

CLEARTONE CUSTOMER SERVICE AGREEMENT

Date received by Customer Services

cleartone

Cleartone Service Agreement Number

1. A/E details	Name:
	Location/dept:
	Email Address:
	Telephone: ext:

2. customer details	Customer full legal name:
	Registered address:
	Postcode:
	Previous address (if applicable):
	Company registration no: VAT no:
	Telephone: Fax:
	E-mail:
	Line of business activity:
	Current telecom supplier:

3. address for notices	Name of principal(s):
	Position:
	Address (if different from above):
	Postcode:
	Telephone: Fax:
	E-mail:

4. credit control	Description of services:
	Order value: Estimated spend:
	Method of payment:
	e.g. DD, cheque, money transfer etc:

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- 1) **What Services does this Agreement cover?**
 - (a) CLEARTONE offers to supply you with services as described in our product descriptions ("Services") in accordance with this Agreement and any applicable Service Contract (see 2)(a)) or Service Level Agreement ("SLA").
 - (b) If you have any prior agreement(s) with us for the provision of Services covered by this Agreement then from the date of this Agreement such prior agreement(s) shall be terminated and replaced by this Agreement.
- 2) **How do you order new Services from CLEARTONE?**
 - (a) You may request us to supply new Services to you from time to time. We will confirm your request if we are able to supply those Services under this Agreement by sending you a Confirmation Notice which, together with this Agreement, the SLA and the Charges (see 5)(a)), shall form a "Service Contract" for the supply of those Services.
- 3) **What are CLEARTONE's obligations to you?**
 - (a) We shall supply you with the Services in accordance with each Service Contract agreed with you.
 - (b) If we are not able to connect you to our network, we may, if possible and with your agreement, provide the Services to you using the network of another operator.
 - (c) If porting and carrier pre-selection services are available, you may request us to:
 - port any number allocated to you to or from another telecommunications operator; and/or
 - be your pre-selected carrier for calls.
 - (d) If applicable, and unless you ask us otherwise, we will:
 - ensure that your name, address and any number allocated to you appear in your local telephone directory;
 - ensure that any number allocated to you is available on the national directory enquiry service; and
 - obtain one domain name registration or transfer for you (subject to availability and domain name registry rules).
 - (e) If you request us to pass caller line identity ("CLI") information to other networks, you will:
 - provide CLI which has either been allocated to you, or which you have the written permission of the person to whom the number has been allocated to provide;
 - provide CLI which is a dialable number to which a return call may be made; and
 - not provide CLI which is a premium rate number.
 - (f) If we supply software to you, we will for the term of each relevant Service Contract:
 - grant you a non-exclusive, non-transferable licence to use the software in accordance with any conditions that we tell you about;
 - ensure that we have the right to grant you the licence described above.
 - (g) If the Service fails to operate within its designed specification due to a fault with CLEARTONE's equipment, CLEARTONE will at no additional charge repair such fault or failure unless such fault or failure has occurred as a result of damage other than by CLEARTONE, its employees or agents.
- 4) **What are your obligations to CLEARTONE?**
 - (a) As a condition of our provision of the Services to you, you shall:
 - not use the Services for any unlawful purposes or to receive or send messages which are offensive, indecent, obscene, menacing, defamatory, or which infringe any intellectual property right (including, without limitation, trade marks, copyright, or rights relating to domain names), nor allow others to do so;
 - comply with the acceptable use policy available on our web-site from time to time;
 - not knowingly intercept or attempt to intercept any message that passes over our network;
 - not knowingly or recklessly send any message or virus through our network which causes or is likely to cause harm, in any degree, to us or our customers, or any of those parties' communication systems;
 - comply with all applicable legal and regulatory requirements;
 - keep confidential and not disclose any information relating to the Services or the Charges without our prior consent (unless such information is already in the public domain or if required by law);
 - inform us immediately if any of the passwords or other confidential information that we have disclosed to you become known to any unauthorised user;
 - only connect to our network equipment and/or networks that are approved for use by us and comply with all relevant legislation, standards and licence requirements;
 - comply with any reasonable instructions we give you relating to use of our network;
 - (b) obtain access to all necessary sites for our engineers and authorised personnel at mutually agreeable times;
 - (c) meet our reasonable requirements about the safety of our personnel whilst on your premises;
 - (d) procure that we are granted the authority to install equipment and carry out construction or other works to provide you with the Services;
 - (e) notify us in advance if, as a result of your marketing activities, it would be reasonable to expect any significant increase in traffic to a non-geographic number allocated to you;
 - (f) independently verify the retail rate charged by any other telecommunications operator to its customers for call made to any non-geographic number allocated to you;
 - (g) not make any statement, warranty or representation about the Services to any third party;
 - (h) comply with all reasonable instructions we may give you which are required to achieve the same effect as these English law terms and conditions in any country other than England;
 - (i) comply with any additional obligations specified in any applicable service description;
 - (j) indemnify us against all third party claims and any losses, liabilities, costs (including legal costs) and expenses which we may incur as a result your (or your customers') use or misuse of the Services always provided that:
 - we promptly notify you of such claim;
 - you have conduct of such claim;
 - we give you (at your expense) reasonable assistance in defending such claim; and
 - this indemnity shall not apply to the extent that any claim or part of a claim directly results from our acts or omissions.
 - (k) We may install equipment at your premises to connect you to our network and enable us to provide the Services. You shall:
 - provide appropriate, safe and secure, equipment space, environment, ducting and electrical power for the installation and maintenance of our equipment at your premises without charge or cost to us;
 - ensure that the equipment is not interfered with by any person;
 - afford us reasonable access at all times to the premises where the Services are provided to you.
 - (l) If 3(b) applies or if the Service you request us to supply is an indirect access service, it may be necessary for you to have your private branch exchange least cost routing software reprogrammed in order to access our network. You agree to pay our then applicable charges for any activities carried out.
 - (m) You agree that title in any equipment provided by us shall remain with us even whilst in or on your premises (or the premises of any of your customers) and that you shall not sell, lease, charge or otherwise deal with the equipment.
 - (n) You agree that you will not sell or assign any number without our prior permission.
 - (o) You agree that any non-geographic numbers supplied to you under any Service shall only terminate at an agreed geographic number destination.
 - (p) If you buy internet access from us, you agree that if you use the internet access service for any purpose other than providing internet access to you or your employees then you have upgraded to our service by which we enable you to provide internet access to third parties and you agree to pay us the then current applicable charges for that service.
- 5) **How much will CLEARTONE charge you for the Services?**
 - (a) If we agree Charges for the supply of Services with you then those Charges will be valid for the period we agree with you. Otherwise, we will notify you of the Charges for the supply of Services to you from time to time.
 - (b) Unless otherwise stated all Charges shall be exclusive of value added or other applicable tax which shall be added to your invoices.
 - (c) You agree to keep these Charges confidential during this Agreement and for one year after this Agreement has ended.
- 6) **How will you pay CLEARTONE?**
 - (a) We will invoice you at the billing address shown overleaf or as you notify us in writing from time to time.
 - (b) You shall:
 - pay all Charges due (whether disputed or not) within thirty (30) days of the date of the invoice;
 - be responsible for payment whether or not the use of the Services has been authorised by you; and
 - have no right to offset, deduct or withhold payment for any reason.
 - (c) If you do not pay us any sum when due then we may charge you daily interest on overdue sums at an annualised rate equivalent to four per cent above the base rate of Barclays Bank plc from time to time from the date



