



VOICE AND DATA COMMUNICATIONS

Telephone Systems | VoIP | Broadband | Lines | Calls | Maintenance | Consultancy | 0330/0800/0845s | Network Cabling | Office Relocations | Call Recording

## Mobile Service Agreement (“MSA”)

*Revision 1.0*

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**MMS Comms Ltd** Hermes House, 5 Heritage Park, Hayes Way, Cannock WS11 7LT

**Telephone:** 01902 544135 **Fax:** 01902 544134 **Email:** [info@mmscomms.co.uk](mailto:info@mmscomms.co.uk) **Web:** [www.mmscomms.co.uk](http://www.mmscomms.co.uk)

Registered in England & Wales No. 8384822. VAT Reg. No. GB 163 524 712



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## 1. Terms Used in this Agreement:

1.1 “Agreement” means these terms and conditions, the Order Form and the Tariff.

1.2 “Airtime” means wireless airtime and network capacity procured from the Network Operator.

1.3 “End-User Licensed Software” (EUL) means any software, the licence terms for which are governed by a separate agreement with the licensor of such software typically by means of a “click-wrap” or “shrink-wrap” licence agreement.

1.4 “Equipment” means the items supplied by us under this Agreement and includes any Software (but not End-User Licensed Software) and documentation supplied under this agreement.

1.5 “GSM Gateways” are devices that transfer a fixed line call onto a radio network via a SIM card and radio channel, thus gaining a mobile-mobile call rate rather than fixed-mobile.

1.6 “GPRS Bearer” means the General Packet Radio Service provided by the Network Operator that forms part of the Airtime.

1.7 “Mobile device” means the mobile equipment incorporating a SIM card.

1.8 Mobile Web is full colour Internet access and email on the move.

1.9 “Network” is the mobile device system over which our services are provided. This is a digital network, which works in many countries and may allow you to use your Mobile Device in those countries.

1.10 “Network Operator” means the network operator who operates the wireless network of networks to which the SIM Cards are connected.

1.11 “Order Form” means the MMS Comms order form to which these terms and conditions are attached and which contain details of your application for the Service and the Mobile Devices.

1.12 “Service” means the provision of Airtime, Equipment, GPRS Bearer, Mobile Web, SMS, SMS Land to Mobile Text Messaging Service, location based services and/or any other Wireless Services.

1.13 “Software” means any software (excluding End-User Licensed Software) supplied to the Customer by Vodafone, O2, EE, Orange, the Network Operator or any other supplier under the terms of or in respect of this Agreement.

1.14 “SIM Card” means the subscriber identity module supplied by the Network Operator (and which shall at all times remain the property of the Network Operator), which is allocated to you

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by MMS Comms, and which contains the Number.

1.15 "SMS" means the short message service, which enables text messages to be sent to, and received from Devices.

1.16 "SMS Land to Mobile Text Messaging Service" means the short message service for text message sent to SIM Cards via a software application in conjunction with a private or virtual private circuit linking the Customer's wireless private or virtual private data network with the Wireless Services.

1.17 "MMS Comms" or "we, us" means MMS Comms Ltd of Hermes House, 5 Heritage Park, Hayes Way, Cannock, WS11 7LT.

1.18 "Tariff" means the MMS Comms tariff that sets out the rates, which we will charge you for your calls and other services you have chosen. Please contact us if you have not received a copy of our Tariff with the Order Form.

1.19 "Term" the length of time you commit to taking the Service for each Mobile Device or Mobile Device upgrade ordered as more particularly described in Clause 3. The initial Term is specified on the Order Form under the Length of Agreement.

1.20 "You" means the customer whose company details or personal details are set out on the Order Form.

## 2. Scope of the Agreement:

2.1 MMS Comms agrees to provide you with the Service and/or Mobile Devices and you agree to use the Service and the Mobile Devices on the terms set out in this Agreement.

2.2 This agreement and any other document referred to herein sets out the entire agreement between us relating to any Mobile Device or Service supplied to you by MMS Comms. You acknowledge that you have not relied on any representation, undertaking, or statement not set out in this Agreement.

## 3. Length of Agreement:

3.1 This Agreement begins when we either accept your application for the Service and/or Mobile Device in writing or when we send you the Mobile Devices and/or SIM Card for the Service you have ordered, whichever is the earlier. Our acceptance of your application is subject to your passing a UK credit check, your consent to our submitting your details to a credit reference agency for this purpose and by signing this Agreement.

3.2 You agree that each Mobile Device ordered by you is subject to its own agreement. The Term commences on the date of initial connection of your Mobile Device and/or SIM Card to the Service. The initial Term is specified on the Order Form under Length of Agreement. The Term

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shall automatically be extended until written notice if given to terminate under clause 8.3.

