

**TERMS & CONDITIONS OF BUSINESS
COMMUNICATE BETTER LIMITED
(TRADING AS COMMUNICATE BETTER BUSINESS SOLUTIONS)**

Core Terms and Conditions

1. DEFINITIONS

The following expressions have the following meanings:

“the Agreement”	together these terms and conditions, the Schedule and the Order Form;
“BT”	British Telecommunications plc;
“CBBS”	Communicate Better Limited (Co. No. 04743770) of 119 Moorside Road, Swinton, Manchester M27 0LB t/a Communicate Better Business Solutions;
“Charges”	the total charges payable by the Customer to CBBS under this Agreement;
“Commencement Date”	the date on which the first element of the Services shall commence or such other date as may be stipulated on the Order Form;
“Customer”	the company, partnership, sole trader or other legal entity named in the Order Form;
“Equipment”	all equipment supplied by CBBS (or procured by it under a rental arrangement) to the Customer as set out in the Order Form;
“Installation Date”	the date on which CBBS installs the Equipment;
“Line Rental”	rental of ISDN or analogue line(s) previously supplied by BT or another network operator as further prescribed at Paragraph [] of the Schedule;
“Maintenance”	the maintenance service to be provided by CBBS to the Customer as further defined in Paragraph 3 of the Schedule;
“Minimum Term”	the minimum term for each Service as set out in the Order Form;
“Network Services”	telephone call services and related call charges as further defined in Paragraph 4 of the Schedule;
“Order Form”	the order form containing the Customer and Service details as attached to this Agreement;
“the Schedule”	the Schedule containing Service specific terms at the end of the core Terms and Conditions;
“Services”	the services provided by CBBS to the Customer which shall comprise Equipment, and installation Maintenance, Line Rental, Network Services, or any of them as set out on the Order Form and as further described in the Schedule;
“Site”	the Site at which the Services and Equipment are to be provided as set out in the Order Form;
“Software”	the computer programme that is installed on the Equipment when supplied or which the Customer otherwise requires for use in conjunction with the Equipment or the Services.

2. SERVICES

In consideration of the payment of the Charges CBBS shall provide the Services to the Customer.

CBBS shall perform the Services with the reasonable skill and care of a competent telecommunications service provider. CBBS shall correct any failures in the Services as soon as is reasonably practicable taking account of all relevant circumstances and subject at all times to the provisions of this Agreement.

CBBS reserves the right at any time and without prior notice to:

- 2.3.1 change the code, telephone number or the technical specification of the Service for operational reasons;
- 2.3.2 interrupt the Service for operational reasons including but not limited to where due to an emergency; and/or
- 2.3.3 give the Customer instructions that CBBS believe are necessary or desirable for health or safety reasons or for the quality of the Service.

CBBS shall use all reasonable efforts to provide the Customer with the Services by such date as CBBS may advise but time for performance shall not be of the essence of the Agreement.

Additional terms shall apply to the relevant Services as set out in the Schedule.

CBBS will test the Equipment at the Site upon installation in accordance with its acceptance test procedure as applicable from time to time. Upon satisfactory completion of such tests CBBS shall confirm to the Customer that the Equipment is correctly installed at which time the Customer will be taken to have accepted the Equipment.

CBBS shall ensure that the performance of the Equipment meets the approved standard of the manufacturers as at the date of installation where Equipment is provided and for the term of this Agreement where Maintenance is to be provided in respect of that Equipment. CBBS will use best endeavours to respond to reported faults within 8 (eight) working hours but shall not be liable for a failure to do so. Installation and Maintenance are to be provided between 9.00am and 5.00pm Monday-Friday excluding public holidays (“Normal Hours”). However, at no time will a failure by CBBS to respond within these guidelines be construed as a material breach of this Agreement. Time for performance shall not be of the essence of the Agreement.

CBBS will normally carry out Equipment installation and Maintenance during Normal Hours but may on reasonable notice require the Customer to provide access at other times. CBBS may work outside Normal Hours but shall not be obliged to do so and the Customer shall be liable for paying to CBBS any overtime charges for the relevant staff.

