



### PART A - THE BASICS

These are the Terms that apply to any service you purchase from Message Direct, as may be updated from time to time and posted on the Message Direct Website.

#### 1 What Words Mean

- 1.1 Some of the words and phrases in these Terms mean specific things. They are Capitalised all the way through and explained in the Defined Terms section at the end of these Terms.
- 1.2 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- 1.3 The headings in these Terms are for convenience only and shall not affect their interpretation.
- 1.4 Any phrase introduced by these Terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

#### 2 When the Contract Starts and How Long It Lasts

- 2.1 A quotation for the Services given by the Company shall not constitute an offer. A quotation, where applicable, shall only be valid for a period of 30 days from the date of issue.
- 2.2 Any order, whether verbal or in writing, submitted by the Customer constitutes an offer by the Customer to purchase Services in accordance with these Terms.
- 2.3 An order for Services shall only be deemed to be accepted when the Company issues an Order Form, at which point the Contract shall come into existence (**Creation Date**). If the Company is unable to accept an order submitted by the Customer, it will notify the Customer in writing as soon as reasonably practicable. For the avoidance of doubt, each Order Form issued by the Company shall constitute a separate Contract.
- 2.4 The Customer shall be responsible to the Company for ensuring the accuracy of any details provided by the Customer and stated in the Order Form (including any applicable specification of the Services).
- 2.5 The Company reserves the right to make any changes to the Services which are required to conform with any applicable law or regulatory requirements.
- 2.6 The Contract shall commence on the Creation Date and shall continue in full force and effect until terminated by either the Company or the Customer giving 30 days' notice in writing to the other, such notice to be served after expiry of the Minimum Term. A notice given in accordance with this section 2.6 shall have the effect of terminating the Contract with effect from the Customer's first Billing Day after expiry of the 30 day notice period.
- 2.7 The Company shall supply the Services to the Customer in accordance with the Contract from the Contract Start Date.
- 2.8 Any telephone numbers, email addresses or other forms of telecommunication provided by the Company to the Customer as part of the Services shall in all circumstances remain the property of the Company.
- 2.9 Notwithstanding section 2.2 above, the diversion of a telephone line by the Customer to any telephone number provided by the Company shall be a deemed acceptance by these Customer of the Terms and all other terms of the Contract.

#### 3 Free Trials

- 3.1 Where the Contract provides for a Free Trial the following provisions shall apply:
  - 3.1.1 The Free Trial shall not be used in combination with any other Company promotions in effect from time to time.

- 3.1.2 Participation in the Free Trial is conditional on:
- (a) the Customer passing a credit check to the satisfaction of the Company;
  - (b) the Customer submitting their credit card details to participate in the Free Trial and in this respect the Company shall be entitled to charge a nominal test sum to the relevant card to be voided once the verification process is complete;
  - (c) the Customer not previously having participated in a Free Trial.
- 3.1.3 The Free Trial shall commence on the Contract Start Date and shall end on the earlier of:
- (a) the use by the Customer of a number of free Minutes as agreed in advance between the parties in writing (including by email); or
  - (b) the expiry of a number of days from the Contract Start Date as agreed in advance between the parties in writing (including by email);  
the **(Free Trial Period)**.
- 3.1.4 For the duration of the Free Trial Period the provisions of these Terms shall apply save that:
- (a) the Services shall be limited to a maximum of:
    - (i) 30 Minutes; and
    - (ii) 20 Call Patches; and
    - (iii) 20 SMS Messages;or such other limits as the Company shall specify to the Customer;
  - (b) the Services shall be provided at no cost to the Customer subject to any set up fees agreed between the parties.
- 3.1.5 At the end of the Free Trial Period the provisions of section 3.1.4(a) above shall cease to apply and the Services shall then be the standard Services offered by the Company (and which will have been specified in the Order Form as applying after the end of the Free Trial Period) and will be subject to the Charges unless the Customer notifies the Company in writing (which shall include by email) at least 3 days prior to the end of the Free Trial Period that it does not wish to continue with the provision of Services after the Free Trial Period. Where the Customer gives such notice the Contract will terminate at the end of the Free Trial Period. The Company shall send the Customer a reminder email when the Customer's use of the Services in section 3.1.4(a) exceeds 80%.
- 3.1.6 If the Customer fails to notify the Company in accordance with section 3.1.5 above that it does not wish to continue beyond the Free Trial Period, the Contract shall be deemed to continue in full force and effect and the provisions of section 2.6 of this Part A shall continue to apply save that the Minimum Term shall be deemed to have commenced at the end of the Free Trial Period.
- 3.1.7 If the Customer gives notice to the Company pursuant to section 3.1.5 above but notifies the Company that it wishes to purchase Services on an alternative basis to that specified in the Order Form:
- (a) the Contract will terminate at the end of the Free Trial Period;
  - (b) the Company may, in its sole discretion but without obligation issue a new Order Form for such alternative Services and a new Contract shall come into existence in accordance with these Terms.
- 3.1.8 The Company reserves the right to terminate or modify the Free Trial without cause and without liability at any time.

