

TERMS AND CONDITIONS FOR THE PROVISION OF TELECOM SERVICES TO RESIDENTIAL & SMALL BUSINESS CUSTOMERS WITH 10 OR LESS EMPLOYEES ("THE CONDITIONS")

Version 1.3

DEFINITIONS

In this Agreement the words below have the meanings next to them unless the context requires otherwise: **"We"/ "Us"/ "Our"** Microtalk Europe Limited, of West World, West Gate, London W5 1DT. **"You"/ "Your"** the individual, partnership, company or other organisation who wishes to be supplied with the Telecom Services and/or Equipment and is identified in the Customer Order for Telephone Services form ("**Form**"). **"Agreement"** these Conditions and the Form. **"Authorised Person"** a person authorised by Us to carry out a function under the Agreement. **"Equipment"** any equipment We supply to You in accordance with this Agreement. **"Intellectual Property Rights"** all patents, copyrights, design rights, trade marks, service marks, trade secrets, know how, database rights, moral rights and other rights in the nature of intellectual property rights (whether registered or unregistered) and all applications for the same, anywhere in the world. **"Maintenance Services"** any maintenance, upgrades and/or support related services for the System when selected by You, as indicated on the Form. **"Property"** the site at which the System is to be installed and the Telecom Services are to be provided to You. **"System"** any telephone system, comprised of items of Equipment, supplied by Us under this Agreement. **"Telecom Services"** Our telecommunication and data services, offered from time to time including, but not limited to, Mobile Services, Broadband Services, IP Telephony Services, Integrated Services Digital Network (ISDN) Private Switched Telephone Network (PSTN), Direct Connects, Leased Lines and Digital Subscriber Line (DSL). **"Website"** www.microtalk.co.uk. **"Working Day"** Monday to Friday 9am-5pm not including public holidays. **"Working Hours"** between 9am and 5pm on a Working Day. **"Your Material"** any documents, plans, drawings, specifications, details, pictures of any other record of information in any form provide by You to Us in connection with this Agreement.

1 DURATION & CANCELLATION

1.1 The Agreement shall take effect from the date You sign the Agreement or verbally accept. The Agreement shall continue unless terminated in accordance with its terms for an Initial Period of **EIGHTEEN MONTHS** and thereafter it will automatically renew in Renewal Periods of **ONE MONTH**, unless the Customer has provided consent in writing or by e-mail to a 24, 36 or 60 Month Contract.

1.2 You may give Us verbal or written notice to cancel this Agreement before the Telecom Services are activated on Your lines. You may give us written notice during the last 30 days of the Initial Period or during a ny any Renewal Period to cancel this Agreement. You must switch the Telecom Services to another provider at the end of such notice period. If You have not transferred the Telecom Services to another provider within **30 days** following the end of the notice period, You will be deemed to have withdrawn Your notice of termination and the Agreement shall continue in accordance with its terms.

1.3 If You cancel this Agreement outside of the terms in Clause 1.2, we may claim our loss of profit and You must pay Us an Early Termination Charge equal to £12.00 per line connected to the Telecom Services for every month the Agreement has left to run for the Initial Period. You must pay us for the Telecom Services which you use during any notice period.

1.4 You authorise Us to activate and provide the Telecom Services to You, and You will be responsible for the payment of all charges relating to the supply of the Telecom Services from the date on which the relevant Telecom Service becomes operational.

1.5 We shall use reasonable endeavours to activate the Telecom Services as soon as possible after the commencement of the Agreement but We cannot guarantee that the Telecom Services will be activated by a particular date.

2 THE TELECOM SERVICES

2.1 We shall provide You with the Telecom Services in accordance with this Agreement using reasonable skill and care.

2.2 We cannot guarantee that the Telecom Services

will operate free from any faults, however, where We are responsible, We shall use reasonable endeavours to correct faults as soon as is reasonably practicable and in accordance with any Maintenance Services which We have agreed to supply to You. Some faults in the Telecom Services will not be under Our control because they are due to a problem in a network or equipment provided by third parties. As a result, We are unable to guarantee that the Telecom Services will be secure, uninterrupted or error free, or that You will be able to access the Telecom Services at all times.

