

1. INTRODUCTION AND DEFINITIONS

- 1.1 The Customer understands that in order to receive the Equipment/Services and the Airtime Services it is required to enter into two separate agreements. These are:
 - 1.1.1 This Agreement with Range Communications (Nottingham) Ltd, hereafter referred to as Range Communications which governs the supply of the Equipment and or Services from Range Communications to the Customer: and
 - 1.1.2 The Airtime Agreement with the relevant networks/service provider.
- 1.2 In this Agreement, the following words and expressions shall have the meanings set out below.

“Airtime Agreement” means the agreement which governs the provision of Airtime Services from the relevant network/service provider, a copy of which will be provided with this Agreement;

“Airtime Services” means fixed line or cellular mobile telecommunications airtime and network capacity procured from a network/service provider;

“Connection” means the connection of an end user to a network or service provider such that the end user is capable of accessing and utilising the Airtime Services:

“Customer” means the person ordering the Equipment/Services and/or the Airtime Services whose full details are set out in the Airtime Agreement;

“Downward Migration” means in respect of a Connection, the transfer at the request of the Customer from one tariff provided by the network/service provider (“the Old Tariff”) to another tariff provided by that same network/service provider (“the New Tariff”) which results in the Customer being charged a lower monthly line rental under the New Tariff than it was being charged under the Old Tariff:

“Equipment” means mobile telecommunications handsets and other associated equipment;

“Hardware fund” means any agreed credit for the Customer based on an upgrade, or additional service or accessory purchase, which is not taken as cash back but can be credited against future purchases of goods in accordance with this Agreement.

“Minimum Terms” means the minimum period of time which the Customer has agreed to maintain (a) Connections(s) under the Airtime Agreement;

“Monthly Subsidy Amount” means the amount which is derived by dividing the Subsidy payable for a Connection by the number of months in the Minimum Term applicable to that Connection;

“Services” means any services ordered by the Customer and provided by Range Communications:

“Short Form Agreement” means the Summary document signed by the Customer and the Director of Range Communications at the same time as this Agreement.

“Subsidy” means the sum payable by Range Communications to the Customer as is determined by Range Communications in its sole discretion, taking into consideration the number of Connections which the Customer is taking out and the applicable tariffs and the Minimum Term which the Customer is prepared to enter into;

2 APPLICABLE TERMS

Unless other terms and conditions are expressly accepted by Range Communications by means of a specific written amendment signed by a director of Range Communications the supply of Equipment and or the provision of Services will be on the terms and conditions set out in this Agreement and the Short Form Agreement to the exclusion of any other terms and conditions whether or not the same are endorsed upon, delivered with or referred to in any purchase order or other document delivered or sent by the Customer to Range Communications.

3 SUPPLY OF CUSTOMER EQUIPMENT

- 3.1 In consideration of the Customer entering into the Airtime Agreement, Range Communications undertakes to supply to the Customer such Equipment/Services as is ordered by the Customer from time to time.
- 3.2 Range Communications shall use its reasonable endeavours to deliver the Equipment on the date agreed by the parties but the Customer acknowledges that time shall not be of the essence.
- 3.3 Notwithstanding delivery and acceptance of the Equipment to the Customer, title to the same will not pass to the Customer (but will be retained by Range Communications) until the earlier of either (i) the expiry of the Minimum Term or (ii) the date on which all undisputed invoices relating to the same (including VAT) have been paid in full to Range Communications
- 3.4 The risk in the Equipment will pass to the Customer upon delivery and the Customer will be liable for any loss or damage of the same as and from the time when the Equipment is delivered to the address notified by the Customer.
- 3.5 The Customer undertakes to notify Range Communications as to any alleged defect, shortage or discrepancy in any Equipment within 3 days of delivery of the Equipment to the Customer. In the event that the Customer fails to notify Range Communications within this period then the Customer will be deemed to have accepted the Equipment and Range Communications shall have no liability to the Customer whatsoever in respect of such Equipment.
- 3.6 Should the Customer for whatever reason cancel the Agreement during the first quarter of the contract they must return all handsets and accessories supplied to them in the same condition they arrived. If the items are not returned or are returned in a non saleable condition then a charge of the full cost of the item plus a £5 admin fee per item will be invoiced to the Customer.

