

Microcare Systems Ltd
Terms and Conditions for Telephone Services
For Business Customers
Dated 1st June 2010

1. DEFINITIONS IN THIS AGREEMENT
2. DESCRIPTION OF THE SERVICE
3. COMMENCEMENT
4. DURATION
 - Minimum Period
5. PROVISION OF THE SERVICE
 - Preparation of the Premises for Access and Installation of Equipment
 - Faults
 - Publishing of customers details
6. USE OF THE SERVICE
7. CHARGE FOR THE SERVICE
8. PAYMENT FOR THE SERVICE
 - General
 - Disputed Invoices
9. CHANGES TO THE CONTRACT
10. TERMINATING THE CONTRACT
11. SUSPENSION OR TERMINATION OF SERVICE FOLLOWING BREACH
12. LIMITATION OF LIABILITY
13. CONFIDENTIALITY AND USE OF CUSTOMER'S INFORMATION
14. MOVING PREMISES
15. GENERAL TERMS
 - Matters Beyond Reasonable Control
 - Dispute Resolution
 - Customer's Instructions
 - Assignment
 - Severability
 - Entire Agreement Clause
 - Waiver
 - Rights of Third Parties.
 - Notices
 - Law and Jurisdiction

1. DEFINITIONS:

In these Terms and Conditions unless the context otherwise requires:

Annual Minimum Call Spend

The minimum annual sum of money that will be spent by the Customer on Call and Line Charges commencing on the Switchover Date or any anniversary thereafter during the term of the Contract

Business Customer

any customer Microcare makes this Contract with in respect of with where the Service is to be provided to a place of business for business purposes. It includes a person who Microcare reasonably believes is acting with the Customer's authority or knowledge

Call

Means a signal, message or communication that is silent, spoken or visual on each line that Microcare agrees to provide to the Customer under this Contract

Call Charges

the sum of money, plus VAT, which to payable by the Customer per Call to Microcare

Call Level

the sum of money the Customer anticipates to spend on Call Charges during the period covered by the Customer's invoices and is agreed by Microcare subject to acceptable credit checks

Charges

means all sums (plus VAT) payable by the Customer to Microcare in respect of the Service including but not limited to the connection charge (in respect of the Customer being connected to the Network) and any other charges for any other services provided by Microcare as identified in the Tariff Schedule

CPS

The carrier pre-selection service for the routing of calls through a carrier other than BT.

Direct Debit

Any request(s) for any payment or series of payments by bank direct debit payment method.

Microcare

means Microcare Systems Limited (Company number 3204267) whose registered office is at Hamilton House, Warth Road, Bury, Lancashire, BL9 9NB.

Microcare Equipment

any equipment, including any Software, owned or controlled by Microcare and placed on the Premises to provide the Service

Conditions

the Conditions for Microcare Telephone Services

Contract

Means the agreement entered into between Microcare and the customer in respect of the Service, subject to these Terms and Conditions.

Customer

means the customer who purchases the Service from Microcare and who enters into this Contract with Microcare. It includes a person who Microcare reasonably believes is acting with the Customer's authority or knowledge

Equipment

means equipment that is not part of the Network and which the Customer uses or intends to use with the Service

Line

Means a connection to the Network

Main Telephone Socket

means the point where the Equipment is connected to the Network which is called the Network Termination Point

Minimum Period

Means the period stated in the Notification Letter, measured from the Service Start Date

Network

Means the fixed line telecommunications network operated by the Network Operator

Network Operator

means the network operator who operates a network to which the Line is connected in accordance with an agreement between the Network Operator and Microcare

Notification Letter

the statutory transfer letter sent by Microcare to the Customer regarding the Customer's transfer to Microcare such letter to include details of the Switchover Date

Relevant Standards

Means the standards designated under s.22 of the Telecommunications Act 1984 as amended by the Telecommunications Act 2003 and any subsequent Act or Regulation

Switchover date

The date the relevant service is available for use by the customer.

Small Business Customer

means a customer of Microcare who carries on an undertaking for which no more than ten individuals work (wether as employees or volunteers or otherwise), but who is not himself a Communications Provider;

2. DESCRIPTION OF THE SERVICE

2.1 The Service is the facility via WLR3 to make or receive a Call and any related services that Microcare may agree to provide to the Customer under the Contract.

2.2. Developments in Network technology (known as Local Loop Unbundling or "LLU") may enable Microcare to provide the Service to the Customer through Microcare's partner Network rather than a third party Network. The Customers telephone line from the exchange to the Customers premises will continue to be maintained and repaired by BT Openreach but will be billed by Microcare.

2.3 The Service may be ordered [online on the WebPremises][or][by the Customer completing, signing and returning the Network Services Quotation and Sales Agreement (or such other form as Microcare shall require), to Microcare's registered office at Phoenix House, 100 Brierley Street, Bury, BL9 9HN.

2.4 The Order constitutes an offer by the Customer to purchase the Service from Microcare in accordance with these Terms and Conditions

2.5 Any quotation by Microcare shall not constitute an offer and is only valid for a period of 20 Working Days

2.6 On acceptance of the Customers order Microcare may transfer the Customer to our LLU network.

2.7. On the day that Microcare transfers the Customer to Microcare's LLU network, the Customer acknowledges it may experience a short temporary loss of Service and afterwards, the Customer may also have to re-set its access numbers and/or passwords.

