

# Terms & Conditions of Service

## THE SCHEDULE for the CallSave, LineSave, LCR, CPS and WLR Service(s)

This Schedule and the Master Service Agreement for the provision of telephony services and the Order and the Price List together form the contract for the Service(s) to be supplied by the Supplier to the Customer.

1. The definitions in the Master Service Agreement shall apply to this Schedule unless expressly stated otherwise.
2. These terms and conditions shall apply in respect of the above Service(s) that you have offered to acquire, detailed particulars of which are set out in the Order. Where there is any conflict between the provisions of this Schedule and the provisions in the Master Service Agreement, the provisions of this Schedule will prevail.
3. Subject to the provisions of paragraphs 8 and 13.1 the Supplier shall use reasonable endeavours to provide each of the Services acquired by the Customer within 20 working days (unless otherwise expressly agreed in writing and signed by a Director of the Company on the Customer Order form) from the date when an order relating to such Service becomes an Accepted Order on the proviso that this time frame is intended to be an estimate only and it shall not be made of the essence by notice and any failure to provide the Services within this timeframe will not constitute a breach of this contract.
4. If the Customer reports a fault on a Line or with the Service the Supplier will make commercial endeavours to resolve the fault promptly in line with a competent telecommunications operator offering such services in the United Kingdom provided that the fault has arisen from normal use of the Equipment or Service.
5. The Supplier cannot be held responsible for any fees or charges imposed by another Network Operator or service provider and the Customer agrees to indemnify and hold the Supplier harmless against any claims, actions, proceedings, losses, damages, out of pocket expenses and costs (including without limitation court costs and reasonable legal fees).
6. The Supplier may change the conditions or service levels relating to a Service in order to reflect contractual changes imposed by its suppliers (including without limitation with BT) or any decision, request by or change in the regulatory regime by the relevant regulatory authorities.
7. The Supplier may have to sub-contract certain elements of the Services to third party telecommunications providers where the Customer has applied for the CPS or CallSave or LCR or WLR or LineSave Services). Whilst the Supplier will endeavour to comply expeditiously with all its obligations with any regulatory processes, the Supplier cannot warrant such compliance by the third party telecommunication provider and therefore cannot offer any guarantees that your application for those Services will be successful or the quality of the service to be provided by that third party telecommunication provider. The Customer acknowledges that delivery of the Services may be dependant on the actions of BT and/or any other Network Operator or telecommunications or services providers and that the Supplier cannot therefore be liable for any faults or delays or interruptions to the Service caused by third parties or events outside the Supplier's control.
8. The Supplier may need to cancel your Contract if a third party telecommunication provider rejects your application or the Customer's current telecommunications provider demonstrates a legal and valid reason for not cancelling their current provision of services to the Customer.
9. The Supplier shall, on one (1) week's written notice to the Customer, be entitled to delete any CLIs which have not been used in a Service used by the Customer in the previous six (6) months except where the CLIs were provided under the Line Rental or WLR or LineSave Services.
10. The Supplier shall be entitled to record any or all telephone calls made by the Customer or any End User to the Supplier in order to monitor the quality of the support or the service provided or for training purposes.
11. The Supplier at its sole discretion reserves the right to remove any Services provided to the Customer or any Number if at any time the Supplier is requested to do so by a competent authority or by a Network Operator or the Supplier has reasons to believe the Customer is using the Service in a way which in the opinion of the Supplier may be detrimental to the Supplier
12. The Customer must not use a Service or allow or permit any End User to use the Service:
  - 12.1. in a way that does not comply with the terms of any legislation or any codes of practice, statements of application, regulations or any licence or authorisation applicable to the Customer or End User (as appropriate) including without limitation the Communications Act 2003, any rules laid down by OFCOM and PhonepayPlus from time to time or that is in any way unlawful or fraudulent or to the knowledge of the Customer or End User has any unlawful or fraudulent purpose or effect;
  - 12.2. in connection with (without prejudice to the generality of paragraph 12.1 above) the carrying out of fraud or a criminal offence against any public telecommunications operator;
  - 12.3. in any way that constitutes Artificial Inflation of Traffic;
  - 12.4. in a way that in the Supplier's reasonable opinion could materially affect the quality of any telecommunications service or other service provided by the Supplier or any third party;
  - 12.5. to make nuisance calls or spam, to threaten, harass, stalk, abuse, disrupt or otherwise violate or infringe the rights (including but not limited to copyright, rights of privacy and publicity) of others;
  - 12.6. for storing, reproducing, transmitting, communicating or receiving any offending material;
  - 12.7. fraudulently or for any criminal purpose or in a manner that is contrary to any regulatory or legal requirement;
  - 12.8. contrary to instructions that the Supplier may give to the Customer;
  - 12.9. to obtain access, through whatever means, to notified restricted areas of the underlying network;
  - 12.10. to send and receive data in such a way or in such amount so as to adversely affect the Network (or any part of it) which underpins any of the Services or to adversely affect any other customers of the Supplier or of any its suppliers;
  - 12.11. in any way which is unlawful, facilitates illegal activity, promotes unlawful violence, harmful, defamatory, obscene, infringing, racially or ethnically offensive,



- discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or causes any damage or injury to any person or property;
- 12.12. to engage in conduct which amounts to improper or persistent misuse of a public telecommunications network or service within the meaning of sections 127 to 128 of the Act; or
- 12.13. in a way which (in the reasonable opinion of the Supplier) brings the name of the Supplier into disrepute, or which places the Supplier in breach of the Act.

### 13. Obligations of the customer

- 13.1. The Customer shall ensure that any other legally binding contract or contracts with other service providers for the provision of CPS or WLR or Line Save or CallSave or LCR or any similar product, which are valid and existing or that would prevent the Supplier providing the Services, or that could incur costs to the Supplier, are validly terminated prior to entering into any Contract for the Services.
- 13.2. The Customer shall ensure that any Call Barring features available on the Customer's telephone Line provided by any other service provider or Network Operator is disabled prior to the installation of the Service by the Supplier. The Supplier accepts no responsibility for calls or call charges imposed by other Network Operators or service providers that are made over the Customer's telephone Line as a result of disabling Call Barring.
- 13.3. The Supplier cannot be held responsible for any fees or charges imposed by another Network Operator or service provider and the Customer agrees to indemnify and hold the Supplier harmless against any claims, actions, proceedings, losses, damages, out of pocket expenses and costs (including without limitation court costs and reasonable legal fees) suffered by the Supplier due to the Customer's failure to adhere to paragraph 13.2.
- 13.4. The Customer shall, at the Supplier's request, arrange for the Customer's apparatus and equipment to be re-programmed by its designated maintainer in accordance with instructions provided by the Supplier, to enable any indirect or other access in order for the Supplier to provide the Services.
- 13.5. The Supplier will have no liability or responsibility for any costs incurred by the designated maintainer in respect of such re-programming and the Customer agrees to indemnify and hold the Supplier harmless against any claims, actions, proceedings, losses, damages, out of pocket expenses and costs (including without limitation court costs and reasonable legal fees) suffered by the Supplier.

### 14. Services

- 14.1. Where the Supplier allocates telephone numbers to the Customer, the Customer will not acquire any rights whatsoever in such telephone numbers. The Customer will not apply for registration of the telephone numbers as part of a trademark.
- 14.2. If the Supplier has agreement with the Customer's existing telecommunications service provider, the Supplier can, at the Customer's request, provide the Customer with a telephone Line using the Customer's existing telephone number subject to the following:
- 14.2.1. There are no technical reasons preventing the use of the number;
- 14.2.2. The Supplier has in the Accepted Order agreed to provide Number Portability to the Customer as part of the Services;
- 14.2.3. The existing telecommunications service provider expressly agrees to release the relevant telephone number(s);
- 14.2.4. The Customer agrees to cease subscribing for the service on the existing telecommunications service provider's telephone line using the telephone number and authorises the Supplier to arrange for that cease to take place;
- 14.2.5. The Customer provides the Supplier with full details including (but not limited to) the account name, account number, service address and billing address;
- 14.2.6. The Customer pays the Supplier's costs (if any) for procuring Number Portability from the existing Network Operator or telecommunications service provider;
- 14.2.7. Number Portability is available at the Site.
- 14.3. Subject always to the provisions of paragraph 11 we will not be obliged to comply with any request for Number Portability unless and until you have fully complied with all your obligations under the Agreement (including payment of all Charges due and payable) which, in the event of cancellation within the Minimum Period (if any) will include an Early Termination Fee.
- 14.4. The Supplier does not accept any liability for claims, losses, damages, expenses and costs relating to the Customer's inability to use or to continue use of a particular telephone number.
- 14.5. The Customer shall provide to the Supplier any relevant account and CLI numbers that may be required by BT or any other telephone line provider or Network Operator. The Customer acknowledges that the Supplier cannot process the provision of the telephone service until such information is provided.
- 14.6. The provision of the telephone service requires that BT undertake programming at telephone exchange level. Accordingly, it is agreed that any act, default or delay by BT in carrying out such programming or otherwise relating to or affecting the telephone service shall not be the responsibility of the Supplier.