## **PART B - THE SERVICES**

### **1 Basis of the Provision of Services**

- 1.1 These Terms shall apply to the Contract to the exclusion of any other terms and conditions that the Customer may seek to impose on the Contract or the Company, whether expressly or whether such terms are implied by trade, custom, practice or course of dealing.
- 1.2 The Company shall provide the Customer with the Services in accordance with these Terms.
- 1.3 In entering into the Contract and accepting these Terms, the Customer acknowledges that it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract.

## 2 Type of Service

- 2.1 The following provisions shall apply to the Services to be provided pursuant to the Contract.
- 2.1.1 Call Answer Service  
Where the Contract provides for this Service the Company will use its reasonable endeavours to take Messages received on the Assigned Number(s), and within such period of time as the Company agrees with the Customer, to forward the same by the method of communication that the Company agrees with the Customer, to the telephone number or email address that the Customer has provided to the Company for that purpose (**Contact Number**).
- 2.1.2 Virtual Switchboard  
Where the Contract provides for this Service, the Company will use its reasonable endeavours to patch Calls received on the Assigned Number(s), to the Contact Number.
- 2.1.3 Customer Service Line  
Where the Contract provides for this Service, the Company will use its reasonable endeavours to respond to queries received on the Assigned Number(s) by providing the responses that the Company has agreed with the Customer.
- 2.1.4 Order Taking and Brochure Requests  
Where the Contract provides for this Service, the Company will use its reasonable endeavours to take orders received on the Assigned Number(s) and/or to take orders for brochures received and to send the brochures out within such period of time as the Company has agreed with the Customer.  
The provision of this Service is conditional upon the Company being stocked at all relevant times with sufficient brochures to send out and, unless the Company has specifically agreed otherwise, being put in necessary funds by the Customer in respect of all relevant postage and packing costs.
- 2.1.5 Emergency Support  
If the Customer has incorporated Emergency Support within the Call Script, the Company will use its reasonable endeavours to take Messages on the Assigned Number(s) and within such period of time as the Company has agreed with the Customer, to patch the same to the Customer in accordance with the Call Script and Call Despatch instruction.
- 2.1.6 Call Diversion / Divert to Voicemail  
Where the Contract provides for this Service, the Company will automatically divert Calls to the prescribed voicemail or any other specified contact. This Service is a chargeable event at a rate determined by the Company from time to time.
- 2.1.7 Payment Taking  
Where the Contract provides for this Service, the Company will use reasonable endeavours to take payment card details from callers to the Customer and input those details into the Customer's online payment systems to enable the Customer to process payments from its callers. In this respect:
- (a) the Customer shall be responsible for its payments systems and the Company shall have no liability for payment transactions that cannot be processed or are incorrectly processed as a result of such payment systems;
  - (b) the Customer shall be responsible for obtaining all consents, licences and authorisations necessary to enable the Company to provide such Services including any consents needed from callers;
  - (c) the Customer will provide the Company's personnel with all access and training necessary to use its payments systems;
  - (d) the Company will not be required to undertake any due diligence or other verification of callers or their payment details save for any that may be agreed in a Call Script;
  - (e) once such payment details are inputted into the Customer's payment systems, the Company will destroy those details;
  - (f) the Company shall not be responsible for any liabilities in connection with a payment transaction made following the collection of payment details by the Company.
- 2.2 Notwithstanding any other term of this Contract, the provision of the Services including any Additional Services is specifically subject to the following:
- 2.2.1 given the nature of the Services, and in particular the fact that the Company will receive a number of Calls and a great deal of information within a short period of time, there will be occasions where the Company fails to record a Message and/or details, and/or to pass