4 HARDWARE FUNDS AND CASH BACK

- 4.1 Hardware must be ordered through Range Communications in writing via email or fax.

- 4.1.1 The hardware fund is to be used within the specified contract period, funds left after either termination/disconnection/upgrade/move/migration or end of our agreement will be forfeited.
 - 4.1.2 If a number terminates with Range Communications for whatever reason, any hardware fund provided will be immediately forfeited, and no sums are due to the Customer subject to the matters set out in clause 4.1.7 below.
 - 4.1.3 All hardware provided by Range Communications, remains the property of Range Communications until the Customer has completed in full its contractual obligations. Range Communications reserves the right to request the safe return of any such mobile equipment in which Range Communications retains title pursuant to clause 3.3 in the event of early termination or disconnection by the Customer.
 - 4.1.4 If there is more hardware fund available than the cost of hardware requested upfront on the contact, the remaining hardware fund will be split into 4 equal parts to be used at each contract quarter.
 - 4.1.5 The cash back and hardware funds are based on a projection of spend over the life of the complete contract, and as such are subject to claw back in the case of the average monthly spend not being achieved. A calculation of monthly spend will take place at each contact quarter. If the hardware fund is reduced at any point, based on such calculations, there will be no increase in the hardware fund even if the average monthly spend returns to the agreed spend. There will be no increase in the hardware fund if the average spend is more than the projected spend.
 - 4.1.6 Unless otherwise stated on the customer requirements from, cash back will be payable four months after connection.
 - 4.1.7 All cash back paid is based on the contractual obligation being completed in full, in the event that a Customer cancels prior to connection, disconnects a Connection prior to the expiry of the Minimum Term, upgrades/resigns a Connection for whatever reason without the relevant written permission from a director of Range Communications prior to the expiry of the Minimum Term, transfers a Connection to another network/service provider/dealership/broker prior to the expiry of the Minimum Term, or a Connection is Downward Migrated during the Minimum Term, then Range Communications shall be entitled to invoice the customer for the pro rata amount of cash back plus any other charges which may apply.
- 5 PROVISION OF THE SERVICES
- 5.1 Range Communications shall use its reasonable endeavours to provide the Services on the dates agreed by the parties.
 - 5.2 Range Communications shall use its reasonable endeavours to ensure that the Services are provided with reasonable skill and care.
- 6 CHARGES AND PAYMENT
- 6.1 The Customer hereby agrees to pay to Range Communications for each item of Equipment and any Services ordered by and provided to the Customer within 14 days from the date of an invoice.
 - 6.2 Range Communications reserve the right to claim interest, compensation and reasonable costs under the Late Payment of Commercial Debts (Interest) Act 1998 and it is agreed that the term implied by that Act shall apply after any Judgment as well as before. Any reference to the Late Payment of Commercial Debts Act 1998 is also a reference to any amendment, modification or re-enactment of it. If for any reason the Late Payment of Commercial Debts Act does not apply, interest shall be payable at an annual rate of 8% above the Bank of England base rate from time to time.
- 7 PAYMENT AND RECLAMATION SUBSIDIES
- 7.1 Subject to the remaining provisions of this clause 7, Range Communications may, acting in its sole discretion, provide the Customer with a Subsidy as a result of the Customer entering into the Airtime Agreement with the network/service provider.
 - 7.2 In the event that Range Communications does provide the Customer with a Subsidy this may be provided to the Customer at the sole discretion of Range Communications, using the following methods set out below or any combination of them:
 - 7.2.1 Deducing the Subsidy from the value of the Equipment or the Services which the Customer orders from Range Communications:
 - Or
 - 7.2.2 The payment of monies (representing the amount of the Subsidy) to the Customer and such monies shall be paid to the Customer in full after the expiry of 6 months from the Connection date where the applicable Minimum Term is 12 months.
 - Or
 - 7.2.3 Using such amount to discharge any termination charges levied upon the Customer by the relevant network/service provider for terminating their previous Airtime Agreement subject to Range Communications being provided with a copy of the relevant invoice from such network/service provider.
 - 7.3 Any Subsidy (or instalment payment of a Subsidy) payable within 30 days from the date that the Customer presents an invoice to Range Communications (save that no invoice shall be necessary where the Subsidy is being deducted from the price of the Equipment/Services ordered by the Customer pursuant to clause 6.2.1) provided that;
 - 7.3.1 At all times the Connection is still active on the relevant payment date that the Subsidy (or instalment payment of the Subsidy) is due;
 - 7.3.2 Where the invoice is payable in instalments or after a prescribed period of time the appropriate trigger date has passed.
 - 7.3.3 The invoice has been raised in accordance with the provisions of this Agreement, and