14.7. The Service types offered by the Supplier and covered by this Agreement and Schedule are:

Least Cost Routing (LCR).

Carrier Pre-Selection (CPS).

CallSave (Acuity's CPS Service).

Wholesale Line Rental (WLR).

LineSave (Acuity's Wholesale Line Rental Service).

14.8. If the Customer has chosen the CallSave, LCR or CPS services, then the Supplier will use all reasonable commercial endeavours to ensure that it will route all calls that can be routed via CPS or LCR or CallSave, but the Supplier is not responsible and cannot be held liable for the actions of BT or any other third party Network Operators or telephone line providers or the Customer's deliberate or otherwise misuse of the Service which result in calls routing over BT or any other third party Network Operator or telephone line provider and the Supplier shall not be liable for any claims, actions, proceedings, losses, damages, expenses and costs incurred by the Customer for any calls intended to route via LCR or CPS or CallSave, but routed over BT or any other third party Network Operator or telephone line provider due to whatever cause.

14.9. The CallSave service and the LineSave service, does not include the Customer's telephones or other equipment that may be necessary in order to receive the Services. The telephones and other equipment required can be supplied by the Supplier as a separate Service.

14.10. If the Customer has chosen the WLR or LineSave Services, then these Services automatically include the supply of the CPS, LCR or CallSave Services and the terms of this Agreement will apply to each such Service supplied by the Supplier.

14.11. Whilst we provide any of the Services to you, you irrevocably authorise us to act on your behalf in all dealings with BT or any other Network Operator or service provider in order to arrange and continue to supply the CallSave and LineSave services.

## 15. Equipment

15.1. In the event that the Supplier must supply and maintain any automatic dialing equipment for the purpose of providing any of the LCR or CPS or CallSave or WLR or LineSave services and the Customer agrees to utilise such Equipment which will usually be supplied at no charge (unless otherwise specified on the Order) then the following terms and conditions shall apply:

15.1.1. The Supplier shall deliver the Equipment to the Customer.

15.1.2. Any delivery date specified for delivery of the Equipment shall be treated as an estimate only and whilst the Supplier will take all reasonable steps to deliver within the period specified, such date shall be treated as an estimate only and time for delivery shall not be made of the essence by notice.

15.1.3. Any failure to deliver the Equipment within the period specified will not constitute a breach of this contract and the Supplier accepts no liability for failure to meet the delivery date.

15.1.4. The Supplier or its appointed Sub-Contractor or Agents shall install the Equipment at the Customer's Site.

15.1.5. The Equipment shall at all times remain the property of the Supplier and under no circumstances shall this be disputed by the Customer or any other third party.

15.1.6. The Customer shall be solely responsible for the Equipment whilst it is in the Customer's custody, care and control and shall ensure that they are kept in satisfactory condition and subject to the provisions of paragraph 15.1.7 the Customer shall fully indemnify the Supplier against any losses and damage, expenses and costs incurred by the Supplier as a result of the Customer's failure to comply with this obligation caused due to any negligence.

15.1.7. The Customer shall not be responsible for any loss or damage to the Equipment which is attributable to the wilful act, fault or omission of the Supplier or as a result of its normal use.

15.1.8. It shall be the responsibility of the Customer to notify the Supplier immediately of any loss or damage to the Equipment has occurred.

15.2. The use of computing equipment and/or computer software owned and/or controlled by the Supplier (including computer networks and systems accessed via the Network) is permitted for bona fide purposes and is subject to authorisation by the Supplier.

15.3. Unauthorised or improper use of the Services and/or the Equipment is a breach of this Agreement and may give rise to withdrawal of the facilities and/or proceedings under the Computer Misuse Act 1990.

## 16. Duration and Termination

16.1. Without prejudice to any other rights or remedies of the Supplier and where applicable having regard to the provisions of paragraph 18.6, the Supplier may terminate this Agreement or terminate or suspend any of the Services to be provided under this Agreement with immediate effect if:

16.1.1. the Customer's existing telecommunications service provider or BT has validly refused the Customer's application to cancel the Customer's existing contract with such provider; or

16.1.2. the Customer uses the Lines in any way which the Supplier considers at its absolute discretion, to be inappropriate, illegal, fraudulent or improper; or

16.1.3. where the Customer has applied for any of the CPS or CallSave or LCR or WLR or LineSave Services) and the Supplier is required to sub-contract certain elements of those Services to third party telecommunications providers and those third party telecommunications providers have not agreed to supply those Services.