2.8. Microcare will seek the Customers express consent before transferring the Customer to our LLU network if the Customer takes calls and line rental service from another provider on the same telephone line at the time of transfer. The Customer agrees to give Microcare authority to act as its agent to arrange connection to Microcare's network for both calls and lines.

2.9. The Customer acknowledges that once they have been transferred to Microcare's partner LLU network, that:

a. they may no longer be able to use some telecommunications services that the Customer may have purchased from other telephone providers, such as indirect access services (whether using the BT 1280, Redcare or other indirect access codes,);

b. they will no longer be able to use Calls or Line Rental Services from other providers. Microcare will not be liable for any charges which may arise as a result of the termination of the Customers contracts with its existing providers for those services;

c. if the Customer wants to switch one or more of Microcare services to another telephone provider, Microcare may have to provide the Customers remaining Service through another Network. The Customer accepts that they may have to pay additional charges for receiving Services from Microcare in that case.

2.10 If Microcare does not provide the Customers Line Rental Service over Microcare's LLU network the Customer will need to continue paying them in order to receive that particular service.

2.11 The Customer shall:

2.11.1 ensure that the terms of the Order and any information it provides to Microcare are complete and accurate

2.11.2 co-operate with Microcare in all matters relating to the Service

2.11.3 provide Microcare with such information and materials as Microcare may reasonably require supplying the Service, and ensuring that such information is accurate in all material respects

2.12 all the Customer's calls will be routed through the CPS service.

3. COMMENCEMENT

3.1 The Contract begins on the date on which the Customer Order is accepted by Microcare in writing for the Service and continues until terminated by the Customer or Microcare in accordance with the Contract.

3.2 Unless otherwise stated in the Contract, the Service commences on the Service Start Date.

4. DURATION

Minimum Period

4.1 The Minimum Period is 36 months and starts from the Service Start Date.

4.2 Upon expiry of the Minimum Term, or any anniversary thereafter, this Contract will renew automatically for a further subsequent term of 36 months ("Subsequent Term") unless terminated by either Party giving no less notice, such notice to expire before the end of the Minimum Term.

4.3 Where the Customer is a Small Business Customer, upon expiry of the Minimum Term or any anniversary thereafter, this Contract will only renew with the consent of the Customer. Microcare will be entitled to see the Customers' consent no less than 90 days before the end of the Minimum Term.

5. PROVISION OF THE SERVICE

Preparation of the Premises for Access and Installation of Equipment

5.1 The Customer agrees to prepare the Premises in accordance with any requirements Microcare may have prior to installation and to provide Microcare or any representative nominated by Microcare with all necessary access to the Premises for the purposes complying with the terms of the Contract. The Customer agrees to provide, at its expense, a suitable location and conditions for Microcare Equipment and, where required, continuous mains electricity supply and connecting points. All costs of reprogramming or removing existing access equipment will be paid for by the Customer.

5.2 The Customer is responsible for obtaining all necessary consents and permissions for Microcare to carry out any work necessary to provide the Service on the Premises including the installation of Microcare Equipment.

5.3 The Customer and Microcare agree to comply with each other's reasonable health & safety and security requirements when on the Premises. If Microcare's or the Network Operator's engineers are required to enter the Premises they will show their identity cards. The Customer and Microcare agree to look after each other's equipment on the Premises. If the Customer or Microcare damages the other's equipment it must pay for any repair or replacement needed. This clause does not apply where the damage results from normal use.

5.4 Microcare will use its reasonable endeavours to provide the Service by the date agreed with the Customer, but all dates are estimates unless confirmed otherwise in the Notification Letter.

5.5 The Customer is responsible for making the Premises good after any work undertaken by Microcare at the Premises, including replacing and re-siting items and for re-decorating.

Faults

5.6 Microcare will use the reasonable skill and care of a competent telecommunications service provider to provide the Service, however from time to time faults may occur as other third party companies provide the Network.

5.7 If the Customer reports a fault in the Service Microcare will report the fault to the Network Operator as soon as is reasonably practicable so that the Network Operator can arrange for an engineer to be dispatched to repair the fault as soon as possible.

Publishing of customers details

5.8 Microcare will, as quickly as is reasonably possible, publish the Customer's name address and the telephone number for the Service in the relevant phone book serving the Customers area and make the said telephone number available from a directory enquiries service unless the Customer requests Microcare not to do so within 14 days of entering into this Contract.

5.9 If the Customer requests a Special Entry to be placed in the relevant phone book issued by the Network Operator it must inform Microcare at the earliest available opportunity. Where Microcare agrees to register a Special Entry the Customer may be required to pay an additional charge and sign a separate Contract in respect of that entry.

6. USE OF THE SERVICE

6.1 Any Customer Equipment must be:

(a) technically compatible with the Service and complies with any relevant standards instructions or laws and does not harm the Network or another customer's equipment;

(b) connected using the applicable Main Telephone Socket that Microcare or the Network Operator have fitted unless the Parties agree otherwise; and

(c) altered or amended only by Microcare. In the event that the equipment is altered or amended by any party other than Microcare (including for the avoidance of doubt the Customer) Microcare shall have the right to terminate the Contract on notice.

6.2 If the Customer Equipment does not meet the Relevant Standards then the Customer must immediately disconnect it, or allow Microcare to do so at the Customer's own expense.