when payment was due until the date of actual payment of all sums due (including interest).

- (d) We may request you to pay us a deposit, to pay us in advance as security for payment of your invoices; we may modify (by notification) your of terms of payment to a period of less than thirty days and/or set a credit limit which your total debt to us (including Charges not yet invoiced) must not exceed.
- (e) We may set off any sums owed by us to you against any sums owed by you to us.

7) Limitations on CLEARTONE's liability

- (a) Nothing in this agreement shall restrict or exclude our liability to you for fraud or for death or personal injury caused to you or your employees by our negligence, or our employees' negligence.
- (b) Subject to 7(a), we will not be liable to you or to any third party for any economic loss, any direct or indirect loss of profits, loss of anticipated savings, loss of business, loss of contracts, loss of revenue, loss of time, loss of goodwill, loss of reputation or loss or harm of data whether in contract, tort or otherwise (including negligence and breach of statutory duty).
- (c) Subject to 7(a) and 7(b), our total aggregate liability to you in respect of all causes of action arising in each calendar year in contract, tort or otherwise (including liability for negligence or breach of statutory duty) in connection with the supply or non-supply of the Services and this Agreement shall be limited to damages equal to 125% of the Charges payable by you in such calendar year. The damages payable shall be calculated by annualising the Charges actually paid and the Charges for Service Contracts due in such calendar year. In the event that it is not possible to ascertain the level of the Charges payable in any calendar year then the Charges payable shall be deemed to be £100,000 in such calendar year.
- (d) We shall not be liable for any damages whatsoever to property at your premises resulting from the installation, repair or removal of equipment carried out by us or by our contractors unless such damage is caused by our wilful misconduct or negligence.
- (e) We shall not be liable to you for any event beyond our reasonable control, including but not limited to default or failure of a third party not within our control (including another telecommunications operator, equipment supplier, installer or maintainer), government action, failure in the supply of a third party network or other event of force majeure.
- (f) Your sole and exclusive remedy in respect of any failure by us to meet the service levels set out in the SLA shall be to the compensation set out in the SLA.
- (g) Except as expressly set out in this agreement or any applicable SLA, all representations, warranties, terms and undertakings, express or implied, statutory or otherwise in respect of this agreement are expressly excluded.
- (h) This Agreement, the Confirmation Notices, the SLA and the Charges set out the whole agreement for the Services. You agree that you did not rely on any statement made by us before the signature of this agreement and you hereby waive any remedy which, but for this 7(h), might otherwise be available to you in respect of any untrue statement (whether made innocently or negligently but not fraudulently) before the signature of this Agreement.
- (i) Each part of this agreement that excludes or limits our liability operates separately. If any part is disallowed, or is not effective, the other parts will continue to apply.