2.3 The parties acknowledge that in entering into this Agreement they have not relied on any representation, warranty, agreement or statement not set out in this Agreement and that (in the absence of fraud) the only remedy available for breach of this Agreement, is for breach of contract.

3 USE OF THE TELECOM SERVICES AND THE SYSTEM

3.1 You shall be responsible for the proper use of the Telecom Services and any System which we supply and in particular You agree:

3.1.1 to comply with Our Acceptable Use Policy as published on our web site.

3.1.2 not to cause any attachments other than those approved for use with the Telecom Services and/or the System to be connected to the Telecom Services and/or the System (if You have any queries regarding the suitability of attachments, You should contact Us); contravene any applicable laws or any relevant regulations, authorisations or licences in using the Telecom Services and/or the System.

3.2 Your equipment shall at all times conform to any relevant standard(s) for the time being for such equipment and the Telecom Services and We shall ensure that it is fit for purpose and that it is safe to connect or keep connected any of Your equipment if it does not conform or if in Our reasonable opinion it is liable to cause death, personal injury, damage or to impair the quality of any Telecom Services provided by Us.

3.3 You shall not resell the Telecom Services and shall ensure that nobody at the Property uses the System or the Telecom Services:

3.3.1 as a means of communication for a purpose other than that for which the Telecom Services and/or the System are provided, and

3.3.2 for any purposes which are unlawful, offensive, abusive, obscene, indecent, threatening, menacing, defamatory, a nuisance, an annoyance, an inconvenience, a hoax or which are intended to cause distress or worry;

3.3.3 fraudulently or in connection with a criminal offence or in violation of a person's rights

3.3.4 contrary to a reasonable instruction given by Us or an Authorised Person;

3.3.5 to obtain access to notified restricted areas of the network used to provide the Telecom Services.

4 ACCESS TO PREMISES AND PROVISION OF INFORMATION

4.1 To enable Us to perform Our obligations under this Agreement:

4.1.1 You will ensure that We and any Authorised Person have the necessary access to the Property and all facilities, equipment and telephone lines in order to satisfy Our rights and obligations under this Agreement. You will also give Us and any Authorised Person such assistance as may reasonably be requested;

4.1.2 wherever appropriate, You duly authorise Us, or an Authorised Person, to program and/or remove existing access equipment, in order to enable Us to install the System and provide the Telecom Services;

4.1.3 We or an Authorised Person will normally carry out work by appointment on a Working Day, but where necessary may request You to provide access to the Property at other times;

4.1.4 at Your request, We may agree to work other than on a Working Day and/or outside Working Hours, provided that You pay Our reasonable charges for complying with such a request; and

4.1.5 You will provide such information as We reasonably require.

4.2 You warrant:

4.2.1 the accuracy and suitability of Your Material, any instruction or advice submitted by You or any third party on Your behalf in relation to the Equipment and/or the Telecom Services at any time;

4.2.2 that You shall at Your own expense provide Us with Your Material within a sufficient time to enable Us to perform Our obligations under this Agreement;

4.2.3 You shall secure and pay for all necessary mains power supply, wayleaves, permits and/or any network charges;

4.3 You shall indemnify Us in full and on demand against all loss, damages, costs (including professional fees) and expenses awarded against or incurred, suffered or sustained by Us as a result of a breach by You of Your obligations;

4.4 We reserve the right not to use any of Your Material which We deem to be inappropriate, or, to make any changes in the specification of the Equipment which are required for the Equipment to comply with any applicable statutory or regulatory requirements, or where the Equipment is to be supplied to Our specification, which do not materially affect its quality or performance.