6.3 If the Customer asks Microcare to test the Equipment to ensure that the Relevant Standards are met, the Customer must pay Microcare the applicable charges in respect of such testing.

6.4 The Service must not be used:

- (a) in any way that is unlawful or in contravention of any instructions, licence, code of practice or guidelines issued by any regulatory authority, nor any third person's rights; nor
- (b) to make offensive, menacing, indecent, nuisance or hoax calls or to cause annoyance or inconvenience to any other person; nor
- (c) to deliberately send or knowingly receive, upload, download or use any material which is deemed offensive, abusive, indecent, defamatory, or obscene under international law; nor
- (d) in any way deemed to be fraudulent, nor in connection with any criminal offence.

6.5 Occasionally, Microcare may be required to:

- (a) change the codes or telephone numbers given to the Customer, or the technical specification of the Service due to mandatory changes imposed on Microcare by third parties provided that any change to the way Microcare provides the Service does not significantly affect the performance or functionality of the Service; or
- (b) interrupt or suspend the Service for operational or emergency reasons. Microcare will restore the Service as quickly as possible.
- (c) give the Customer instructions that Microcare believe are necessary for health or safety reasons, or to maintain the quality of the Service that Microcare supplies to the Customer or other customers

6.6 The Customer does not own any number or have any right to sell or transfer the number provided to it for use with the Service.

6.7 When ordering new telephone numbers, the Customer should not arrange for any form of advertising of the numbers until the number is live and tested.

6.8 Microcare may occasionally monitor and record calls relating to customer services made to or by Microcare. Microcare does this for training purposes and to improve the quality of its customer services. We also record all calls to the 999 or 112 emergency services.

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

6.10 The Customer will fully and effectually indemnify Microcare against any claims or legal proceedings which are brought or threatened against Microcare by a third party because the Service is used in breach of clause 6.4. If requested, Microcare will keep the Customer informed of the progress of such claims or proceedings.

6.11 All user names and passwords used in conjunction with the Service shall be the property of Microcare at all times.

7. CHARGE FOR THE SERVICE

7.1 The Customer agrees to pay the Charges for the provision of the Service in accordance with Microcare's Tariff Schedule.

7.2 Microcare's full tariff schedule is shown (including any updates) at <http://www.microcare-systems.co.uk>.

7.3 Microcare will give the Customer written notice of any changes to the Charges and the tariff schedule from time to time by e-mail or by post 1 month before the proposed date of change. If the change is not acceptable to the Customer, it will notify Microcare in writing within 21 days of the date of the notice

7.4 The Customer may obtain the current charge by emailing Microcare at enquiries@microcare-systems.co.uk with full account details.

8. PAYMENT FOR THE SERVICE

General

8.1 The Customer agrees to pay all of the Charges due in respect of the Service which are calculated using the details recorded by Microcare or its service carrier not by reference to any data recorded or logged by the Customer. This includes all Call Charges incurred during the use of the Service by the Customer or any third party using the Service at the Premises

8.2 Microcare will calculate the Call Charges using the details recorded at the telephone exchange. Call charges will normally be invoiced monthly in arrears. Wherever possible Call Charges will appear on the Customer's next invoice.

8.3 Microcare will send invoices in arrears to the Customer via email (Microcare e-billing) to the e-mail address notified by the Customer to Microcare. If the Customer does not give a valid email address, the invoice will be sent to the registered address of the Customer at additional cost to the Customer

8.4 The Customer will be liable for Charges for the Service from the Service Start Date.

8.5 Unless otherwise provided in the Notification Letter, all charges are exclusive of VAT which is chargeable at the applicable rate from time to time in force.

8.6 The first invoice will be issued to the email address provided by the Customer shortly after receipt of the order to include all setup charges.

8.7 Unless otherwise agreed between the Customer and Microcare, payment is due on the date specified on the invoice and the Customer must pay all charges by direct debit or by credit card.

The Customer authorizes Microcare to vary the amount, frequency and time of any Direct Debit to such level as Microcare deem reasonably appropriate. Invoices paid by credit card will incur an additional charge of £5 or 3% charge of the transaction whichever is the greater.

8.8 By agreeing to the Terms and Conditions the Customer is committed to using Microcare for both Line Rental and Calls. Should the Customer use an alternative carrier for Calls once this Contract has commenced, or prevent Microcare from carrying Calls in any monthly period so that the Call Charges are significantly reduced in comparison

to the Customer's previous average invoicing profile, the Customer agrees that Microcare may charge the Customer £30 plus VAT on the Customer's next monthly invoice and for each subsequent month during the term.

8.9 If the Customer does not pay the invoice within 14 days of the invoice an administration fee of £45 will be charged and Microcare may charge the Customer daily interest on late payments at a rate equal to 8% per annum above the base lending rate of Barclays Bank PLC for the period beginning on the date on which payment is due and ending on the date on which payment is made.

8.10 If, after commencement of the Contract, the Customer exceeds the agreed Call Level, Microcare may issue the Customer with an interim invoice and the Customer will pay any reasonable deposit required by Microcare as security for payment of future invoices.

8.11 Line rental is Payable from the Service Start Date, Line Rental is payable quarterly in advance, unless expressly agreed in writing by Microcare. Line rental Charges vary depending upon the classification of the Customer's line.

8.12 If the Customer orders a temporary Service, Microcare may charge the Customer for any supplementary charges incurred, plus the line rental in advance for the whole period of the temporary Service. Visit charges, and time related charges still apply as appropriate.

