

TERMS AND CONDITIONS

IF THESE TERMS AND CONDITIONS ARE TOO SMALL FOR YOU TO READ COMFORTABLY PLEASE CALL CUSTOMER SERVICE ON 0844 54 99 222 AND WE WILL SEND YOU A LARGER PRINT VERSION. OUR CURRENT TERMS AND CONDITIONS AND FULL DETAILS OF ALL PRODUCTS AND SERVICES ARE ALWAYS AVAILABLE ON DEMAND FROM HELPDISK@MIDUS.CO.UK AND ARE DEEMED INCORPORATED HEREIN. THE SERVICES MAY BE PROVIDED TO YOU ON A FREE OR TRIAL BASIS AT THE SOLE DISCRETION OF MIDUS COMMUNICATIONS.

1. Definitions in this agreement:

"Act" means the Telecommunications Act 2003.

"Airline Service Provider" means a third party supplying airline services to the Customer.

"CPI" means the Consumer Prices Index as published by the Office for National Statistics

"CPS" means carrier pre selected allowing calls to be made over a number of networks

"Customer" means the customer detailed overleaf.

"Data Protection Laws" means the Data Protection Act 1998 and the Telecommunications (Data Protection and Privacy) Regulations 1999

"Direct Debit" means any request(s) for any payment or series of payments by bank direct debit payment method.

"Equipment" means any equipment or product (including for the avoidance of doubt mobile telephones) supplied by Midus or any third party on behalf of Midus to the Customer.

"MIDUS" means Midus Communications also trading as Midus whose registered office is at 89 Whiting Street Bury St Edmunds Suffolk IP33 3GH (registered number 05649942)

"Minimum Term" means the period of 12 months from the Commencement Date or such other period as is prescribed for the relevant service or as is otherwise detailed overleaf.

"Mobile Services" means the provision of services in relation to mobile telephony.

"Regulations" means the Consumer Protection (Distance Selling) Regulations 2000.

"Services" means the provision of telecom services and/or Equipment and/or Mobile Services and/or fraud monitor and services provided by us relating to the Internet and any related service provided by Midus to the Customer under this agreement.

Any reference to any statute includes any amendments to that statute from time to time or any subsequent substitution thereof

2. The Services and Equipment

2.1 Save as provided in these terms and conditions Midus shall provide the Customer with such Services and Equipment as are requested by the Customer and any use of the Services or payment for the Services is deemed acceptance of these terms and conditions. In respect of fraud monitor and other services the additional terms and conditions set out on our website shall be deemed to be incorporated herein. Midus shall only become liable to supply Services to the Customer once satisfactory responses to credit checks and criminal bureau checks have been received by Midus and (where appropriate) any airline service provider. Midus will monitor and record information relating to a customer's trade performance and such records will, subject to the provisions of the Data Protection Laws, be made available to credit reference agencies, who may share that information with other businesses in assessing applications for credit and fraud prevention.

2.2 The Customer shall be responsible for the safe keeping and safe and proper use of the Services and any related Equipment after installation of the Services and the Customer undertakes in particular:

2.2.1 not to cause any attachments other than those approved for connection under the Act to be connected to any Equipment; and

2.2.2 not to contravene the Act or any other relevant regulations or licences.

2.3 The Customer hereby agrees that its telecommunications apparatus shall at all times conform to the standard or standards (if any) for the time being designated under the Act and Midus shall not be under any obligation to connect or keep connected any telecommunications apparatus if it does not comply or if in the reasonable opinion of Midus it is likely to cause death, personal injury, damage or to impair the quality of any Services provided by Midus.

2.4 The Customer undertakes to use the Services in accordance with the Act and Midus's acceptable use policy (as published from time to time on www.midus.co.uk) and the Customer further undertakes not to use the Services and to procure that none of its employees use the Services:

2.4.1 as a means of communication for a purpose other than that for which the Services are provided; and

2.4.2 for the transmission or receipt of any material which is defamatory obscene offensive or of an abusive or menacing character or otherwise in breach of Midus's acceptable use policy.

2.5 Midus's acceptable use policy and fair usage policy form part of this agreement and includes any restrictions imposed on Midus by the provider to it of the Services and/or Equipment and is designed to protect the level and quality of the services that Midus offers to all of its customers and permits Midus to regulate the Customer's use of the Services.

2.6 Any Equipment supplied by Midus further to a rental agreement remains the property of Midus and must be made available for collection on the expiry or termination of this agreement.

