposit (or part thereof) which is held by mayflower for over one year and which is subsequently repaid to the customer may, at mayflower's discretion, attract interest at an amount determined by mayflower.

10. Assignment

- 10.1 The customer shall not assign, transfer, sub-contract, delegate or otherwise deal with all or any of its rights under the contract.
- 10.2 mayflower shall have the right to assign or otherwise transfer, sub-contract, delegate all or any of its rights and obligations hereunder to an associated company or other person.

11. Force majeure

- 11.1 Neither mayflower 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 without limitation any act of God, inclement weather, failure or shortage of power supply, flood, 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

- 12.1 Failure by either mayflower or the customer to exercise or enforce any right conferred by this 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

- 13.1 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

- 14.1 All notices to mayflower herein provided shall be sent by the customer in writing by 1st class recorded delivery post and the customer must retain the relevant receipt as proof.

15. General

- 15.1 Reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted, with or without amendment.
- 15.2 Unless there is something inconsistent in the subject or context, words denoting the singular number only include the plural and vice versa; words denoting one gender only include the other genders.
- 15.3 Unless the context otherwise requires, a reference to a condition is to a condition of the contract.
- 15.4 The headings in the contract are inserted for convenience only and do not affect its interpretation.
- 15.5 If any provision of the contract is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the contract had been entered into with the invalid provision eliminated.
- 15.6 A person who is not a party to this contract has no right under the contracts (Rights of Third Parties) ACT 1999 to enforce any provisions of this contract.

16. Governing law

- 16.1 The contract shall be governed, construed and interpreted in accordance with English law and the parties submit to the exclusive jurisdiction of the English 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.