The Customer must notify CBBS as soon as it becomes aware of any fault in the Services and CBBS will endeavour to supply support to the Customer in an attempt to correct the fault as soon as it is reasonably possible. If CBBS provides assistance to the Customer for the resolution of the fault but it is subsequently discovered that the fault lies with neither the Equipment nor the Service provided by CBBS, then the Customer shall pay CBBS for the resolution of the fault on a time and materials basis at CBBS current rates from time to time.

CBBS shall not be responsible or liable for any delays in third party services or for any other third party failures. Any such delay will not give the Customer the right to refuse installation of the Equipment or payment due to CBBS.

Each Service shall be subject to the Minimum Term for that Service as set out in the Order Form. Renewal of the Service and termination thereof shall be in accordance with the Service specific provisions as set out in the Schedule.

3. CUSTOMER OBLIGATIONS TO CBBS

The Customer shall ensure that:

- 3.1.1 the Site(s) is prepared in accordance with CBBS’ instructions for the provision of the Services. The Customer will meet the costs of preparing the Site(s);
- 3.1.2 there is adequate electricity supply and suitable earth connection for the operation of any Equipment to be installed at the Site(s) and in case of multi-line unit access that there is a designated carrier network test and termination point;
- 3.1.3 assistance and co-operation is given to CBBS to enable CBBS to carry out its obligations under the Agreement including but not limited to giving full access to the Site(s) and all cabling and server rooms as may be required by CBBS; and
- 3.1.4 if the Equipment is to be connected to the BT network or other outside services, arrangements are made for provision of all required circuits. The Customer shall pay all costs for circuit rentals, connection charges, inspections, commissioning and all other costs necessary for CBBS to provide the Services (as applicable).
- 3.2 The Customer agrees to hold harmless, indemnify and keep indemnified CBBS against any action, liability, penalties, costs, claims, losses, damages, proceedings and expenses (including legal costs), suffered or incurred by CBBS arising out of or relating to the Customer or any third party use of the Equipment or Services including but not limited to:
 - 3.2.1 any claim or allegation made by a third party that its intellectual property rights have been breached in any way (whether successful or not);
 - 3.2.2 failure by the Customer to provide Site access and otherwise comply with its obligations under this Clause 3; and
 - 3.2.3 any improper, immoral or unlawful purpose.
- 3.3 The Customer must advise CBBS in writing if it changes its address.
- 3.4 The Customer must comply with all reasonable instructions given to it by CBBS and provide CBBS with all information relevant to the Services to be provided under this Agreement.
- 3.5 The Customer must not use the Equipment or Services unlawfully including but not limited to the operation of any telephone services which fail to comply with the Independent Committee for the Supervision of Standards of Telephone Information Services or other relevant regulations and legislation.

4. CHARGES AND PAYMENT

The Customer shall pay the Charges together with all value added tax and any other applicable taxes in respect of all the Services.

The Customer will pay interest at a rate of 3% (three percent) over the Bank of England Base Lending Rate applicable in force from time to time per month on all overdue amounts from the date payment is due until the Customer has paid all outstanding sums in full.

Unless otherwise specified in this Agreement payment shall be due in full within 30 (thirty) days of the date of the invoice.

In the event that the Customer fails to pay the Charges on the relevant due date in accordance with the Schedule CBBS reserves the right to suspend or cancel any or all of the Services or terminate this Agreement until such time as it shall receive payment in full of the outstanding amount. CBBS reserves the right to levy an administration fee of £50 (fifty pounds) for lifting such a suspension.

5. LIMITATION OF LIABILITY

Under no circumstances whatsoever shall CBBS be liable whether in contract, tort or otherwise howsoever arising for any costs, claims, damages, liabilities or expenses in respect of:

- 5.1.1 any direct loss of profit or any direct loss of anticipated savings;
- (a) indirect loss of profit;
- (b) loss of use of money or loss of anticipated savings;
- (c) loss of business or opportunity;
- (d) loss of goodwill or damage to reputation; and/or
- (e) loss of or damage to data.