3.3 Upgrades: If you upgrade your Mobile Device to a new model, then the new model will be subject to a new Term from the date the new model was delivered.

#### 4. Supply of Mobile Devices:

4.1 We will try to deliver the Mobile Devices within agreed timescales, under no circumstances shall we be liable to you for any loss of any kind whatsoever caused by any delay in delivery of the Mobile Devices.

4.2 MMS Comms is not the manufacturer of any Mobile Devices supplied to you under this Agreement. MMS Comms warrants that each item of Equipment will conform in all material respects to the manufacturer's specification for a period of 12 months (apart from Software in which case for 90 days) from the date on which each item of Equipment is dispatched (the "Warranty Period") unless special conditions associated with certain Equipment apply.

4.3 All risks of loss or damage to Mobile Devices shall pass to you on delivery. Property in the Mobile Devices shall not pass to you until the purchase price has been paid in full. The SIM Cards shall remain the property of the Network Operator at all times.

4.4 Any Mobile Device delivered damaged must be notified to MMS Comms within 3 working days and returned to us within 6 working days of the order being delivered. We may, entirely at our discretion, repair or replace such damaged Mobile Devices, substitute substantially similar goods or reimburse the price paid for the damaged Mobile Devices.

4.5 The warranty set out in this clause shall not apply where the Mobile Equipment have been altered in any way or been subjected to misuse, including without limitation being dropped in water or any other liquid, or to unauthorised repair.

#### 5. Charges and Payment:

5.1 You have to pay for all charges for your Mobile Device and for using the Service as set out or referred to on the Order Form or in the Tariff you have chosen on the Order Form, including without limitation the Call Charges, Connection Charges, Monthly Line Rentals and Mobile Devices Prices. You acknowledge that you are responsible for paying all Call Charges made using your Mobile Device and/or SIM Card whether or not such call has been made by your personally.

5.2 Unless expressly stated otherwise, all charges and prices for Services and Mobile Devices supplied under this Agreement are exclusive of VAT, which shall be charged at the rate and in the manner prescribed by law from time to time.

5.3 We must receive payment from you for charges within 14 days of the date of the invoice. Payments must be made by direct debit. Any other payment method can only be made with

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prior written approval by us and may attract a surcharge of £5.

5.4 If we receive payment later than the timescales show in clause 5.3 above, we may charge interest on the amount outstanding. Interest will be charged at the rate of 8% above the base-lending rate of The Bank of England from the date the amount becomes due to the date of full payment.

5.5 All sums due to us must be paid in full without set-off, counterclaim or deduction.

5.6 We may set monthly credit limits for call charges where you pay in arrears. We may stop you using some or all of our Services if you go over the credit limit.

5.7 You must tell us within 1 months of the invoice date if you have a query on any of your invoices. Any dispute in respect to an invoice must be submitted to us in writing within 1 months of the date of the invoice failing which it will be deemed agreed and accepted.

## 6. Intellectual Property

6.1 In the event that MMS Comms or its sub-contractors supply software to you for use in conjunction with the Service, MMS Comms grants You, so far as MMS Comms is able, a non-exclusive, non-transferable licence for the use of such software for the duration of this Agreement. Except as permitted by law, the Customer is not permitted to copy, de-compile or modify the software, nor copy the manuals of documentation supplied with such software.

6.2 If requested by MMS Comms, the Customer shall sign any agreement containing reasonable terms which is reasonably required by the owner of the copyright in such software to protect the owner's interest in that software. No additional charges will be payable under such agreement.

## 7. Your Use of the Service:

7.1 You must not use your SIM Card or Mobile Device (or allow it to be used) for any illegal, fraudulent, or immoral purpose or to make offensive or nuisance calls. We may report any incidents to the police or any other relevant official organization.

7.2 You must not use your SIM Card or Mobile Device with any equipment, which has not been approved for use on the Network. If you are not sure, you should ask the person selling the equipment or you can call the following helpline number: 01902 544135.

7.3 You agree to follow all reasonable instructions we provide you with regarding your use of the Service (for example, fair usage policy), the SIM Card and the Network and provide us with any information we reasonably ask for.

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7.4 You must tell us immediately if your name, company name, address, bank account or credit card details change.

7.5 You agree not to use SMS or the SMS Land to Mobile Text Messaging Service for the purpose of marketing or advertising anything to users for wireless services without the consent of those users.

7.6 You agree that in respect of SMS, MMS Comms is acting as a service provider and as such has no knowledge of, involvement with, or liability for the specific content of any text messages sent to the Users SIM Cards, which do not originate from the Service Provider.

7.7 You may establish, install or use a GSM Gateway for your own private purposes only, provided that it adheres at all times to the Network Operators policies in respect of the use of private GSM Gateways.