8.13 The Customer must pay all Charges in accordance with their direct debit authority, or in accordance with the time for payment detailed in the invoice. The Customer must pay all deposits upon demand from Microcare.

8.14 If Microcare is unable, for whatever reason, to recover the sums due under the Customer's account within 4 days following the due date for payment, Microcare reserves the right to suspend the Service in accordance with clause 11.

8.15 On the fifth day following the due date for payment, a letter will be sent to the Customer's address requiring the account to be discharged in full within 10 days of receipt of the letter.

8.16 If payment details are provided by the Customer to enable Microcare to collect the sums due on their account, Microcare will re-apply for payment. If the Customer's proposed payment method is still rejected, invalid or unavailable or if the Customer's account remains outstanding for any other reason 18 days after the original due date for payment, then:

(i) the Customer will be charged a further administration fee of £45.00 plus VAT together with an additional fee for the provision of a subsequent warning letter, and

(ii) Microcare will contact the Customer in writing requiring discharge of the Customer's account in full within 10 working days of receipt of the letter, failing which Microcare reserve the right to refer the outstanding account to Microcares' credit control department.

8.17 If the Customer's account remains unpaid for a period of 18 days after the original due date for payment a security deposit of six times the average monthly invoice or payment in full for the first year will be required before Microcare will reinstate the Service.

8.18 If the Customer's account remains unpaid for a period of 32 days after the original due date for payment, the services will then be terminated and the Customer's account will be referred to Microcare credit control department for it to take the appropriate action to collect the outstanding sums.

8.19 If Microcare is required to instruct a debt collection agency to collect payment (including interest and late payment charges) on its behalf the Customer must pay Microcare an additional sum. This sum will not exceed the reasonable costs Microcare has to pay the agency, who will add the sum to the Customer's outstanding debt.

8.20 The Customer is required to ensure that the name of the account holder is the same as the name on the payment details provided.

8.21 If the Customer has agreed to an Annual Minimum Call and Line Spend (as notified to the Customer by Microcare on entering into this Contract), and at the end of any given year (beginning on the Switchover Date or any anniversary thereof), the Customer has not incurred the Annual Minimum Call Spend, or if the Customer terminates this Contract in any way other than pursuant to clause 10, prior to the end of any given year (beginning on the Switchover Date or any anniversary thereof), the Customer will be liable to pay 25% of the difference between the Charges incurred during that year and the Annual Minimum Call Spend.

8.22 Microcare reserves the right to apply a monthly minimum threshold of £7.50 excluding VAT in respect of outbound calls for each invoiced account to keep the account operating at a viable level. In the event that the actual outbound calls billed amount does not reach the threshold level the Customer agrees to pay the difference between the actual calls billed amount and the threshold.

8.23 If the Customer makes a valid claim regarding excess invoice charges for any part of the Service and that such an excess is due to an error on Microcare part, the excess charge will be refunded by credit to the Customer's account. A maximum credit equivalent to three months excess applies to this clause.

8.24 If the Customer cancels an active Direct Debit instruction once the Contract has commenced an additional administration fee of £15.00 will be added to the monthly invoice until the Direct Debit is reinstated

8.25 If any sum owed by the Customer to Microcare under the Contract or any contract with Microcare is not paid by the due date, Microcare may deduct this sum from any payment or credit due to the Customer under the Contract or any other contract with Microcare.

Disputed Invoices

8.26 If the Customer intends to dispute any charge on an invoice the Customer must do so in writing to Microcare within 14 days of the date of the invoice and provide Microcare with all relevant information in support of the disputed charge. Where the disputed charge(s) amount to:

(a) less than 5% of the total charges listed on the invoice, the Customer will pay the full amount of the invoice; or

(b) more than 5% of the total charges listed on the invoice, the Customer must pay the remaining amount of the invoice that is not in dispute. Any disputes will be resolved promptly and the resolved amount if any is payable immediately.

8.27 The Customer remains liable for all Charges whether the Customer or someone else used the Service and whether the Service was used with the Customer's knowledge and consent or otherwise including and not limited to calls made by rogue callers and calls made by a third party who has gained unauthorised access to the Customer's system.

8.28 Any calls that are routed by any means beyond the control of Microcare and for which you are invoiced by another provider will remain the responsibility of the Customer.

9. CHANGES TO THE CONTRACT

9.1 Microcare can change the Contract (including the charges) at any time and will publish any change in line with clause 9.2.

9.2 Microcare will publish any changes to the Contract (including the Charges) at Phoenix House, 100 Brierley Street, Bury, BL9 9HN and online at <http://www.microcare-systems.co.uk>, as follows:

(a) at least 14 days before the change is to take effect for changes that are to be made to the significant detriment of the Customer; and

(b) at least one day before the change is to take effect for all other changes.

9.3 If the Customer wishes to object to any proposed change in respect of clause 9.2 (a), the Customer must notify Microcare within 14 days of publication on the Website or receipt of the notice of the proposed increase, otherwise the Customer will be deemed to have accepted the proposed change.