For the avoidance of doubt the sub-clauses of this Clause 5.1 are intended by the parties to be distinct and severable.

Unless otherwise expressly stated neither party’s liability in contract, tort or otherwise including any liability for negligence howsoever arising out of or in connection with this Agreement shall exceed:

5.2.1 £1,000,000 (one million pounds) for one event or series of related events; or

5.2.2 £2,000,000 (two million pounds) in total for all events arising in any twelve month period.

Nothing in this Agreement shall exclude or limit the liability of either party for fraudulent misrepresentation or for death or personal injury resulting from its own negligence or that of its employees, agents or sub-contractors.

The Customer shall provide to CBBS all data, records and other information as may be necessary for CBBS to provide the Services and otherwise perform its obligations under this Agreement. CBBS shall not under any circumstances be liable for any failure, delay or other default in the Services as a result of the Customer’s failure to comply with its obligations under this Clause 5.4.

6. SOFTWARE

- 6.1 All proprietary rights including intellectual property rights in the Software vest in and shall remain vested in CBBS or the relevant third party owner as the case may be and nothing in this Agreement shall confer or be deemed to confer any such rights on the Customer. The Customer shall only use the Software subject to and in accordance with such licence terms as shall be stipulated for the use of the Software by the third party licensor of the Software from time to time. The Customer shall be responsible for obtaining all rights, licences and warrants to use the Software and further shall be responsible for compliance with all such licence terms.
- 6.2 The Customer shall not copy, change, interfere with or take apart the Software in any way, reveal its contents to a third party or grant a sub-licence. The Customer must ensure that the Software is only used in the permitted territories and for the permitted purpose as set out in the relevant licence terms.
7. **SUSPENSION**
- 7.1 CBBS may, without terminating this Agreement, suspend any or all of the Services if:
- 7.1.1 CBBS believes or is advised it is necessary because of technical problems or work on the network or for reasons of safety;
- 7.1.2 CBBS believes it is necessary to prevent fraud taking place;
- 7.1.3 CBBS is obliged to comply with an order, instruction or request of Government or persons purporting to act with Government authority, an emergency service organisation or other competent administrative authority;
- 7.1.4 CBBS needs to maintain or upgrade the CBBS designated carrier network at any site;
- 7.1.5 the Customer's total Charges incurred are more than any credit limit which CBBS may impose on the Customer at CBBS' discretion; or
- 7.1.6 in accordance with Clause 4.4 of this Agreement.
8. **TERMINATION AND EFFECT OF TERMINATION**
- 8.1 This Agreement shall come into force on the Commencement Date and shall continue in full force and effect unless or until terminated in accordance with the provisions contained herein or until the final Service is properly terminated in accordance with the Schedule. For the avoidance of doubt, termination of a Service element shall not operate to terminate this Agreement as a whole.
- 8.2 Without prejudice to any other rights or remedies under this Agreement or at law, CBBS may terminate this Agreement or cancel a Service at any Site immediately by serving written notice on the Customer if any encumbrancer takes possession or a receiver is appointed over any of the property or assets of the Customer or the Customer makes a voluntary arrangement with its creditors or becomes subject to an administration order or the Customer goes into liquidation (except for the purposes of amalgamation or reconstruction) or enters into a bankruptcy arrangement or anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the Customer or the Customer ceases or threatens to cease to carry on its business.
- 8.3 Either party may terminate this Agreement or cancel a Service in the event that the other party commits a breach of any material obligation under this Agreement and (in the case of a remediable breach) fails to remedy the breach within 14 (fourteen) days of receiving written notice to do so. For the purposes of this Clause 8.3, a material breach shall include a failure by the Customer to pay CBBS by the relevant due date.
- 8.4 Upon termination for any reason of this Agreement, all amounts owed by the Customer to CBBS shall become immediately due and payable in full on demand and the Customer must:
- 8.4.1 immediately stop using the Services;
- 8.4.2 immediately stop using the Equipment (unless paid for by the Customer in full); and
- 8.4.3 permit CBBS to enter the Site(s) during normal business hours to remove the Equipment (unless paid for in full by the Customer).