8) When does this Agreement and each Service Contract start and finish?

- (a) This Agreement shall start on the date that you sign it for a period of one year, which shall automatically be renewed each time a new Service Contract is entered into for further periods of one year. Either party may terminate this Agreement on 30 days notice to expire on the day before the anniversary of the last renewal.
- (b) Each Service Contract shall start from the date the Service is made available and end on the date set out in our notice of confirmation of your order ("Confirmation Notice"). If no termination date is set out in the Confirmation Notice then each Service Contract shall run for a period of one year after which either party may terminate it on 30 days written notice.
- (c) In addition to our other rights, we may at any time without informing you end this Agreement and/or any Service Contract and/or suspend the provision of any Service, if:
 - you materially breach this Agreement or any other agreement you have with CLEARTONE, (which shall include late or non-payment of any of our charges);
 - bankruptcy or insolvency proceedings are brought against you, a receiver is appointed over any of your assets or you go into liquidation (or any similar event in your country of incorporation takes place);
 - we are obliged to by a decision or direction of any governmental body or regulatory authority.
- (d) If this Agreement ends or the Services are suspended, all Charges incurred by you for the use of the Services (whether invoiced or not) shall be due and

payable in full on demand and you shall have no right to withhold, deduct or set off any such amounts.

9) General

- (a) Any waiver, concession or extra time we may allow you is limited to the specific circumstances in which it was given. It does not affect our rights under this Agreement in any other way.
- (b) No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties. However, we may amend this Agreement, with immediate effect, in order to comply with any law or a ruling or decision of any regulatory body.
- (c) This agreement is personal to you and you cannot transfer or try to transfer this agreement or any part of it to anyone else.
- (d) Subject to and in accordance with relevant data protection legislation you consent to allow us to collect data about your use of the Services and to provide this data to our affiliates for the purposes of marketing our telecommunications services or other services or for any purpose connected with the performance of this Agreement. We will provide you, at your request, with details of all such information held about you and will modify any information held that you notify us is incorrect.
- (e) Subject to and in accordance with relevant data protection legislation you consent to allow us to collect data about your use of the Services and to provide such data to any governmental or regulatory body for the purpose of our compliance with applicable laws and regulations.
- (f) You agree that during this agreement, and for six months after its termination, you will not solicit or endeavour to entice away from CLEARTONE any of our employees.
- (g) Where we provide numbers to you, we may, for operational or other reasons, change the numbers allocated to you in connection with the Services but we will not do so unreasonably.
- (h) You promise that the person signing on your behalf is authorised to do so.
- (i) This Agreement shall be governed by English law. Both parties submit to the exclusive jurisdiction of the Courts of England always provided that CLEARTONE may commence proceedings in any other jurisdiction in which you are or become incorporated.
- (j) You and CLEARTONE do not intend that any term of this agreement should be enforceable under the Contracts (Rights of Third Parties) Act 1999 by anyone else.
- (k) Our address for the receipt of notices is our registered office. Your address for the receipt of notices is as set out overleaf.
- (l) Any notice given in connection with this Agreement shall be served in writing by hand, normal first class post, fax or electronic transmission. Any notice sent by:
 - hand, fax or electronic transmission shall be deemed to have been received immediately after despatch or transmission; and
 - post shall be deemed (in the absence of evidence of earlier receipt) to have been received 48 hours after date of posting.
- (m) After delivery of a Service, you shall be entitled to a maximum period of 5 working days in which to test the Service before Service acceptance. If the Service fails your own internal tests you should report the fault to CLEARTONE during this period of 5 working days. If you do not notify CLEARTONE of any fault within that period then the Service shall be deemed accepted.