2.7 The Customer shall not publicise any number in any way or commit to any advertising or publicity until such time as it has received from Midus in writing confirmation that the number is ready for service. Midus will use reasonable endeavours to provide you with the Services by the dates agreed with you and to continue to provide the services until this agreement is terminated. Midus will not be liable for any loss or damage should the Service not commence or restart on the agreed date. Where Midus is supplying network services as part of the Services the Customer must provide to Midus details of all related services that it wishes to receive relating to any telephone number that the Customer wishes to use. Midus will provide network Services through such party as it deems appropriate.

2.8 The Customer shall give Midus at least 30 days written notice in the event that unusually high use of the Services is likely to occur. Midus shall not be liable for failure/withdrawal of any part of the Services should such notice not be given.

2.9 The Customer hereby specifically authorises Midus to send/resend CPS during the continuance of this agreement, and hereby waives Midus's obligation to notify it of the same being done. If the Customer wishes to receive such notification then it must so inform Midus in writing.

2.10 Where Midus provides software to the Customer as part of the Services and/or Equipment Midus hereby assigns the software to the Customer solely for the use of the same by the Customer in connection with the Services and/or Equipment. This licence automatically terminates on termination of this agreement. Midus does not warrant that the software will be error-free and the Customer hereby agrees to make proper back-ups of all data.

3. Term

3.1 This agreement shall commence on the date hereof and subject to the remaining terms of this clause 3 shall continue for the Minimum Term and thereafter from year to year until terminated by either party giving to the other not less than 90 days prior written notice but not greater than 120 days prior written notice expiring at the end of the Minimum Term or at the end of any subsequent 12 month period as appropriate. Such notice to be sent by recorded delivery mail effective on the date the notice is received by Midus.

3.2 Either party shall be entitled forthwith to terminate this agreement by giving written notice to the other if

3.2.1 the other commits a continuing or material breach of this agreement and, if the breach is capable of remedy, fails to remedy it within 21 days or (in the case of a breach of clauses 2.4 or 5.9) forthwith after receipt of a written notice giving full particulars of the breach and requiring it to be remedied;

3.2.2 the other commits three or more material breaches of this agreement even if they are capable of remedy;

3.2.3 the other party ceases, or threatens to cease, to carry on business; or

3.2.4 any licence or agreement under which Midus or the Customer has the right to run its telecommunications system and in the case of the Customer connected to the Midus system is revoked, amended or otherwise ceases to be valid; or

3.3 For the purpose of clause 3.2, a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to the time of performance (provided that time of performance is not of the essence).

3.4 Midus may terminate this agreement immediately if:

3.4.1 the Customer is suspected, in the reasonable opinion of Midus, of involvement with fraud or attempted fraud in connection with use of the Services or this Agreement; or

3.4.2 Midus reasonably suspects that the Customer is unable to pay or is refusing to pay Midus charges and/or budget plan payments; or

3.4.3 an administrator takes possession or a receiver is appointed over any of Customer's property or assets, the Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order, the Customer becomes bankrupt or goes into liquidation (except for the purposes of an amalgamation, reconstruction or other reorganisation and so that the company resulting from the reorganisation effectively agrees to be bound by or to assume the obligations imposed on the Customer under this agreement); or

3.5 a waiver by either party of a provision of this agreement shall not be considered as a waiver of a subsequent breach of the same or another provision.

3.6 If the Customer gives less than the specified amount of written notice to terminate this agreement (as per Clause 3.1) or ceases to use the Services or a part thereof (including reduced usage) or attempts to terminate this Agreement prior to the expiry of the Minimum Term or any subsequent 12 months period (other than under clause 3.2) or fails to achieve any minimum call spend as set out overleaf, Midus reserves the right to invoice the Customer for:

3.6.1 the loss it suffers, which includes loss of revenue for the short notice given for the balance of the Minimum Term based upon an average of 6 calendar months bills of the Customer in which periods the Customer has made full use of the Services (or such lesser period as is available); less

3.6.2 a discount for any early receipt of such compensation calculated by reference to CPI.

Upon termination Midus shall be entitled to raise invoices for all sums due and all invoices (whenever raised) shall become due for payment immediately.

3.7 In the event of termination by either party for any reason Midus shall be entitled to recover from the Customer the Equipment or (if this is no longer available) the current value of the same at that time.