- 8.5 The Customer's obligations in respect of the Equipment will continue to apply until CBBS has removed the Equipment.
- 8.6 Upon termination of this Agreement CBBS will not be liable for any further or outstanding Services required by the Customer.
- 8.7 The provisions of Clauses 4, 5, 6, 8.3, 8.4, 8.5, 9 and 10 remain in force despite the termination of this Agreement.
- 8.8 In the event that either party terminates a Service in accordance with the Service specific provisions in the Schedule then the remainder of the Services and the whole of this Agreement shall remain in full force and effect unless otherwise stated.
9. **CONFIDENTIALITY**
- 9.1 Each party shall treat as confidential and will only use for the purposes of this Agreement the confidential information (the "Confidential Information") of the other party, which includes but is not limited to all information:
- 9.1.1 supplied to or obtained by it for the purposes of the Agreement including all know-how, designs, drawings, specifications, data sheets, sales and technical bulletins, service manuals, mechanical diagrams and contracts (including this Agreement);
- 9.1.2 all other information whether or not reduced to writing relating to the design, manufacture, use and service of the Equipment and Services; and
- 9.1.3 any other information relating to the parties, their businesses, customers, prices, services, software, development concept (including any technical specifications therefor), marketing, employees or suppliers, that may be divulged by either party in the course of its performance of this Agreement that is not in the public domain.
- 9.2 Confidential Information shall only be disclosed to those employees of the recipient party who need to know the same and to the extent necessary for the proper performance of this Agreement.
- 9.3 The recipient party undertakes to ensure that such employees are made aware of its confidential nature prior to such disclosure and that such employees have a duty of confidence to the disclosing party.
- 9.4 Nothing in this Clause 9 shall prevent CBBS from disclosing such information to the providers of any Software or a third party service provider (including but not limited to a network provider and any entity hiring out the Equipment) as shall be necessary from time to time to allow CBBS to comply with its obligations to such party or parties.
10. **FORCE MAJEURE**
- 10.1 Neither party shall be liable for any delay or failure in performing its obligations under this Agreement resulting from causes beyond its reasonable control including but not limited to fire, flood, strike or other form of industrial action (of its own or other employees), embargos, terrorist activity, war, inability to obtain supplies and raw materials, requirements or regulations of any civil or military authority or failure to provide service by any telecommunications provider ("**Force Majeure Event**").
- 10.2 The affected party shall be entitled to a reasonable extension of time for the performance of such obligations. Such delay will not constitute a breach of this Agreement. If a default due to a Force Majeure Event shall continue for more than thirty (30) days then the party not in default shall be entitled to terminate this Agreement. Nothing in this Clause 10 shall preclude the Customer's obligations to pay the Charges in accordance with Clause 4.
11. **GENERAL**
- 11.1 No delay or failure by either party to exercise any of its powers, rights or remedies under this Agreement shall operate as a waiver of them. The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law.
- 11.2 CBBS shall be entitled to perform any of its obligations undertaken by it and to exercise any of the rights granted to it under this Agreement through any other company which at the relevant time is its associated company or subsidiary or subsidiary of any such associated company and any act or omission of any such company shall for the purposes of this Agreement be deemed to be the act or omission of CBBS.
- 11.3 This Agreement is personal to the Customer who may not without the written consent of CBBS assign, mortgage, charge or dispose of any of its rights under it or sub-contract or otherwise delegate any of its obligations under it.
- 11.4 Nothing in this Agreement shall create or be deemed to create a partnership or a relationship of employment between the parties.
- 11.5 This Agreement contains the entire agreement between the parties with respect to its subject matter, supersedes all previous agreements and understandings between the parties with respect to its subject matter and may not be modified except by an instrument in writing signed by a duly authorised representative of CBBS.
