



# Our Supplementary Agreement (to an airtime agreement) for the provision of free or subsidised mobile handsets/equipment

Our Supplementary Agreement (to an airtime agreement) for the provision of free or subsidised mobile handsets/equipment. The Supplier agrees to supply the Equipment free-of-charge or at a subsidised rate (as set out in the Order) on the basis of the network provider agreeing to pay the Network Commission to the Supplier. The Customer acknowledges that the Bonus depends largely upon the details of the Airtime Agreement; accordingly any cessation or change of service or tariff under the Airtime Agreement (whether before or after connection to the network provider's system) may result in an adjustment to or demand for repayment the Network Commission.

## 1. Definitions and Interpretation

**Agreement:** means these Terms and Conditions together with the Order.

**Airtime Agreement:** means the agreement entered or to be entered into between the Customer and the network provider for mobile services.

**Bonus:** means any introductory or anniversary bonus or credit made available to the Customer by or through the Supplier. The bonus may, for example, be applied in whole or in part by the supply of Equipment, or in the form of compensation for termination of an existing airtime agreement - in the latter case, the Customer must supply a copy of the invoice from the existing network showing the compensation payable. The financial value of the bonus is as specified in the Order or otherwise notified by the Supplier. The credit may be held in whole or in part for release over the course of the Airtime Agreement, or as otherwise agreed.

**Connection:** means the connection to the network provider's mobile network.

**Customer:** means the party purchasing the Equipment, as named in the Order.

**Downward Migration:** means the transfer of a Connection from one tariff to another tariff provided by the network provider which results in Customer being charged a tariff based on a lower line rental and/or lower call charges.

**Equipment:** means any equipment (such as handsets) supplied by the Supplier to the Customer, as specified in the Order or otherwise notified by the Supplier.

**Minimum Term:** means the minimum period for a Connection under the Airtime Agreement.

**Network Commission:** means any commission, fee, payment or benefit provided by the network provider to the Supplier resulting from or relating to the Airtime Agreement.

**Order:** means the order for Equipment.

**Supplier:** means Greystone Telecom Limited (Company number 4066365) whose registered office is at Greystone House, Rudheath Way, Gadbrook Business Park, Northwich, Cheshire, CW9 7LL.

Any reference in this Agreement to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

## 2. The Supplier's Obligations

- 2.1 In consideration of the Customer entering into the Airtime Agreement (and therefore entitling the Supplier to the Network Commission), the Supplier shall supply the Equipment to the Customer pursuant to an Order. The Supplier shall use reasonable endeavours to meet any agreed delivery dates for Equipment but will not be liable for a failure to do so. Time shall not be of the essence in respect of delivery dates.
- 2.2 The Equipment will be accepted when the Customer takes delivery of it.
- 2.3 All intellectual property rights in the Equipment and in all its parts and anything supplied in connection with it or to facilitate its use are and shall remain the property of the Supplier or its suppliers and no rights in or under such property will pass to the Customer.
- 2.4 Title in the Equipment shall pass to the Customer on payment in full and risk in the Equipment shall pass to the Customer on delivery. The Customer acknowledges that such Equipment is sourced by the Supplier from third parties and accordingly the Supplier (so far as permitted by law) has no liability in respect of such Equipment save that it shall pass on to the Customer the balance of the manufacturer's or third party's warranty as obtained by the Supplier. If the Equipment is faulty and returned to the Supplier within 14 days of delivery to the Customer, the Supplier will at its option use reasonable endeavours to either (a) have repaired or replaced the Equipment or (b) substitute it with substantially equivalent equipment. The Customer will only be able to rely on any such warranty if it can show that it has used the Equipment in accordance with any documentation or reasonable instructions provided by or through the Supplier.
- 2.5 The Supplier will request the network provider to connect the Customer to the network provider's system. The Supplier cannot be responsible for the coverage or quality of service that the Customer receives from the network provider.
- 2.6 The Supplier does not represent or warrant that the Equipment will be available without interruption or will be free from error.
- 2.7 To the extent that the Supplier is to provide a Bonus in a form other than Equipment, the Customer may invoice the Supplier for such part of the Bonus at any time after four months from the date of the Connection. Such part of the Bonus shall then be payable by the Supplier within 30 days of receipt of the Customer's invoice, or as otherwise agreed. The Bonus shall only be due if as at the date of provision of the Bonus the Connection is still live and there has been no Downward Migration. The Customer's right to receive or claim a Bonus or any part of it shall cease on the expiry of the Minimum Term.