3.8 In the event of termination by Midus on any of the grounds given above (except the loss by Midus of the licence or agreement to run its telecommunications system):

3.8.1 Midus shall be entitled to recover the cost of removing the Equipment, and all other liabilities, claims, costs, losses and expenses incurred by Midus which have not previously been paid or reimbursed by the Customer including the initial CPS and engineering costs and of providing the Services and all losses suffered by Midus by way of third party claw-back where such claw-back is due to the breach by the Customer of this agreement or the third party agreement;

and until such time as the Customer has transferred to a new provider, Midus shall be entitled to amend its charges to its standard published usage charges.

3.9 Continued use of the Services following termination by Midus will result in Midus levying its standard published usage charges for all Services used, which charges the Customer shall pay immediately upon demand.

3.10 The rights to terminate this agreement given by this clause shall not prejudice any other right or remedy of either party in respect of the breach concerned (if any) or any other breach.

4. Access to premises

4.1 To enable Midus to comply with its obligations under the Agreement:

4.1.1 the Customer shall allow or procure permission for Midus and any other person(s) authorised by Midus to have reasonable access to the Customer's premises and the Services' connection points or, where network connection services form part of the Services, such location on the Customer's premises and/or any neighbouring premises as Midus reasonably requires and shall at all times provide such reasonable assistance as Midus requests.

4.1.2 Midus will endeavour to carry out work by appointment and during normal working hours, but may need to provide access at other times. If at the request of the Customer Midus carries out work outside its normal working hours the Customer will be responsible for Midus's reasonable additional charges.

4.1.3 The Customer shall carry out such site preparations as Midus may reasonably require.

4.2 If the Customer requests maintenance or repair work which is found to be unnecessary or results from an act or omission of the Customer, Midus will charge for the work and the costs incurred.

4.3 The Customer hereby duly authorises Midus, its dealers and agents to reprogram and/or remove existing access equipment in order to provide the Services. In the event that the work is instead undertaken by the Customer's existing telephone system maintainer, Midus will contribute a maximum of £75 plus vat towards any charges raised by the Customer's existing telephone system maintainer and the Customer shall pay all other costs.

5. Charges and Payment

5.1 Following the expiration of a trial period that may be provided to the Customer at the sole discretion of Midus Communications and unless otherwise specified in writing by Midus the Customer agrees to pay Midus's charges and/or budget plan payments monthly by Direct Debit, the payments to be made at the discretion of Midus within thirty days of the start of the provision of the Services and in accordance with the applicable tariffs. Where network connection and/or line rental services form part of the Services the charges shall be paid in advance.

5.2 Usage charges will be such charges for the use of the Services by the Customer as Midus shall notify to the Customer when this Agreement is entered into or as Midus may thereafter notify to the Customer from time to time pursuant to clause 5.13. Details of the Customer's current charges can be obtained by emailing Midus at helpdesk@midus.co.uk with full account details. There will be a minimum monthly usage charge and low usage charge for each Service as set out in Midus's price list from time to time. Usage charges payable shall (in the absence of manifest error) be calculated by reference to any data recorded or logged by Midus or its service carrier and not by reference to any data recorded or logged by the Customer. Midus shall be entitled to estimate the usage charges in circumstances where the relevant data is not available to Midus in a timely manner, and any estimated usage charge shall be reconciled on a subsequent invoice.

5.3 Unless otherwise stated all other amounts due from the Customer to Midus shall be paid within 7 days of the date of Midus's invoice.

5.4 If the Customer fails to make any payment on the due date then, without limiting any other right or remedy available to Midus (such failure to pay being a material breach of this agreement), Midus may charge the Customer an administration fee of £15 and interest (both before and after any judgment) on the amount unpaid, at the rate of 8 per cent per annum above Royal Bank of Scotland base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

5.5 The price for the Services is exclusive of any applicable value added tax, which the Customer shall be additionally liable to pay to Midus.

5.6 The Customer agrees to pay Midus in full without any set-off all sums due to Midus under this Agreement.

5.7 Midus shall be entitled to require the Customer to pay a deposit in respect of future usage charges and the Customer shall pay the amount so required within 7 days of a request for the same.

5.8 The Customer authorises Midus (on giving not less than 10 days notice) to vary the amount, frequency and time of any Direct Debit to such level as Midus reasonably deems appropriate

5.8.1 to reflect increased charges made to Midus by its suppliers and/or

5.8.2 to reduce such indebtedness of the Customer to Midus and/or

5.9 If any payment is cancelled or returned unpaid by the Customer's bank or if the Customer fails to debit their bank account within 7 days of the date of the invoice, Midus shall be entitled to any right or remedies under this Agreement. Midus shall from the time of such failure provide the Services at the standard published usage charges and in addition the Customer agrees to pay Midus an administration fee of £25-00. For the avoidance of doubt the time of payment is of the essence of this Agreement and the cancellation or return unpaid of any payment or the cancellation of a Direct Debit (unless the Customer can show that it was not at fault) shall be a material breach of contract allowing Midus to terminate this Agreement immediately.