16.2. The Customer shall be responsible for paying all Charges accrued until and during any such period of suspension (including without limitation in relation to Charges in respect of Line rental).



- 16.3. In the event that the Customer seeks to terminate the Contract for any reason other than permitted by virtue of the provisions in this paragraph 16 or clause 6 of the Master Services Agreement whether before or after the Start Date, the Supplier shall at its sole discretion be entitled to accept such termination provided that it shall be entitled to:
- 16.3.1. charge and the Customer agrees to pay, if the Service provided is for CallSave, LCR, without offset, a termination fee equivalent to 50% of the Customer's average monthly call spend charges multiplied by the number of whole or part months remaining of the Minimum Term or the Renewal Period whichever is applicable; and
- 16.3.2. charge and the Customer agrees to pay, a cancellation charge equivalent to 12 months line rental if the Services provided are for WLR or LineSave.
- 16.4. In the event that the Supplier terminates this Agreement in accordance with the provisions of paragraph 16.1 or clause 6.3 of the Master Services Agreement or the Customer seeks to terminate and the Supplier accepts such termination in accordance with the provisions of paragraph 16.3 or clause 6.7 of the Master Services Agreement, the Customer shall in addition to the costs referred to in paragraph 16.3 or clause 6.7 of the Master Services Agreement (if applicable) whichever is the greater, pay to the Supplier the Early Termination Fee.

## 17. Charges and Payments

- 17.1. The Customer shall pay to the Supplier all Charges and other sums due under this Agreement without set off, deduction or counterclaim.
- 17.2. The Supplier may amend its Prices upon which Charges are based at any time during the Term by not less than thirty (30) days notice, such Prices to be published on its website at [[www.acuityunifiedcomms.co.uk](http://www.acuityunifiedcomms.co.uk)] The Supplier will only amend the Charges payable by you for valid reasons, such as an increase or decrease in tariff access rates or other new charges or changes in charges levied on the Supplier by the Network Operator, as a result of changing regulatory or legal requirements, market conditions, changes in technology or our systems capabilities or which in the Supplier's opinion are commercially necessary to enable us to provide the Services to you. This includes the ability to separately make a charge for Services that were at the time the Customer entered into this Agreement included in the Service as free. In the event that any increase in the Charges for the Services is in excess of 10 % of that originally proposed for the same Services, then the Customer may serve notice to terminate this Agreement within (14) days of such notice of increase in the Charges. Notwithstanding the aforementioned the Supplier shall be entitled to increase the Charges for whatever reason at the start of each Renewal Period upon thirty (30) days' prior notice to the Customer, such particulars of the increase being given via the Companies web site.
- 17.3. The Customer shall pay to the Supplier the Charges which for all calls and for traffic routed via the Network shall be priced using a rate per minute or part thereof as set out in the Price List. However telephone calls are actually billed in one second units. The individual telephone calls are rounded up to the next £0.001 and the total of the Call Charges in respect of those individual telephone calls are rounded to the nearest £0.01.
- 17.4. All amounts payable to the Supplier in respect of the Services are quoted exclusive of Value Added Tax or any other applicable taxes which may from time to time be levied and such Value Added Tax and any other such applicable taxes shall be itemised separately on all invoices and bills and be payable by the Customer in addition to, and at the same time as, any Charges.
- 17.5. All Call Charges shall be calculated by reference to data recorded or logged by the Supplier and not to data recorded or logged by the Customer and the Supplier's CDR's shall be prima facie evidence of call parties, call time and call duration in relation to any particular call and shall be accepted as such save in the case of manifest error by the Supplier. For the avoidance of doubt it is agreed that the Customer has to pay for all calls using the Service, even though the call originated was unauthorised i.e. the person, End User, or Customer which initiated the access did so using premises, equipment, or facilities, or security access code, etc or knowledge of the Customer, but was not authorised to use such premises, equipment, facilities or security access code or knowledge for such purpose.
- 17.6. The Supplier may in a separate invoice make claims for any Backdated Charges. Any such Backdated Charges must be made within six months of the date that the Backdated Charges arose.
- 17.7. The Supplier reserves the right to charge the Customer for any payphone access levy incurred by the Supplier during the provision of the Number Translation Service to the Customer and its customers. The relevant Call Charges are shown in the Price List.
- 17.8. The Supplier shall be entitled to levy a monthly rental fee for any Equipment provided by the Supplier, as agreed with the Customer.
- 17.9. The Supplier shall be entitled to levy the Installation Costs for any Equipment or the Services as outlined in the Service Order.