9.4 The Customer may request changes to the Contract. Such requests must be made in writing and submitted to Microcare.

9.5 If Microcare agree to the changes contained in the written request a letter will be sent to the Customer confirming the agreed changes. The Contract is to be considered to be amended on the date that the letter confirming Microcare's agreement to the changes is received by the Customer, or, in the absence of proof of receipt, the deemed date of receipt. Any such letter shall be deemed to have been received:

(a) if hand delivered or sent by prepaid recorded or special delivery post or prepaid international recorded airmail, at the time of delivery;

(b) if sent by post (other than by prepaid recorded or special delivery post) two days from the date of posting;

(c) in the case of fax or e-mail at the time of transmission.

10. TERMINATING THE CONTRACT

10.1 The Customer may cancel the Contract or any part of the Service within ten working days from the date that the Customer agrees to proceed with the contract without additional charge, other than those charges actually incurred by under clause 10.6. Thereafter, if the Customer cancels the Contract or any part of the Service any time before Microcare provides the Service the Customer will pay Microcare the early termination charges calculated in accordance with clause 10.6.

10.2 The Contract may be ended by either party upon giving the other one calendar month's prior written notice to the other.

10.3 If the Customer or Microcare ends the Contract during the Minimum Period the Customer will pay Microcare the Early Termination Charges set out in clause 10.6. This clause will not apply if:

(a) the Customer ends the Contract during the Minimum Period because Microcare is in material breach of the Contract and fails to remedy such breach within 30 days of receiving a request from the Customer to remedy the breach; (subject to the breach being capable of being remedied by Microcare); or

(b) the Customer gives notice to end the Contract within ten working days of Microcare notifying the Customer of an increase to the charges or changes to the Terms and Conditions in either case to the Customer's significant detriment; or

(c) a Customer as a Business Customer wishes to cancel the Contract at any time prior to the Service Start Date by giving written notice to Microcare or contacting Microcares' customer services. Microcare will inform the Customer of the Service Start Date by issuing a Notification Letter to the Customer. For the avoidance of doubt, any costs incurred by the Customer prior to the cancellation of the Contract shall be charged to the Customer and become payable in accordance with clause 8.

(d) Microcare ends the Contract of the Service during the Minimum Period for any reason other than because of a default of the Customer

(e) the Contract ends because clause 15.1 applies

10.4 The Customer may end the Contract if:

(a) Microcare materially breaches the Contract and fails to remedy the breach within 30 days of receiving a request from the Customer to remedy the breach (subject to the breach being capable of being remedied by Microcare); or

(b) insolvency proceedings are brought against Microcare or Microcare makes an arrangement with its creditors or a receiver, an administrative receiver or an administrator is appointed over any of Microcares' assets or Microcare goes into liquidation.

10.5 If the Customer terminates this Contract prior to expiry of the Minimum Period, other than in respect of termination by the Customer pursuant to clauses 10.3 and 10.4, the Customer shall pay the early termination charges, calculated in accordance with clause 10.6.

10.6 The early termination charges shall be, for each line that a Customer cancels:-

(a) the sum of the Line Rental charges payable by the Customer from the date of actual termination until the date of expiry of the Minimum Period; and

(b) any actual Call Charges accrued up to and including the date of termination; and

(c) 25% of the Call Charges that would otherwise have been payable by the Customer during the Minimum Period.

Such sum to be calculated by taking the average monthly Call Charges incurred during the period from the Service Start Date to the date of termination multiplied by the number of months remaining in the Minimum Period. Such sums shall be paid by way of liquidated and ascertained damages by the Customer to Microcare and such sums are accepted by the parties as being a genuine pre-estimate of the net losses likely to be suffered by Microcare in such an event and.

(d) an administration charge of £70.00 (seventy pounds) plus VAT.

10.7 If the Customer terminates this Contract during the Subsequent Term the provisions of clauses 10.2 to 10.6 shall apply with the phrase "Subsequent Term" replacing the phrase "Minimum Period".

10.8 If the Contract ends, Microcare will refund any money owed to the Customer, after first deducting any money the Customer owes to Microcare under this Contract or any other agreement Microcare has with the Customer.

10.9 Without prejudice to its other rights under this Contract if Customer terminates any Service prior to expiry of the Minimum Period, other than in respect of termination by the Customer pursuant to clauses 10.3 and 10.4, Microcare shall be entitled to charge the Customer an amount that would be reasonable in covering Microcare's losses as a result of such a termination.

11. SUSPENSION OR TERMINATION OF SERVICE FOLLOWING BREACH

11.1 Microcare may suspend the Service or end the Contract, or both, at any time without notifying the Customer and without prejudice to Microcare's other rights and remedies, if:

(a) The Customer breaches the Contract or any other contractual arrangement that the Customer has with Microcare for telephone and, if the breach is capable of remedy, fails to put right the breach within 14 days of being requested by Microcare so to do (subject to the breach being capable of being remedied by the Customer. A breach for non-payment of any valid invoice by the due date; or

(b) Microcare reasonably believes that the Service is being used in breach of clause 6.4, irrespective of the whether the Customer is aware of the breach or not; or

(c) Bankruptcy or insolvency proceedings are brought against the Customer or the Customer does not comply with a payment order of the Court or the Customer makes an arrangement with its creditors or a receiver, an administrative receiver or an administrator is appointed over any of the Customer's assets or the Customer goes into liquidation; or

(d) Microcare are required to suspend the Service or terminate the Contract under any an order, instruction or request of any authorised government body or authority or emergency service; or

(e) The direct debit information provided by the Customer are found to be invalid or are subsequently cancelled; or

(f) A contract that Microcare has with a third party that assists in providing the Service is terminated.