5 SUSPENSION OF SERVICES AND CHANGES

5.1 We may at Our sole discretion suspend immediately the provision of the Telecom Services and/or the Maintenance Services until further notice with no obligation to give the reason for such suspension. We will endeavour to give reasonable notice where practicable.

5.2 You shall reimburse Us for all reasonable costs and expenses incurred by the implementation of such suspension and/or the recommencement of the provision of the Telecom Services and/or the Maintenance Services as appropriate. This shall not apply where the suspension is implemented otherwise than due to Your breach or fault or omission.

5.3 Occasionally We may have to:

5.3.1 change the technical specification of the Telecom Services or the codes or numbers allocated to You for operational reasons or to comply with safety, regulatory or statutory requirements;

5.3.2 interrupt the Telecom Services for operational reasons, such as repairs, maintenance or improvements or because of an emergency or a legal obligation to comply with an order, instruction or request of a government or other competent authority;

5.3.3 give You instructions that We believe are necessary for health or safety, or for the quality of the Telecom Services that We supply to You or to other customers.

5.4 If We have to interrupt or suspend the Telecom Services and/or the Maintenance Services for operational reasons We will restore them as quickly as it can.

6 INTELLECTUAL PROPERTY RIGHTS

6.1 The Intellectual Property Rights in:

6.1.1 Your Material shall (subject to the rights of any third party) belong to You; and

6.1.2 any documents, plans, drawings, specifications and data provided by Us ("**Our Materials**"), or anything produced or used by Us in the supply of the Equipment and/or the Telecom Services, the Form, and/or this Agreement shall vest solely with Us and may not be reproduced without Our prior written consent.

6.2 You warrant that Your Material and its use by Us for the purposes of this Agreement will not infringe the Intellectual Property Rights or other rights of any third party and You shall indemnify Us in full and on demand against all losses, damages, legal fees, costs, expenses or other claims arising from any such infringement or alleged infringement.

6.3 In the event of any claim or action against Us on the grounds that the Equipment infringes the Intellectual Property Rights of any third party, We may, at Our sole discretion and where the infringement arises from Our Materials, replace or modify the Equipment or terminate the Agreement or part of the Agreement without any further liability to You.

6.4 You shall promptly notify Us of any claim or action by a third party alleging the Equipment infringes any Intellectual Property Rights. In the event of any such claim or action against You arising as a result of Our alleged infringement, We shall be entitled to defend such action or take legal action against that third party or take any such action that We deem appropriate and You agree to give Us Your full co-operation in respect of any such action.

7 LIABILITY

7.1 Nothing in this Agreement shall exclude or restrict Our liability for death or personal injury resulting from Our negligence or that of Our employees while acting in the course of their employment.

7.2 If the Telecom Services fail to be set up or once set up fail to operate and your services are provided by another supplier, We will not be responsible for that supplier's charges. You will switch back to Us as soon as reasonably practicable once the Telecom Services are operating.

7.3 We shall not be liable to You by reason of any representation (unless fraudulent) or any implied warranty, condition or other term, or any duty at common law or under the express terms of this Agreement for any loss of revenue, profit, opportunity, goodwill, data, business, contracts, anticipated savings or any indirect or consequential loss or damage howsoever arising in connection with this Agreement (whether by breach of contract, tort, breach of statutory duty or otherwise of Us, Our employees, agents or subcontractors).

7.4 Our liability (whether for breach of contract, tort, breach of statutory duty or otherwise) arising out of or in connection with the performance or non-performance of Our obligations under this Agreement shall be limited to the higher of any amount recovered by Us under a relevant policy of insurance or the total amount you have paid us in a 12 month period.

7.5 You shall indemnify Us against any claims, losses, expenses, damages and liability incurred by or awarded against Us arising out of any act, omission or breach by You, Your employees, agents or subcontractors relating to the Telecom Services, the supply of Equipment, Installation Services and Maintenance Services and/or this Agreement.