## 18. Payment of Charges

- 18.1. Except where stated, the Supplier shall invoice the Customer each calendar month for all Call Charges and any other sums due for the prior calendar month under this Agreement.
- 18.2. Except where stated otherwise, the Supplier shall invoice the Customer in advance for all Line Rental charges due under this Agreement.
- 18.3. Except where stated otherwise, the Supplier shall invoice the Customer upon activation of the Service for all Installation Costs, any one off charges as referred to in the Order and any Equipment charges due under this Agreement.
- 18.4. All payment is due seven (7) days after the date of the relevant invoice, and shall unless agreed in accordance with the provisions of paragraph 18.9 be paid by direct debit into the Supplier's nominated bank account from time to time. Time shall be of the essence in respect of such payments and payment shall be deemed to have been made at the time when cleared funds are available in the Supplier's bank account.
- 18.5. Charges shall accrue from the Start Date.
- 18.6. Where the Supplier has previously expressly agreed in writing with the Customer, the Supplier will allow the Customer to accumulate unpaid Charges up to a maximum of an agreed credit limit which the Customer agrees in writing with the Supplier. In the event that at any time unpaid Charges exceed the credit limit the Supplier shall be entitled, at its option, to:
- 18.6.1. suspend provision of the Services on written notice with immediate effect; and/or
- 18.6.2. request an immediate payment on account by the Customer; and/or
- 18.6.3. issue an interim invoice.
- 18.7. Any interim invoice issued under this paragraph shall be payable by the Customer within seven (7) days of the date of issue. Should the Customer fail to pay



an interim invoice when due or make any payment on account agreed with the Supplier within seven (7) days of being requested to do so by the Supplier, the Supplier will be entitled to suspend the Services without notice until such time as payment is made in full.

- 18.8. In the event of the Supplier disconnecting the Services as a result of non-payment of any of the Charges and/or any other sums due or as a result of any other of breaches by the Customer under this Agreement, a further charge of £50.00 plus Value Added Tax will be added to the Customer's account for administration purposes.
- 18.9. All payments in respect of the Charges and/or any other sums due under this Agreement will be made by direct debit only unless the Customer has the express written prior agreement of the Supplier to pay by an alternative method. Any payments by any other method will incur an administration fee of £15 per payment. If a direct debit payment is dishonoured or cancelled the Supplier will be entitled to pass on to the Customer an administration fee of £50 plus any additional third party charges incurred by the Supplier. The Supplier will also be entitled to charge the Customer a monthly administration fee of £50 for each month in which Customer's direct debit is dishonoured or not re-instated following cancellation.
- 18.10. The Supplier may charge interest on all overdue amounts from time to time on a daily basis at a rate of five percent (5%) per annum above the base lending rate of Barclays Bank Plc from time to time, to run from the due date of payment until receipt by the Supplier of the full amount (including any accrued interest) whether before or after judgement in respect of the overdue amount.
- 18.11. The Supplier may at any time review and/or adjust the amount payable by the Customer by direct debit to ensure that it is sufficient to cover the Charges and you irrevocably authorise us to change your direct debit instruction accordingly.
- 18.12. The Customer shall be responsible for paying all Charges incurred during any such period of suspension (including without limitation in relation to Charges in respect of Line rental).
- 18.13. Should any unforeseen circumstances cause an interruption to the CDR's and the Supplier is unable to provide an accurate itemised schedule of calls, the Customer agrees to pay to the Supplier by direct debit a fixed amount for each billing period affected by the interruption, which the Supplier will calculate based on your estimated annual usage, or your actual use in the previous six months or such other period which we believe best represents your use.

## 19. General

- 19.1. The Supplier does not support Wholesale Line Rental (WLR) or LineSave without the Carrier Pre-Selection (CPS) or CallSave or Least Cost Routing (LCR) service also being supplied on the line. These Services and calls to be routed exclusively by the Supplier.
- 19.2. If your Order is for the LineSave or WLR Service, it is your responsibility to ensure that any monitored alarm system (MAS) you use is compatible with the Service. If we suspend or end the Service, this will affect your MAS. We do not accept liability in connection with your use of a MAS with the Service.

## 20. CLI and Data Protection

- 20.1. The use of any information, including CLI, may be subject to (and therefore the Customer shall comply with) the Data Protection Act 1998, EU Data Protection Directives and The Telecommunications (Data Protection and Privacy) Regulations 1999. The Supplier reserves the right to withhold CLI if it believes that the Customer has failed to comply with this paragraph or the Supplier receives a complaint from any relevant authority.