- information on to the Customer, correctly or accurately, and the Company will not under such circumstances be liable or responsible to the Customer;
- 2.2.2 the Company will not provide any Service which is in any way, whether directly or indirectly, involved in or associated with, or which the Company suspects is in any way, whether directly or indirectly, involved in or associated with, any illegal, defamatory, obscene, sexist, racist, inflammatory or immoral activity, and/or any activity which the Company determines adversely affects its reputation (**Unacceptable Activity**). If the Company suspects any Unacceptable Activity, the Company may immediately terminate the Contract (notifying the Police or relevant authorities where appropriate), at which time all Charges at that time incurred by the Company in relation to the provision of the Services will become immediately due and payable to the Company. For the purpose of the above, what constitutes Unacceptable Activity will be determined by the Company in its sole discretion, and the Company's determination on the matter will be final and not subject to discussion;
- 2.2.3 the Company will not accept any Call which is a reverse charge or collect call, and/or on the basis that the Company is in any manner required to bear the cost to the caller of making the Call to the Company;
- 2.2.4 it is the Customer's responsibility to ensure that it provides the Company with an appropriate Contact Number and that at all relevant times the Contact Number is operational and manned. The Company will not under any circumstances be responsible or liable, should the Contact Number be unanswered and/or out of order, or should the Company otherwise be unable to forward a Message, or patch a Call through, to a Contact Number;
- 2.2.5 the Company will not under any circumstances be responsible or liable, should the Company's personnel mishear and/or misunderstand or be unable to understand, a Message and/or a caller, whether because the line is poor, the caller is difficult to understand, the caller's English is poor, or otherwise. All Messages left, and/or communications, with the Company's personnel, must be in the English language;
- 2.2.6 the Company will not under any circumstances be responsible or liable, should the Company be unable to receive and/or forward a Call, or forward a Message to the Customer, whether by telephone, email or otherwise, as a direct or indirect result of any equipment breakdown or malfunction; delay in or breakdown of any telecommunications or internet service; or atmospheric conditions;
- 2.2.7 in relation to the Customer Service Line and Order Taking and Brochure Request Services, the Company will not provide, nor will the Customer require the Company to provide, any response or responses to callers that the Company has not previously agreed in writing with the Customer. Given the nature of these Services, the fact that responses need to be given to callers in live time, and the fact that the Company's personnel have no special knowledge of, or training in, the Customer's products, services or business, if, within their entire discretion, the Company's personnel feel at any time, and under any circumstances, that they are unable to, and/or not comfortable in, responding to a particular query and/or handling a particular order, they will not respond to that query and/or handle that order, but in such circumstances will use their reasonable endeavours to take a Message, and forward the same to the Customer in the manner referred to at section 2.1.1 of this Part B;
- 2.2.8 the Company's personnel will not deal with or speak to, any caller who is abusive, or unpleasant, or who shouts or uses bad, inflammatory, sexist, racist or obscene language. When confronted with such a caller, such staff will immediately terminate the Call, and if the same caller calls again, not take the Call;
- 2.2.9 no brochures, materials, letters, parcels, documents, products, goods or things (**Materials**) will be sent to the Company without the Company's prior written approval, (any Materials sent out without such prior written approval being **Unauthorised Materials**) and the Company will not accept and/or be required to keep any of the same on its premises. The Company will not be required to accept and/or to keep on its premises, and/or to send out on the Customer's behalf, any Materials which:
- (a) the Company is unable or the Company determines (in its sole discretion) that it would be impractical for the Company, to examine or identify the nature or contents of; or
  - (b) which the Company deems (in its absolute discretion) to be:
    - (i) dangerous, noxious, harmful or deteriorating; or

- (ii) inconvenient or impractical for the Company to store or send out, and/or which would constitute an excessive insurance or security risk for the Company (whether because such Materials are too large in number, or too bulky, or their value exceeds the Company's applicable insurance cover, or otherwise); or
- (iii) in any way illegal, defamatory, obscene, sexist, racist, inflammatory or immoral, and/or which the Company determines adversely affect its reputation (any of (i), (ii) or (iii) being collectively, with Unauthorised Materials, **(Unacceptable Materials)**).