5.10 Invoices paid by credit card incur an additional 5% or 3% charge of the transaction whichever is the greater.

5.11 Should the Customer have any dispute with regard to the usage charges or any other charges, the Customer shall give written notice to Midus of the amount in dispute and the reason for the dispute. Any rectification or amendment of such disputed charges are limited to the 6 months prior to the written notification being received by Midus and remains at Midus's sole discretion such discretion not to be unreasonably withheld. Such notice must be received prior to the Customer not paying any amount due to Midus, failing which the Customer shall be deemed to be in material breach of contract clauses 5.4 and 5.9 shall apply in respect of the entire balance. The Customer shall remain liable to pay all amounts not in dispute in accordance with the terms of this agreement.

5.12 The Customer remains liable for all charges whether the Customer or someone else used the Services and whether the services were used with the Customer's knowledge and consent or otherwise including and not limited to calls made by a rogue callers and calls made by any third party who has gained unauthorised access to the Customer's system.

5.13 Midus retain the right to vary the charges set out in the tariff (but not more than twice a year to any particular Customer) at any time upon giving the Customer 10 days notice such notice to be given either on the tariff invoice or by letter or email. Continued use of the Service is deemed acceptance of these changes. Any increase in charges that exceeds CPI plus 4% shall entitle a Customer to terminate this Agreement.

5.14 Any calls that are routed by any means beyond the control of Midus and for which you are invoiced by another provider will remain the responsibility of the customer.

6. Suspension of the Services

6.1 Midus shall be entitled, for business, operational or technical reasons or in order to comply with any numbering scheme or other obligation imposed on Midus by its licence or by any other regulatory or technical requirements (including any numbering scheme) to suspend any telephoned number or code or group of numbers or codes allocated to the Customer whether on a temporary or permanent basis provided that Midus gives the Customer the maximum period of notice

in writing thereof practicable in the circumstances. If such a withdrawal or change amounts to a significant adverse change in the Services provided by Midus to a Customer then the Customer may terminate this Agreement.

6.2 If the Customer is in breach of a material term of this agreement Midus may at its sole discretion and upon giving the Customer written notice cease to suspend without compensation the provision of Services for a period not exceeding 21 days. If the breach is capable of remedy and is remedied by the Customer within the 21-day period then Midus shall reimburse the provision of Services. If the breach is not capable of remedy or if so capable is not remedied within the period of 21 days, then Midus shall have the option of either terminating this Agreement under the provisions of clause 3.3 or of continuing the Services.

6.3 If the Customer's call charges exceed the estimated call spend or the credit limit given to the Customer by Midus, whichever is the lower, then Midus reserves the right to request immediate payment of the excess amount and to demand in accordance with clause 5.6 a deposit be paid in such amount as Midus shall deem to be reasonable. If payment is not made forthwith by Customer within 7 days, this shall constitute a material breach and Midus shall be entitled to suspend all or any of the Services until payment of the excess amount is made in full.

7. Liability

7.1 Nothing in this agreement shall exclude or restrict the liability of either party for death or personal injury resulting from its negligence, or exclude or restrict Midus's liability to Customers who are consumers where such liability cannot be lawfully excluded or restricted.

7.2 If the Services fails to operate or the Customer diverts traffic to another carrier, Midus will not be responsible for that carrier's charges.

7.3 Neither party shall be responsible to the other in contract, tort or otherwise for any loss of business, loss of data, contracts, anticipated savings or profits or for any other indirect or consequential loss whatsoever save that this exclusion shall not apply to the fraudulent activities of either party nor to any claw-back or other loss suffered by Midus pursuant to the determination by an airline services provider that the Customer has used and/or provided services using the Equipment and/or Services which it deems a gateway.

7.4 Each party's liability in tort, contract or otherwise arising out of or in connection with the performance of either party's obligations under this Agreement shall be limited to £1,000,000 for any one incident or series of incidents and £2,000,000 in aggregate.

7.5 Neither party shall be liable to the other for any damage or loss which may be incurred by the other party due to any cause beyond the first party's reasonable control including without limitation any act of God failure or shortage of power supplies, trade dispute, any act or omission of Government, highways, regulatory bodies, other public telecommunication operators or other competent authority, or supply of services by third parties.