- 7.3.4 Where the;
- a) invoice is for termination charges pursuant to clause 7.2.3, this amount is invoiced within 3 months from the Connection date; and or
- b) Invoice is for the payment of monies pursuant to clause 7.2.2, this amount is for the payment of monies pursuant to clause 7.2.2, this amount is invoiced during the Minimum Term; and or
- c) amount claimed is being deducted from the price of Equipment/Services ordered by the Customer pursuant to clause 7.2.1, this amount is claimed during the Minimum Term; and in the event that the Customer fails to invoice/claim the Subsidy within the timescales set out in clause 7.34 (a) to (c) (inclusive) then the Customer's right to the Subsidy shall cease.
- 7.4 The Customer acknowledges that:
- 7.4.1 The payment of the Subsidy is conditional upon:
- a) the Customer maintaining each Connection for the Minimum Term, and
- b) the Customer not Downward Migrating any Connection during the Minimum Term: and
- c) such other conditions as are notified to the Customer from time to time by Range Communications.
- 7.4.2 Range Communications will provide the Subsidy prior to the satisfaction of the conditions set out in clause 7.4.1 and hence the need for clause 7.5
- 7.5 Range Communications shall be entitled to reclaim from the Customer the Subsidy (or such proportion of the Subsidy) already paid to the Customer (or withhold such amount from any Subsidy or instalment of a Subsidy to be paid to the Customer) in the event that;
- 7.5.1 A Connection is for whatever reason disconnected prior to the expiry of the Minimum Term; or
- 7.5.2 A Connection is for whatever reason upgraded/resigned without the relevant written permission from a director of Range Communications prior to the expiry of the Minimum Term; or
- 7.5.3 A Connection or care of a Connection is transferred to another network/service provider/dealership/broker prior to the expiry of the Minimum Term; or
- 7.5.4 A Connection is for whatever reason Downward Migrated during the Minimum Term; or
- 7.5.5 The relevant network/service provider (for whatever reason) reclaims or withholds in full or in part from Range Communications any of the connection commission paid to Range Communications by the network/service provider in respect of that Connection; and the proportion of the Subsidy that Range Communications shall be entitled to reclaim from the Customer shall be the Monthly Subsidy Amount for each month (and such pro rata amount for each incomplete month) of the balance of the Minimum Term which is unexpired at the date of disconnection, Downward Migration, upgrade/resign or transfer.
- 7.6 Any such sum reclaimed (or withheld) pursuant to clause 7.5 shall be invoiced to the Customer and such sum shall be payable (unless withheld) within 14 days of the date of the Range Communications invoice.
- 7.7 In the event that a Customer disconnects a Connection prior to the expiry of the Minimum Term, upgrades/resigns a Connection for whatever reason without the relevant written permission from a director of Range Communications prior to the expiry of the Minimum Term, transfers a Connection or care of a Connection to another network/service provider/dealership/broker prior to the expiry of the Minimum Term, or a Connection is Downward Migrated during the Minimum Term then Range Communications shall be entitled to charge the Customer an administration charge of £250 for each connection, in addition to any other claw backs, reclamation of subsidies, reclamation of hardware, reclamation of hardware fund and reclamation of cash back.
- 8 WARRANTIES
- 8.1 The Customer acknowledges that Range Communications is not the manufacturer of the Equipment, and accordingly, that the warranty given by Range Communications is limited as follows. If any Equipment is proved to the reasonable satisfaction of Range Communications to be defective in material or workmanship then:
- 8.1.1 If the Equipment is returned to Range Communications within 14 days of the date of their delivery then Range Communications will at its option (a) repair the Equipment: (b) replace the Equipment, (c) substitute substantially equivalent goods or (d) credit the Customer in respect of any such Equipment. For the avoidance of doubt, where Daisy Connect replaces Equipment or provides substitute goods, the original Equipment returned by the Customer will belong to Range Communications provided that these obligations on the part of Range Communications will not apply where:-
- a) the Equipment has been altered in any way whatsoever or has been subjected to misuse or unauthorised repair: or