7.6 Neither party 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 ("**Force Majeure**") including without limitation any act of God, inclement weather, failure or shortage or power supplies, flood, drought, lightning, fire, strike, lock-out, trade dispute or labour disturbance, terrorism, any act or omission of Government, highways authorities, other public telecommunication operators or other competent authority, or failure of supply of services by third parties. This clause shall not apply to a requirement on either party to pay a sum to the other.

8 CHARGES AND PAYMENT

8.1 You must pay Our charges for the Telecom Services and, where applicable, the Equipment, the Installation Services and the Maintenance Services ("**the Charges**"). You can request the details of the applicable Charges from Our Customer Care Department. We may change the Charges at any time upon giving You at least 14 days prior notice, provided that in exceptional circumstances we may change the Charges on less than 14 days notice. Such exceptional circumstances may include where Our suppliers change their charges to Us on less than 14 days notice.

8.2 In addition to the Charges, You shall pay Us any additional sums which are agreed by Us and You, or any sums which, in Our sole discretion are required, including, without limitation as a result of:

8.2.1 any change in delivery and installation dates, designs, quantities or specifications for the Equipment which is requested by You;

8.2.2 any delay caused by Your instructions or Your failure to give Us adequate information or instructions;

8.2.3 unexpected or unforeseen complications arising;

8.2.4 the inaccuracy of Your Material;

8.2.5 any other cause attributable to You.

8.3 Whether payment of the Charges is in advance or in arrears generally depends upon the nature of the Telecom Services or other services selected.

However, We reserve the right to require You to pay the Charges in advance. Any Charges for the Maintenance Services shall be billed monthly in advance.

8.4 We shall prepare and send invoices to You notifying You of our Charges by email. Should you request a paper copy of an invoice, this shall be charged at £3.50 per month.

8.5 You agree to pay the Charges billed by Us within 14 days of the date of each bill for Telecom Services and Maintenance Services unless alternative terms are agreed in writing by Us at the time the Agreement is entered into. You agree to pay the Charges relating

to Equipment and the Installation Services within 30 days of the date of Our bill, however, where We agree that you may pay such Charges in installments, each installment shall be payable monthly in advance.

8.6 You shall make payment of all Charges by direct debit unless otherwise agreed in writing by Us. We may sub-contract direct debit processing to Swiftnet Limited or any other supplier. You shall sign and maintain for the duration of the Agreement a variable direct debit mandate which will enable Us to withdraw the amount of the Charges from Your nominated bank account. If You allow a direct debit mandate to lapse, We reserve the right to charge an additional £7.50 fee to cover any administrative costs which we incur in collecting payment by alternative means.

8.7 If at any time during the Agreement We have reasonable cause to doubt Your credit worthiness, We may require You to make payment in advance of the whole or part of the Charges for Equipment and/or the Telecom Services, or at Our discretion to provide reliable security to the value of such sum or sums as are owed or will become payable to us under the Agreement.

8.8 We shall prepare and send bills for usage Charges in such form and manner as shall be determined by Us. Usage Charges payable by You shall be calculated with reference to data recorded, logged or obtained by Us whether or not the Telecom Services have been used by or with Your authority and irrespective of any fraud and not by reference to any data logged or recorded by You.

8.9 All sums referred to in this Agreement are exclusive of Value Added Tax and any other taxes of a similar nature which may from time to time be introduced, and which shall be charged in addition.

8.10 If this Agreement is terminated part way through a month, no refund shall be due to You and nor shall We pro rata any Charges payable by You in respect of that month for the Telecom Services, Maintenance Services and/or the Equipment.