8. Mobile Services

8.1 In respect of Mobile Services and unless Midus advise otherwise the Customer shall enter into an agreement direct with the Airline Services Provider and is responsible for all aspects (including the management) of that airline service agreement. Midus shall assist the Customer wherever possible in the management of the airline service agreement.

8.2 If Midus agrees to reimburse to the Customer charges for specified mobile numbers in respect of the Customer's transferring Airline Service Provider in respect of such mobile numbers reimbursement must unless otherwise agreed in writing (i) be claimed by the Customer not earlier than four months from the date of transfer and (ii) be only claimed in respect of such mobile numbers as remain live and have not had a notice of termination of contract served at the date of the claim.

8.3 Midus will be paid commission (initially and on an ongoing basis) by the Airline Service Provider for introducing the Customer and other customers to it. Such commission may be clawed back in certain circumstances due to the act or omission of the Customer, including if the airline service agreement is terminated or in respect of gateway or unauthorised use by the Customer. The Customer shall indemnify Midus against any such claw-back and immediately on demand pay to Midus an amount equivalent to that clawed-back.

8.4 Where it is agreed that Midus shall pay to the Customer a cash incentive inducement or subsidy for entering into an airline services agreement, any such amounts must be invoiced by the Customer in three equal amounts such invoices to be dated and delivered at the end of months 6, 12 and 18 of the airline services agreement. Payment shall only be due to the Customer where the airline services agreement has not been terminated before the end of the minimum term of the airline service agreement. The Customer shall produce to Midus such evidence as Midus may reasonably require as to the continuation in force of the airline service agreement.

8.5 Any cash incentives or subsidies due under this clause 8 that have not been claimed by the Customer within 14 days from the end of the minimum term of the airline service agreement become null and void.

8.6 Any Equipment supplied in connection with Mobile Services shall be supplied subject to these terms and conditions. Midus shall endeavour to supply the Equipment as soon as practicable and reserves the right to alter specifications or designs at any time to meet such delivery target.

8.7 All such Equipment will be supplied with the manufacturer's guarantee, unless otherwise agreed in writing. The Customer hereby acknowledges that the manufacturer's guarantee is only valid if the Customer complies with the terms and conditions of manufacturer's guarantee.

8.8 The Customer shall be liable for the full costs of any repairs carried out to the Equipment which are not covered by the manufacturer's guarantee.

9. Distance Selling

9.1 If Midus enter into this Agreement with a Customer, who is a consumer as defined in the Regulations, without meeting with the Customer then Midus acknowledge that the Regulations apply.

9.2 The Customer has the right to cancel this Agreement at any time within 7 days of it being entered into by contacting Midus by post, fax or email at its main office.

10. General

10.1 Midus reserves the right to change the provider of the Services to it at any time; further Midus reserves the right to change these terms and conditions in a manner that does not impair the quality or increase the cost (otherwise than pursuant to another of these conditions) of the Services provided to the Customer at its sole discretion by giving the Customer not less than 14 days notice (usually on the front page of the monthly invoice and/or on its website at www.midus.co.uk), and continued use of the Services thereafter will be deemed acceptance of such changes.

10.2 A notice required or permitted to be given by either party to the other under this agreement shall be in writing addressed to that other party at its principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice and, save in respect of a notice pursuant to clause 3.1, shall be deemed served on the second after the same has been posted.

10.3 If any provision of this agreement is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of this agreement and the remainder of the provision in question shall not be affected

10.4 The Customer shall not assign sub-license, delegate or otherwise deal with all or any of its rights and obligations under this agreement without Midus's prior written consent, such consent not to be unreasonably withheld. Nothing in this agreement shall be deemed to grant to the Customer a licence to use any software or other intellectual property right (which shall include the Midus trade marks) other than strictly in accordance with the terms of this agreement. For the avoidance of doubt, the Customer shall not be entitled to sub-license any such software or other intellectual property right.

10.5 These terms and conditions together with any terms set out in the order constitute the entire agreement between the parties, supersede any previous agreement or understanding and, subject to clause 10.1, may not be varied except in writing and signed by Midus or varied orally and then confirmed in writing by Midus. All other terms, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law. In entering into this agreement the Customer acknowledges that it does not rely on any representations which are not confirmed in the terms of this agreement, but nothing in this agreement affects the liability of either party for fraudulent misrepresentation.

10.6 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall not apply to this agreement.

10.7 The laws of England shall govern this agreement, and the Customer agrees to submit to the exclusive jurisdiction of the English Court.