- 11.6 In entering into this Agreement each party acknowledges that it does not do so on the basis of and does not rely on any representation, warranty or other provision except as expressly provided in this Agreement and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 11.7 This Agreement shall be governed by and construed in accordance with English Law and the parties hereby submit to the exclusive jurisdiction of the English Courts except with regard to enforcement in which case jurisdiction shall be non-exclusive.
- 11.8 Any notice to be given under this Agreement shall either be delivered personally or sent by pre-paid recorded delivery or registered post or by facsimile. The address for service of each party shall be its address stated on the Order Form or any other address for service subsequently notified by one party to the other. The notice shall be deemed to have been served if personally delivered at the time of delivery, if posted at the expiry of 3 days after posting and if sent by facsimile on receipt of a receipt confirming that the fax has been correctly transmitted.
- 11.9 No change to this Agreement shall be effective unless in writing and duly executed by an authorised officer of CBBS.
- 11.10 A person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce it. Any remedy which exists or is available apart from the Act is not affected.
- 11.11 If any provision of this Agreement is held by a Court of competent jurisdiction to be invalid or unenforceable then such provision shall be severed from the Agreement and the remaining provisions shall continue in full force and effect.
- 11.12 In the event of any conflict between the clauses of these Terms and Conditions and any Service specific provisions in the Schedule then the latter shall prevail.
- SCHEDULE**
- Service Specific terms**
- The following Service specific terms shall apply in addition to the standard Terms and Conditions where the relevant Services are purchased by the Customer as shown on the Order Form.
1. **EQUIPMENT**
- 1.1 The Equipment shall either be purchased by the Customer or shall be hired to the Customer by a third party provider under the terms of a separate rental arrangement. The relevant option shall be as set out on the Order Form.
- 1.2 In the event that the Customer purchases the Equipment, the Customer shall pay 50% (fifty percent) of the Equipment Charges set out in the Order Form on signing the Agreement and 50% (fifty percent) on the Installation Date.
- 1.3 In the event that the Customer purchase the Equipment the ownership of the Equipment shall remain with CBBS unless and until the Customer pays for the Equipment in full. Until that time the Customer will hold the Equipment fiduciary agent and bailee for CBBS. The Customer must keep the Equipment separate from other equipment and it must be properly stored, protected, insured and identified as CBBS property. The Customer is not permitted to sell the Equipment and CBBS can insist on its return. Until such time as title shall pass in the Equipment, the Customer shall take good care of the Equipment and apply the same standards of care as if title had passed.
- 1.4 In the event that the Customer elects to rent the Equipment then the Customer shall comply in full with such terms and conditions as shall apply as between the Customer and the third party owner of the Equipment. Compliance with such contract is entirely the responsibility of the Customer. The Customer shall in relation to such Equipment do all things as are necessary in order to enable CBBS to perform its obligations under this Agreement.
- 1.5 In the event of changes made to the Equipment, either by the Customer or by another third party which causes a fault CBBS reserve the right to charge the Customer a call out charge and an appropriate fee to rectify the problem.
2. **MAINTENANCE**
- 2.1 CBBS will provide the Customer with Maintenance Services which shall include the provision of parts and labour, site call out for investigation and diagnostics, replacement of kit, remote diagnostics and dial in for fault rectification (only where agreed), access to a telephone helpdesk (available during Normal Hours).
- 2.2 The period of Maintenance will start on the Installation Date. In the event of Maintenance being the only Service required and agreed to by the Customer, the Commencement Date will be from the date on which full payment is received for the forthcoming 12 (twelve) month period. The period of Maintenance will continue for the Minimum Term and then from year to year until terminated at any time by either party, giving the other not less 42 (forty two) days written notice before the anniversary of the Commencement Date.
- 2.3 The Customer shall pay all CBBS invoices for Maintenance by direct debit within 14 (fourteen) days of the invoice date, which will be before the period of cover starts.
- 2.4 CBBS may from time to time increase the charge for Maintenance to account for cost increases and/or additional Equipment being installed. If this increase exceeds 10% (ten percent) the Customer will be informed in writing before the renewal date as set out in Paragraph 2.2 above.