### 3. The Customer's Obligations

The Customer shall be responsible for any loss or damage to the Equipment, and shall (subject to any manufacturer's warranty) also be responsible for the maintenance of the Equipment. The Customer shall be responsible for insuring (or self-insuring) the Equipment, unless a separate contract of insurance is agreed to be arranged through the Supplier.

### 4. Repayment of Bonus and Payments

- 4.1 If the network provider exercises any right against the Supplier to withhold or claw-back payments of Network Commission in relation to the Customer or the Equipment, the Supplier shall be entitled to claw-back or adjust the Bonus or make charges to the extent that they are or were based on Network Commission.
- 4.2 In the event that the Customer cancels prior to connection, disconnects a Connection prior to the expiry of the Minimum Term or a connection is Downward Migrated during the Minimum Term, then the Supplier shall be entitled to charge the Customer an administration fee of £250 (or such lesser figure notified by the Supplier) for each such disconnection or downward migration. The administration fee reflects the Supplier's loss or anticipated loss of Network Commission and/or the cost of supplying Equipment.
- 4.3 In respect of the supply of Equipment that is not free-of-charge, or any repayments due from the Customer, amounts due from the Customer shall (without set-off or deduction) be paid in pounds sterling within fourteen (14) days of the date of the Supplier's invoice. If the Customer fails to make payment by this date in full, the Supplier may charge interest as set out in s.6 Late Payment of Commercial Debts (Interest) Act 1998 and the Supplier shall also be entitled to claim fixed sum compensation under s.5A of that Act to cover credit control overhead cost. The interest shall be calculated on a daily basis from the date of due payment until actual payment whether before or after any judgement (unless the court decides otherwise) and compounded on the first day of each month. In addition the Supplier shall be entitled to claim from the Customer the costs of taking legal action to recover any debt.

### 5. Limitations and Exclusions of Liability

- 5.1 This Clause 5 sets out the Supplier's entire liability (including any liability for acts or omissions of the Supplier's employees, agents or subcontractors) to the Customer in tort, contract or otherwise arising in connection with the performance, non-performance or contemplated performance of this Agreement. Except as set out in this Agreement, the Supplier provides no warranties, conditions or guarantees as to the description or quality of the Equipment, and all warranties, conditions or guarantees implied by or expressly incorporated as a result of custom and practice, statute, common law or otherwise are hereby expressly excluded so far as permitted by law. The Supplier's duty in performing any obligations under this Agreement is only to exercise reasonable care and skill of a reasonably competent Equipment distributor.
- 5.2 Subject to Clause 5.4, the Supplier's entire liability for non-fraudulent representation, or implied warranty, condition or other term, or under any duty at common law, or in tort (including negligence) or under the express terms of this Agreement shall not in the aggregate, in any period of 12 months, exceed the Bonus in respect of that 12 month period. If for any reason this limit of liability shall be found to be unlawful or invalid by a court of competent jurisdiction, the Supplier's entire liability as referred to in this clause shall not exceed £10,000.
- 5.3 Except in respect of the repayment of the Bonus and any liability under clause 5.4, neither party shall be liable to the other party under the express terms of this Agreement or by reason of any non-fraudulent representation, or implied warranty, condition or other term, or any duty at common law, or any tort (including negligence), for any:
- loss or reduction of profits
  - loss or reduction of revenue or income
  - increased costs of operation
  - loss of or damage to business
  - loss of or damage to goodwill or reputation
  - loss or reduction of anticipated savings
  - loss or corruption of, or damage to, data
  - loss or reduction of use
- damages payable or other payments to any third party, or indirect or consequential or special loss or damage whatsoever and howsoever caused.
- 5.4 The Supplier shall not exclude or restrict liability for death or personal injury resulting from its own negligence or for fraudulent misrepresentation.
- 5.5 Subject to Clause 5.4, the Supplier shall not be liable for any direct loss or damage (whether physical, financial or otherwise) howsoever arising from the act or default of the network provider.
- 5.6 Each of the Supplier and the Customer acknowledges that it considers the provisions of this Clause 5 to be reasonable, taking account of the other terms of this Agreement (including the Charges) and its ability to insure against losses which may arise from any breach by the other Party of its obligations under this Agreement.
- 5.7 The provisions of this Clause 5 shall survive termination of the Agreement.