(g) Microcare in its sole opinion suspects that the Service is being used, or is about to be used, for purposes that are fraudulent or for purposes deemed to be excessive for the type of account in operation and, if the Service is suspended, will keep the account suspended until such time as a bond, or other such payment as is agreed between the Parties, is received by Microcare. The Customer will continue to pay the charges during any period of suspension.

11.2 If the Customer exceeds the agreed Call Level prior to submission of the next monthly invoice, Microcare will inform the Customer of the amount the Customer has spent and agree any necessary action. Microcare reserves the right to suspend outgoing Calls on the Service pending payment of charges accrued on Microcare's invoicing system if the Customer exceeds the agreed Call Level prior to payment of the first three 3 invoices submitted in respect of the Service.

11.3 If the Customer fails to pay an invoice in accordance with clauses 8.1 and 8.7, Microcare reserves the right to:-

(a) firstly, to suspend the Service with outgoing call bars (except for emergency number access); and

(b) thereafter implement incoming call bars

11.4 Microcare will lift the suspension(s) following full payment of the outstanding amount being made by the Customer.

11.5 If the Service is suspended pursuant to clause 11 (except clauses 11.1(d) and 11.1 (f) Microcare will not recommence provision of the Service until the Customer rectifies the breach of this Contract or otherwise satisfies Microcare that the Service will not be used in a way that is in breach of this Contract.

11.6 The Customer remains liable to pay the Charges applicable to any period of suspension of the Service (other than in respect of a suspension pursuant to clause 11.1(d) and 11.1 (d)

11.7 If the Service is suspended under clause 11.1(e) above, Microcare reserves the right to charge the Customer an administration fee of £45 payable within 14 days of the suspension of the Service. This sum is in addition to any outstanding payment for invoices that may have been submitted previously.

11.8 Upon reconnection of the Service, Microcare reserves the right to charge a reconnection fee of £25 plus VAT per affected line.

12. LIMITATION OF LIABILITY

12.1 Microcare accepts liability as set out in the Contract. Microcare does not guarantee that the Service will be free from faults as other third party companies may provide the Network. Matters affecting the Network are beyond Microcare's reasonable control and are therefore not liable for faults arising as a result of the actions of the

aforementioned third parties. If the service fails to operate or the Customer diverts traffic to another carrier, Microcare will not be responsible for that carrier's charges.

12.2. Microcare does not accept liability for the acts or omissions of other providers of telecommunications services (including but not limited to the Network Operator) unless those providers have been specifically engaged by Microcare as subcontractors or assignees in respect of performing Microcare obligations under this Contract.

12.3 Microcare does not accept liability for any charge incurred as a direct result of the Customer failing to utilise any new line within 30 days of the line being activated.

12.4 Microcare does not exclude or restrict its liability for death or personal injury caused by its own negligence or the negligence of its employees or agents acting in the course of their employment or agency or for any fraudulent misrepresentation or to any extent not permitted by law.

12.5 Unless otherwise expressly stated in the Contract Microcare shall not be liable to the Customer in contract, tort (including negligence), breach of statutory duty or otherwise for any direct, indirect or consequential loss of profit, revenue, time, opportunity, contracts, data, use, business, any loss of or damage to reputation or goodwill, any loss of anticipated savings, wasted expenditure, loss of or damage to physical property, business interruption or for any other direct, indirect or consequential loss or punitive damages which may arise in relation to the Contract whether or not Microcare was advised in advance of the possibility of such loss or damage.

12.6 Microcare accepts liability to the Customer, as follows, subject to clauses 12.2, 12.3 and 12.5:-

- (a) in respect of its failure to report a Fault to the Network Operator as soon as is reasonably practicable, where Microcare have previously been notified of such a Fault by the Customer; or
- (b) for any actual loss or damage suffered by the Customer where the loss or damage suffered was reasonably foreseeable.

For the avoidance of doubt Microcare shall not be liable for any delay in the repair of the Fault except to the extent that such a delay was a direct result of Microcare failing to reporting the Fault to the relevant Network Operator as soon as was reasonably practicable.

12.7 Subject to clauses 12.2, 12.3 and 12.5 above, Microcare accept liability to the Customer in contract, tort (including negligence) breach of statutory duty or otherwise for direct loss limited to:

- (a) £500.00 for each line affected;
- (b) £1,000.00 per event or series of events;
- (c) a maximum of £10,000.00 for loss of or damage to physical property in any period of 12 consecutive months

12.8 Microcare does not accept liability for the acts of its customers resulting in the breach of regulatory codes of practice that control the use of premium rate numbers, which include 0871, 0872, 0873 and 09 number ranges. Full code of practice details are available from PhonepayPlus, (formerly ICSTIS), the regulatory body for phone-paid services in the UK. www.phonepayplus.org.uk.

12.9 Except as set out expressly in this Contract, all conditions warranties, undertakings and obligations implied by statute, common law, custom, and trade or otherwise are excluded to the fullest extent permissible in English Law.