- 2.5 Maintenance will not cover the following:
- 2.5.1 failure due to changes or to disconnection from such system and equipment as may be approved by CBBS;
- 2.5.2 failure caused by alterations to the system or any equipment by a third party which have not been prior approved by CBBS;
- 2.5.3 failure of any third party supplier or connected services;
- 2.5.4 changes in the environment, including but not limited to making good defects in or caused by electricity supply;
- 2.5.5 ancillary items including but not limited to answer phones, call loggers, payphones, public address systems, printers, external music on hold sources, system cabling and consumables together with all other ancillary and external items unless otherwise agreed in writing; or
- 2.5.6 damage to any equipment or kit on the system cause by the Customer;
- 2.5.7 a force majeure event as defined in Clause 10.
- 2.6 In the event that a fault is reported by the Customer which results in CBBS undertaking a call out and site visit and in the event that it is found that the fault is not due to some act or omission of CBBS then CBBS reserves the right to raise additional call out charges payable by the Customer on a time and materials basis.
3. **LINE RENTAL**
- 3.1 CBBS will provide the Customer with either analogue PSTN lines, ISDN II or ISDN30 Digital Circuits between the Site and the telephone network.
- 3.2 Payment is due from the day the Line Rental Service commences. The Line Rental Service is invoiced monthly in advance. The amount of rental and classification of lines are detailed in the CBBS Telephone Line Products and Services Pricelist available on request.
- 3.3 The Customer shall terminate all prior line rental agreements with BT or any other network provider immediately prior to the commencement of the Line Rental Service in accordance with this Agreement. The Customer authorises CBBS to use all information the Customer provides in order to liaise directly with BT. The Customer agrees to take the Line Rental Services specified in this Agreement for the Minimum Term. Following the Minimum Term the Line Rental Services shall continue until terminated by either party giving not less than 90 (ninety) days written notice to the other party.
- 3.4 In the event that the Customer fails to provide CBBS with the required notice period in order to terminate the Line Rental Service or in the event that it purports to terminate the Line Rental Service within the Minimum Term then CBBS reserves the right to charge a fee to the Customer comprising the remaining Line Rental charges which would otherwise have been payable up to the end of the Minimum Term or the end of the subsequent period had the correct notice been given as the case may be.
4. **NETWORK SERVICES**
- 4.1 CBBS will provide the Network Services to the Customer being the ability to make or receive telephone calls over the public network.
- 4.2 CBBS will charge the Customer at the current stated tariff as stipulated by CBBS from time to time. CBBS will invoice the Customer monthly in arrears and the Customer shall pay the charges by the fourteenth day after the date of the invoice by Direct Debit. All charges payable under this Agreement shall be calculated by reference to data recorded and logged at the telephone exchange by CBBS, and not by reference to data recorded or logged by the Customer. Customers who do not pay the monthly invoice by Direct Debit will have a £2 (two pound) levy applied to their account every month. All tariffs are exclusive of VAT and subject to change from time to time. CBBS shall inform the Customer of any increases in tariff in writing 30 (thirty) days prior to any change.
- 4.3 CBBS may on 7 (seven) days written notice to the Customer, stipulate a reasonable monetary limit that will apply to all call charges due or which will become due to CBBS from the Customer. If at any time the amount of charges payable to CBBS exceeds the stipulated monetary limit, CBBS will immediately notify the Customer and any amounts incurred in excess of the stipulated monetary limit will immediately become due and payable.
- 4.4 The Customer agrees to take the Network Services specified in this Agreement for the Minimum Term. Following the Minimum Term the Network Services shall continue until terminated by either party giving not less than 90 (ninety) days written notice to the other party.
- 4.5 In the event that the Customer fails to provide CBBS with the required notice period in order to terminate the Network Service or in the event that it purports to terminate the Network Services within the Minimum Term then CBBS reserves the right to charge a fee to the Customer comprising a sum equal to the average of a full month's Network Service (call) charges calculated over the previous three month's billing period.