### 6 Circumstances Beyond Reasonable Control

Neither Party shall be liable for any delay in performing its obligations under this Agreement caused by circumstances beyond its reasonable control. These are circumstances such as, but not limited to, Acts of God, insurrection or civil disorder or military operations, national or local emergency, acts or omissions of the Equipment supplier or network provider, fire, flood, lightning or other weather of exceptional severity, postal or transport delays, or industrial disputes. This Clause does not apply to the Customer's obligation to pay.



#### 7 Notices

- 7.1 Notices must be written and delivered by (a) hand, (b) facsimile or electronic mail (confirmed by first class pre-paid post in respect of posting and delivery within the UK or airmail otherwise) or (c) first class prepaid post in respect of posting and delivery within the UK or airmail otherwise. The address for service on the Customer is as set out in the most recent invoice.
- 7.2 A notice will be deemed served as follows:
- 7.2.1 By hand, on delivery except where this is outside a Working Day, in which case the next Working Day;
- 7.2.2 By fax (written record of successful dispatch) on delivery except where this is outside a Working Day, in which case the next Working Day;
- 7.2.3 By electronic mail on delivery except where this is outside a Working Day, in which case the next Working Day, provided that either a telephone call is made to and received by the recipient informing the recipient of the date and time of that electronic mail message or the recipient expressly or impliedly acknowledges receipt of the electronic mail message;
- 7.2.4 Two Working Days after posting, if posted in and for delivery in the UK; or five Working Days if otherwise.

#### 8 General

- 8.1 Headings in this Agreement shall not affect interpretation.
- 8.2 A delay in enforcing rights under this Agreement shall not be a waiver, as any waiver must be expressly granted in writing.
- 8.3 The unenforceability or invalidity of any part of this Agreement shall not affect the enforceability or validity of the remainder of it.
- 8.4 The termination or expiry of this Agreement shall be without prejudice to the rights of either Party, which have accrued prior to termination or expiry. Clauses that are expressed to survive or which are by implication intended to survive termination or expiry of this Agreement shall so survive. This Agreement contains the entire agreement and supersedes all other agreements and understandings between the Parties with respect to its subject matter. Any terms proposed by the Customer that are not written in these Terms and Conditions shall be invalid. Subject to Clause 5.4, each Party acknowledges that, in entering into this Agreement, it does not do so on the basis of, and does not rely on, any representation, warranty or other provision except as expressly written in this Agreement, and that its only remedy can be for breach of contract. This Agreement is not intended to be for the benefit of and shall not be exercisable by, any third party (other than the network provider) under the Contracts (Rights of Third Parties) Act 1999 or otherwise and neither Party can declare itself trustee of the rights under it for the benefit of any third party. The Supplier may transfer or assign its rights and obligations and may sub-contract any of its obligations.
- 8.5 English law shall govern the validity, construction and performance of this Agreement and the Parties submit to the exclusive jurisdiction of the English Courts.