12.10 Subject to clause 12.4, Microcare total liability to the Customer in respect of all other losses arising under or in connection with the Contract whether in contract, tort (including negligence), breach of statutory duty, or otherwise shall not exceed £10,000.00

13. CONFIDENTIALITY AND USE OF CUSTOMER'S INFORMATION

13.1 Microcare and the Customer will keep in confidence any information, whether written or oral, of a confidential nature obtained under or in connection with the Contract except to the extent any disclosure is required by law. The Customer and Microcare will not, without the consent of the other, disclose such information to any person other than:

- (a) the employees or professional advisers who shall require the information in order for the Customer or Microcare to fulfil its obligations under the Contract; or
- (b) in the case of the Customer, its users of the Service to the extent that they are required to use or access the Service.

13.2 Information shall not be treated as confidential if it is:

- (a) lawfully in the public domain; or
- (b) lawfully in the possession of the Customer or Microcare before disclosure has taken place; or
- (c) obtained from a third person who is entitled to disclose it; or
- (d) replicated independently by someone without access or knowledge of the information.

13.3 If the Customer receives a request under the Freedom of Information Act 2000 which encompasses any information provided to the Customer by Microcare in connection with the Contract the Customer will notify Microcare immediately of the request and give Microcare at least 10 Working Days to make representations before releasing the requested information.

13.4 Microcare will only use Personal Data (as defined within the Data Protection Act 1998) obtained from the Customer following provision of the Service for the following purposes:- (a) administering the Customer's account;

- (b) notifying the Customer of changes to the Service;
- (c) enabling Microcare to supply the Service to the Customer; and,
- (d) for invoicing purposes.

13.5 Microcare will not pass Personal Data obtained from the Customer to any third parties for marketing purposes but may send the Customer information about Microcare own products and services which it considers may be of interest to the Customer, unless the Customer specifically requests in writing that Microcare does to do so.

13.6 Any request under clause 13.5, either by the Customer, the Customer's User or by the Customer on behalf of the User should be submitted in writing to Microcare Data Controller at Hamilton House, Warth Road, Bury, Lancashire, BL9 9NB.

13.7 In assessing applications for and making decisions about credit in respect of the Customer, Microcare may make the following searches for information pertaining to the Customer:-

- (a) the files of credit reference agencies. The credit reference agency will keep a record of any search undertaken.
- (b) identity and anti-fraud checks with fraud prevention agencies. If the Customer gives false or inaccurate information fraud is suspected, Microcare shall make a written note.

Details of how the Customer conducts their account may also be disclosed to those agencies.

13.8 Information obtained from the agencies referred to in clause 13.7 may be used by Microcare and other parties for

- (a) checking the Customer's identity,
- (b) obtaining statistical analysis about credit, or, fraud, and
- (c) to manage the Customer's account.

13.9 Microcare may also perform subsequent searches for the purpose of risk assessment, debt collection and fraud prevention with one or more credit reference agencies and/or fraud prevention agencies whilst the Customer retains a financial obligation to Microcare.

13.10 Information held about the Customer by credit reference agencies may be linked to records relating to the Customer's financial associate(s). The Customer declares that the Customer and the Customer's financial associate(s) are financially independent and the Customer requests that their application for the Service be assessed without reference to any "associated" records, although the Customer recognises that this may adversely affect the outcome of the application. The Customer confirms to the best of their knowledge that there is no information relating to their financial associates that is likely to affect Microcare's willingness to offer the Services to them.

13.11 By agreeing to the Terms and Conditions, the Customer authorises Microcare to check the validity of this declaration with credit reference agencies and if Microcare discover any associated records, which would affect the accuracy of this declaration Microcare may suspend the Service or terminate this Contract with immediate effect. For the purpose of clauses 13.10 and 13.11 a "financial associate" is someone with whom the Customer has a financial link, for example, a spouse, partner or family member.

13.12 The Customer authorises Microcare to disclose, in the UK and globally, all pertinent information about them, their use of the Service and how they conduct their account for the purposes of providing the Customer with the Service or as required for reasons of national security or under any legal duty pass such information to associated companies, partners or agents, any telecommunications company, debt collection agency, credit reference agency, fraud prevention agency or governmental agency and other users of these agencies who may use this information for the same purpose as Microcare. The Customer agrees to this information being obtained by Microcare for credit control purpose and fraud and crime detection and prevention.

13.13 Any Customer who wishes to have details of the credit reference or the fraud prevention agencies Microcare uses to obtain information about the Customer or receive a copy of the information holds about them may do so by submitting a request in writing for a copy of the information to the Data Controller at Microcare at the address detailed in clause 13.6, stating the Customer's full name, address, account number and phone. (Microcare may charge a reasonable administration fee for providing such information)

14. MOVING PREMISES

14.1 If the Customer is moving the Premises, Microcare must be informed as soon as is reasonably practicable so that suitable arrangements can be made to transfer the Customer's Line. Unless otherwise requested, Microcare, in addition to moving the line, will also endeavour to retain the Customer's existing telephone number. If Microcare can transfer the Customer's existing number to the new Premises the existing Contract will continue under the same Terms and Conditions. If Microcare cannot transfer the Customer's existing number to the new Premises, installation of a new line will be required at the new Premises, or if the Customer requires any additional new Lines, this will attract new Line connection charges and a new contract for a minimum term of 12 months.

14.2 If the new installation or moving Premises involves the visit of an engineer to facilitate the new installation the Customer will be responsible for the costs incurred by Microcare (Currently £195 for the first hour and £95 per hour thereafter with a £30 charge for per half hour of travelling time plus VAT). There will be a charge for any missed appointments due to the Customer's failure to attend (currently £195.00 plus travel charge of £30 per half hour) together with an administration fee of £45.00.