8.11 If You fail to make payment of any amount on the due date then, without limiting any other right or remedy available to Us, We may:

8.11.1 terminate the Agreement or suspend any further deliveries of Equipment and/or performance of the Maintenance Services and/or the Telecom Services to You and We shall have no liability to You in respect of the suspension, nor in respect of any loss or damage caused to You as a result of it; and/or

8.11.2 appropriate any payment or pre-payment made by You to such of the Equipment (or any equipment supplied under any other agreement between Us and You), Maintenance Services and/or Telecom Services or any additional sums payable as We may think fit (notwithstanding any purported appropriation by You); and/or

8.11.3 charge You for all the legal or debt collection costs incurred by Us (both in and out of Court) which shall be a minimum of 15% of the unpaid amount on a full indemnity basis.

9 TERMINATION

9.1 We can suspend the Telecom Services and/or the Maintenance Services or end the Agreement in whole or in part at any time without giving advance notice to You if:

9.1.1 a liquidator (other than for the purpose of amalgamation or reconstruction), trustee in bankruptcy, administrator, receiver or receiver and manager is appointed in respect of the whole or part of Your assets and/or undertaking or You enter into an arrangement or composition with Your creditors, or if You become unable to pay Your debts within the meaning of S123 of the Insolvency Act 1986 or other circumstances arise which entitle a court or creditor to appoint a receiver or administrator or to make a winding up order;

9.1.2 You are materially in breach of a term of the Agreement and upon being given notice of that breach in writing fail to remedy that breach, if capable of remedy, within 14 days; or

9.1.3 an event of Force Majeure prevents a party from performing its obligations under this Agreement for a continuous period of 30 days or more.

9.2 Notwithstanding anything to the contrary in the Agreement, We (without prejudice to Our rights) may terminate this Agreement immediately if any authorisation or licence under which You have the right to run Your telecommunication system and

connect it to Our system is revoked, amended or otherwise ceases to be valid.

9.3 Where We terminate this Agreement under clause 10.1.2, without prejudice to any other claims We may have, We may claim our loss of profit arising from such a termination calculated by the formula in Clause 1.3.

10 GENERAL

10.1 This Agreement represents the entire understanding between the parties in relation to the subject matter hereof and supersedes all other agreements and representations (except for fraudulent misrepresentation) made by either party whether oral or written and this Agreement may only be modified if such modification is in writing and signed by a duly authorised representative of each party thereto.

10.2 Any typographical, clerical or other error or omission in any sales literature, Form, the Charges, bill or any other document issued by Us shall be subject to correction without any liability to You.

10.3 Failure by either party to exercise or enforce any right conferred by this Agreement 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.

10.4 Any notice, bill or other document which may be given by Us under this Agreement shall be deemed to have been duly given if left at or sent by post to an address notified to Us in writing by You as an address (including e-mail address) to which notices, bills or other documents may be sent, or Your usual or last known place of abode or business, or if You are a limited company, its registered office.

10.5 Our address for the service of any notice by You under this Agreement shall be such address as is shown on the last bill rendered to You or such address as We may prescribe for that purpose.

10.6 You shall not assign or delegate or otherwise deal with all or any of Your rights and obligations under this Agreement without Our prior written consent.

10.7 We will not, unless otherwise agreed in writing, transfer any telephone numbers made available to You under the terms of this Agreement to any third party, unless and until all outstanding charges and costs due under this Agreement have been paid in full. Any transfer to a third party will be at Our sole discretion.

10.8 If You have a complaint in relation to the Telecom Services, You should contact Our Customer Care Department. In accordance with Ofcom regulations, a Code of Practice for Complaints is in place. The procedure set out in this Code will be followed should a complaint be received. Please contact Our Customer Services Department or see our web site for a copy.

10.9 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

10.10 If any provision of this Agreement is held to be illegal, void or unenforceable, the legality, validity and enforceability of the remainder of this Agreement is not to be affected.

10.11 Any director or representative who signs the Agreement on Your behalf will be deemed to be an authorised signatory and We shall be entitled to rely on such signatory as binding You to the terms of the Agreement.

10.12 We may assign this Agreement to a third party at any time.

10.13 This Agreement shall be governed by and construed and interpreted in accordance with English law, and the parties hereby submit to the jurisdiction of the English courts.