#### 8. How You Can End or Terminate this Agreement:

8.1 You can end the agreement immediately if we have broken this agreement and cannot sort out the situation within 14 days of you telling us about the breach in writing.

8.2 You can end this agreement immediately if we do not give you Service for 14 consecutive days or more (by giving us written notice specifying the reason) unless you have broken this agreement or a matter covered in clause 13 or 18 occurs.

8.3 You can end this Agreement by giving us 30 days written notice to expire at the end of the initial Term or each anniversary thereof.

8.4 You can end this agreement by giving us 30 days written notice to expire before the end of the term.

#### 9. What You Have to Pay When You End this Agreement:

9.1 If you end this agreement for any reason, you will have to pay the charges you owe on your account and any unpaid invoices for Mobile Devices.

9.2 If you end this agreement under clause 8.1 of 8.2 and you have paid the monthly charges in advance then you can receive a refund of the part of the payment you have not used or you may use the Service until the payment is used up.

9.3 In addition to the amounts payable under clause 9.1 above, if you end this agreement early under clause 8.4, you must pay:

9.3.1 The monthly line rentals for the part of the Term you have not used. The terms of this Agreement will continue to apply to paying off these charges; and

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9.3.2 £25 per SIM Card for the cost of disconnecting your Mobile Devices from the Network.

9.4 The prices of Mobile Devices supplied under this Agreement are calculated using a subsidy we are paid by the Network. This subsidy applies only when you are connected to the Network. Therefore, if you end this agreement under clause 9.5 prior to the expiry of the Initial Term for any Mobile Devices supplied, you must either return those Mobiles to us in good working order and condition or if you wish to keep them you must pay us the difference between what you had paid us for the Mobile Devices and their full wholesale price. This may be up to £250 per Mobile Device.

10. Right to Cancel for Consumer Purchases:

10.1 If your purchase is for personal usage (i.e. The Personal Details on the Order Form contained within the Mobile Service Agreement was completed rather than the Business Details, you can cancel your order for the Service and/or Mobile Devices within 7 working days of receipt of the Mobile Devices and/or Services.

10.2 On cancellation, you must return your Mobile Devices and SIM Cards to us in the same condition as they were delivered to you (including the original packaging and any accessories that were included in the price), and we will refund you the purchase price you have paid.

10.3 On cancellation, you must also pay for any Call Charges and use of the Service you have made.

11. How We Can End This Agreement:

11.1 We can end this agreement immediately if you become bankrupt, insolvent or go into liquidation or if you enter into a voluntary arrangement or have a receiver or/and administrator appointed over any or all of your assets. We do not have to give you notice in these circumstances.

11.2 We can also end this agreement in the following circumstances:

11.2.1 If you break this agreement and do not fully resolve the situation within 14 days of us telling you about the break. An example of a break of this agreement is not paying your invoices.

11.2.2 If the Network closes down for any reason.

11.2.3 If you give us false information.

12. What You Have to Pay When We End this Agreement:

12.1 If we end this agreement because you break it, become bankrupt, or go into liquidation, or provide us with false information you will have to pay us all the charges set out in clauses 9.1, 9.2 and 9.4 above that you would have paid if you had ended this Agreement early under clause

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8.4 and/or return to us any Mobile Devices that are still subject to an Initial Term.

12.2 If we end this Agreement because the Network closes down, you will only have to pay the charges you already owe. We will repay any monthly charges you have paid in advance.

13. What to do if your SIM Card or Mobile Device is lost, stolen or damaged:

13.1 You must inform us immediately if a SIM Card supplied to you by us is lost, stolen or damaged. You will remain liable for all Charges incurred until you do so. We will send you a replacement SIM Card as soon as reasonable practicable, but we reserve the right to charge you for doing so.

13.2 If you need us to replace a Mobile Device because it has been lost, stolen or damaged, we reserve the right to charge you the full price of any replacement.

14. Limits of Liability:

14.1 We are only liable to you as set out in this Agreement. We have no other duty or liability to you.

14.2 Nothing in this Agreement shall limit or exclude our liability for death or personal injury resulting from our negligence or that of our employees or for fraudulent misrepresentation or any other liability, which may not by applicable law be excluded or limited.

14.3 Except as set out in clause 14.1 above, our entire liability to you for something we or anyone who works for us does or does not do in connection with this Agreement and the equipment and services supplied by us is limited to £2,500 for one incident and to £5,000 for all incidents in a 12 month period.

14.4 We shall not be liable to you in any way for any loss of income, business or profits, loss of data or for any loss or damage that was not reasonable foreseeable at the time you entered this agreement.

14.5 We are not liable to you in respect of any products or services you order from other companies using your Mobile Devices.

14.6 We will not be liable to you if we cannot carry out our duties or provide our services because of something beyond our reasonable control.

14.7 Where your Mobile Device allows access to the Internet, we shall not be liable to you for the content of any website or other material that you access via the Service.