14.3 If the Customer moves Premises and leaves the installation for the new owner/tenant the Customer is required to inform them that the Service will be discontinued if Microcare are not contacted by the new owner/tenant within 72 hours for the purpose of entering into a new Contract.

14.4 If the Customer currently receives services from an alternative supplier the Customer is responsible for any contractual agreement the Customer has with them and any liabilities the Customer may incur for terminating the Customer's current agreement.

15. GENERAL TERMS

Matters Beyond Reasonable Control

15.1 (a) If Microcare is prevented from, or is delayed in performing, any obligation under the Contract because of something beyond its reasonable control including without limitation act of God, storm, lightning, flood, exceptionally severe weather, fire, explosion, failure or shortage of power supplies, default of suppliers or subcontractors, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, war, riot, civil disorder, malicious damage, strikes, lock-outs or other industrial disputes (whether involving the workforce of Microcare or any other party) or acts or omissions of local or central government, highways, OFCOM or any other Network Provider or other competent authorities, or beyond the reasonable control of its suppliers, it will have no liability to the Customer for that failure or delay in performing.

(b) Microcare will not be liable for failure to or delay in supplying the Service if legal or regulatory restrictions are imposed that prevent Microcare from supplying the Service.

Dispute Resolution

15.2 17.2 (a) Microcare will attempt to resolve any dispute that the Customer may have with Microcare under Microcare's Complaints Handling and Dispute Resolution Code of Practice see <http://www.microcare-systems.co.uk>. If the dispute cannot be resolved within 12 weeks of the Customer raising the dispute with Microcare, then the Customer may refer the matter to:

(i) the Telecommunications Ombudsman, via the website (www.otelo.org.uk) or by telephone on 0845 050 1614; or
(ii) OFCOM, the communications regulator via the website www.ofcom.org.uk or by telephone on 020 7981 3040 or 0300 123 3333.

(b) Any dispute must be submitted in writing to Microcare's Customer Services Centre giving all relevant details including the nature and extent of the dispute.

(c) Nothing in this clause 17.2 shall prevent the Customer or Microcare from exercising any rights and remedies that may be available in respect of any breach of the provisions of the Contract.

Customer's Instructions

15.3 Microcare may take instructions from any person whom it reasonably believes is acting with the Customer's authorisation.

Assignment

15.4 The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of Microcare. Microcare may at any time assign, transfer charge, subcontract, delegate or deal in any other manner with all or any of its rights or obligations under this Contract without the consent of the Customer.

15.5 Nothing in this contract shall be deemed to grant to the Customer a licence to use any software or other intellectual property right other than strictly in accordance with the terms of this Contract. For the avoidance of doubt, the Customer shall not be entitled to sub-license any such software or intellectual property right.

Severability

15.6 If any provision of the Contract is found by any court or administrative body of competent jurisdiction to be unenforceable, invalid or illegal, the other provisions of the Contract shall not be affected. If any unenforceable, invalid or illegal provision would be enforceable, valid or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intentions of the parties.

Entire Agreement Clause

15.7 (a) The Contract and any documents referred to in it constitute the entire agreement between the Customer and Microcare and replaces all previous negotiations, representations, proposals, understanding and agreements between them whether written or oral relating to the subject matter of the Contract.

(b) Each party acknowledges and agrees that, in entering into this Contract and the documents referred to in it:

(i) it has not relied upon any statement, representation, warranty or other assurance of any person (whether a party to this Contract or not) not expressly incorporated in this Contract or those documents; and

(ii) in connection with the Contract the only rights and remedies available to it in relation to any statement, representation, warranty or other assurance are for breach of contract.

(c) Nothing in this clause shall limit or exclude any liability for fraud.

Waiver

15.8 a) A failure or delay by the Customer or Microcare to enforce any right, remedy provided under this Contract or act upon a breach under the Contract shall not be deemed to be a waiver of that right, remedy or breach or any other right, remedy or breach.

(b) If the Customer or Microcare waives a right, remedy or breach of the Contract, that waiver is limited to the particular right or breach.

(c) The single or partial exercise of any right or remedy by the Customer or Microcare does not operate as a bar to the exercise or enforcement of any right, power or remedy on any later occasion.

Rights of Third Parties

15.9 A person who is not a Party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. However, this does not affect any right or remedy of a third party that exists or is available apart from that Act.

Notices

15.10 Unless otherwise stated in the Contract, notices given under the Contract must be in writing and delivered by hand, [sent by e-mail or] sent by prepaid first class post [or] [recorded delivery or by commercial courier] to:

(a) Taryn Batten, Microcare at Phoenix House, 100 Brierley Street, Bury, BL9 9HN or such other address as may be communicated to the Customer; or

(b) the Customer at the address to which the Customer asks Microcare of Phoenix House, 100 Brierley Street, Bury, BL9 9HN to send correspondence and bills.

15.11 The Customer must inform Microcare at Phoenix House, 100 Brierley Street, Bury, BL9 9HN immediately if there is any change to any of the contact information previously.

Law and Jurisdiction

15.12 (a) This Contract and any disputes or claims arising out of or in connection with its subject matter shall be governed by and interpreted in accordance with English law.

(b) The Customer and Microcare irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim, which may arise out of, under, or in connection with this Contract.