- b) the Customer has failed to observe any maintenance requirements relating to the Equipment or:
- c) the Equipment has been improperly installed or connected (unless Range Communications carried out such installation and connection); or
- d) the Equipment has been expressly sold on a "no warranty" basis or in respect of any promotional items supplied from time to time with or in connection with the Equipment.
- 8.2 If it is requested on the Customer Requirements form that the Customer requires setup and general training on using the handsets, the Customer understands that this service is provided under best endeavours. If the Customer's computer equipment is unable to install and run software provided by the Networks and hardware manufacturers, Range Communications may be unable to provide setup, synchronization or copying of contacts/calendar/email and general handset settings that require a suitable computer to do so.
- 8.3 Save as provided in this Agreement Range Communications hereby excludes all conditions, warranties and stipulations express or implied, statutory, customary or otherwise which but for such exclusion would or might subsist in favour of the Customer.
- 9 LIMITATION OF LIABILITY
- 9.1 Range Communications' liability for loss or damage of any kind whatsoever (however such liability arises and whether in contract, tort, for breach of statutory duty or otherwise) under or in connection with;
- a) this Agreement and/or
- b) any matter collateral to this Agreement and/or in respect of any representation or misrepresentation (other than a fraudulent misrepresentation made by or on behalf of Range Communications) shall in no circumstances exceed the sum paid by the Customer to Range Communications in respect of the Equipment or Services with which such liability arises provided that nothing in this clause shall limit or exclude liability for death or personal injury arising from Range Communications' negligence.
- 9.2 Save as otherwise provided, Range Communications will be under no liability under this Agreement for any personal injury, death, loss or damage of any kind whatsoever (other than death or personal injury resulting from Range Communications negligence) whether consequential or otherwise including but not limited to loss of profits, pure economic loss, Loss of business and depletion or goodwill.
- 9.3 Save for death or personal injury resulting from Range Communications negligence, Range Communications shall not be liable to the Customer for any loss as a result of electromagnetic frequencies or any similar result from use of the Equipment.
- 10 GENERAL
- 10.1 Range Communications will be entitled to assign, sub-contract or sub-let this Agreement or any part thereof. The Customer shall not be permitted to assign or sub-let this Agreement or any part thereof without the written consent of Range Communications.
- 10.2 Failure of Range Communications to enforce any of the provisions of this Agreement will not be construed as a waiver of any of its rights hereunder.
- 10.3 Range Communications shall be entitled to amend any of the terms of this Agreement upon the giving of 7 days written notice to the Customer.
- 10.4 In relation to all obligations of the Customer under this Agreement, the time of performance is of the essence.
- 10.5 The illegality, invalidity or unenforceability of any clause or part of the Agreement will not affect the legality, validity or enforceability of the remainder. If any such clause or part is found by any competent court or authority to be illegal, invalid or unenforceable the parties agree that they will substitute provisions in a form as similar to the offending provisions as is possible without thereby rendering them illegal, invalid or unenforceable.
- 10.6 Each of the parties hereto is an independent contractor and nothing contained in this Agreement shall be construed to imply that there is any relationship between the parties of partnership or of principal/agent or of employer/employee.
- 10.7 The legal construction of these clauses shall not be affected by their headings which are for convenience or reference only.
- 10.8 Any demand, notice or communication shall be deemed to have been duly served: -if delivered by hand, when left at the proper address for service. -if given or made by prepaid first class post. 48 hours after being posted (excluding Saturdays, Sundays and public holidays).
- 10.9 No variation to this Agreement may be made unless set out in writing and signed by a director of Range Communication.
- 10.10 This Agreement shall be governed by English law and the parties submit to the exclusive jurisdiction of the English Courts.