14.8 Clause 7 will apply even after this Agreement has ended.

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## 15. Refund Policy:

15.1 A refund will be granted within 30 days of purchase for:

15.1.1 Software supplied which is defective at the time of purchase and provided it has not been tampered with or altered in any way by you.

15.1.2 Software not delivered on the delivery date due solely to an error by MMS Comms.

15.2 We cannot offer refunds in the following instances:

15.2.1 Time purchased after a trial period has been used.

15.2.2 Over 30 days have elapsed from the date of purchase.

15.2.3 Software purchased for use on Networks not supported.

Note: Where a refund is available to you a £5.00 administration fee will be charged if it is as a result of circumstances beyond MMS Comms' control.

## 16. Service Availability and Suspension:

16.1 We shall use all reasonable endeavours to provide and maintain the availability of the Service. However, we do not warrant that the Service shall be available without interruption or that it will be free from error. We may suspend the Service immediately if:

16.1.1 The Network fails or if it is being modified, maintained or repaired, or if the Network is unavailable for any other reason.

16.1.2 You tell us about the loss or theft of your SIM Card or Device (but you must still pay the service charges under this agreement for any calls made using your stolen Device or SIM Card).

16.1.3 If we do not receive full payment for any of your invoices in time or you exceed any credit limits set under clause 5.6.

16.1.4 If we reasonably suspect or know your Device or SIM Card is being used fraudulently or illegally.

## 17. What You Must Pay if the Service is Suspended:

17.1 If the Service is suspended for reasons set out in clause 16.1 for more than 3 days in any month you will not have to pay line rental for that period.

17.2 If the Service is suspended for any of the reasons set out in clauses 16.1.2, 16.1.3 and 16.1.4, you will still have to pay the monthly line rental.

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17.3 If we bar your access to the Service for non-payment of invoices, we shall charge you a fee of £35 per Mobile Device for reconnection.

#### 18. Changes to this Agreement:

18.1 We can change the terms of this Agreement by giving you notice if the law or any regulations affecting the Service changes or VAT or any other tax is increased,

18.2 We can change our charges for the Service on 30 days written notice. However if we increase our charges or introduce new charges because of something other than a change in the law or an increase in taxes, you can end this agreement on 30 days written notice. You will then only have to pay invoices for Services and Mobile Devices that you incur up until the end of the notice period. During the notice period the old charges will still apply.

18.3 We shall notify you of any changes by mail, email or text message to your Mobile Device.

#### 19. Transferring this Agreement:

This agreement is personal to you but please contact us if you want to transfer you SIM Card or Mobile Device. We can transfer this agreement to someone else if we give you written notice beforehand.

#### 20. Ownership of the SIM Card and Device number:

20.1 We control the SIM Card and Mobile Device number although they belong to the Network operator. We reserve the right to charge you an administration fee of up to £25 for porting or migrating to other service providers and disconnection from the Network.

20.2 We may change or reallocate your Mobile Device number where required to do so by any UK statutory or regulatory authority.

#### 21. Coverage:

21.1 Your Device will only work in the areas covered by the Network you have chosen.

21.2 We cannot guarantee coverage in any area as we have no control over this but you can get coverage information from us. The Service may be affected by interference caused by the weather, high buildings, geographical feature and tunnels.

#### 22. Use of Your Details:

22.1 For the purposes of fraud prevention, debt collection, credit management and emergency services provision, you agree that we may disclose information about you and your account with us to debt collection agencies, credit reference agencies, financial institutions, emergency service organizations and other Device companies. We may also pass you details to third parties

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in the event that we sell our business in order that you can continue to receive a Mobile Device Service.

22.2 Unless you indicate otherwise on the Order Form, we may also use you details to send you information and other services that we offer that we think you may be interested in.

### 23. No Third Party Rights

Under the terms of this Agreement 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 but this does not affect any right or remedy of a third party which exists or is available apart from by that Act.

### 24. Disputes and the Law:

24.1 Any concession or extra time we allow you under this Agreement applies only to the specific circumstances in which we give it. It does not affect our rights or remedies under this Agreement in any other way and will not constitute a waiver of our rights.

24.2 If any term or part of this Agreement is not legally effective, it shall not affect the enforceability of the remainder of the Agreement. The parties shall also agree that any ineffective or unenforceable term or part of this Agreement shall be substituted with a provision as similar in meaning to the original as is possible without rendering it unenforceable or ineffective.

24.3 You have the right to refer any disagreement regarding the service to an Arbitration Procedure. This was set up by the Chartered Institute of Arbitrators and the Network operators and we will provide details on request.

24.4 This Agreement shall be governed by the laws of England and Wales and according to English Law and subject to the non-exclusive jurisdiction of the English Courts to which both parties hereby submit.

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