If the Company receives any Unacceptable Materials, the Company will not be obliged to accept the same, but if it does, the Company will notify the Customer that the Materials that it has received are Unacceptable Materials, and the Customer must take steps to collect the same from the Company's premises as soon as possible. Until collected by the Customer, any Unacceptable Materials will be held at the Customer's risk and the costs to the Company of handling, storing and if it deems fit, insuring, the same will be payable by the Customer on demand. If any Unacceptable Materials are not collected by the Customer within 7 days the Company reserves the right to arrange for the sale and/or removal and/or destruction of the same at the Customer's expense, entirely without liability to the Customer, which expenses may be deducted by the Company from any relevant proceeds of sale. Where the Company feels appropriate, instead of, waiting for the Customer to collect, and/or destroying the same, the Company will immediately pass any Unauthorised Materials to the Police or the relevant authorities, without any liability to the Company.

2.2.10 The Customer hereby indemnifies the Company and will keep the Company indemnified, on demand, against any claim, damage, cost, demand, fee, fine, expense, penalty, liability, or otherwise (including any professional costs and expenses) that the Company may at any time, whether directly or indirectly, incur, be subject to or liable for, or be otherwise put to as a result of:

- (a) any Materials being illegal or immoral;
- (b) any Materials offending or defaming any third party or infringing any third party's rights, including any copyright, trade mark, service mark, design right, and/or any other intellectual property right or licence of any third party;
- (c) any claim that in taking any order, the Company was acting in its own capacity and not as the Customer's agent on the Customer's behalf, to the effect that the Company became personally bound thereby; and/or
- (d) without limitation to the above, any breach by the Customer of these Terms.

2.2.11 The Company has a general and particular lien over all goods, materials, data or otherwise from time to time belonging to the Customer, including without limitation the Materials (Goods), for all claims and money owing by the Customer to the Company from time to time in any other way whatsoever, together with the following rights:

- (a) to put the Goods into a saleable state;
- (b) to sell the Goods;
- (c) to retain from the proceeds of sale a sufficient amount to pay all monies due from the Customer to the Company (including any costs incurred in putting the Goods into a saleable state and the expenses of the sale).

### 3 Additional Services

- 3.1 The Customer may at any time during the term of the Contract issue a request to the Company for Additional Services, either verbally or in writing.
- 3.2 The Company shall be entitled to accept or reject the Customer's request for Additional Services in its absolute discretion and on whatever terms that it deems fit. The Charges relating to such Additional Services shall be at the rate specified in the Order Form or, where the Order Form does not address the Charges associated with the Additional Services or the Charges stated in the Order Form are out of date, the Company shall confirm the Charges for the Additional Services to the Customer in writing.
- 3.3 The Company shall supply the Additional Services and the Customer shall pay for the Additional Services in accordance with the Terms.

## 4 Services

- 4.1 The Services (and where applicable the Additional Services) shall be provided by the Company using reasonable skill and care.
- 4.2 Subject to the Customer complying in all respects with the Terms, the Company shall use reasonable endeavours to maintain the Services (and where applicable the Additional Services), however the Customer acknowledges that the Services (and where applicable the Additional Services) will not be uninterrupted or error free and agrees that the existence of such errors or interruptions shall not constitute a breach of the Contract.

## 5 Modifications to Services & Suspension of Services

- 5.1 The Company shall be entitled at any time during the continuance of the Contract to:
  - 5.1.1 make such modifications or additions to the Services as it may reasonably require and as the Company in its absolute discretion deems fit, provided the Services are not thereby materially prejudiced;
  - 5.1.2 at the Company's absolute discretion suspend the provisions of the Services or any part or parts thereof upon:
    - (a) an event of Force Majeure;
    - (b) non-payment on the due date of all and any sums payable by the Customer pursuant to the Terms;
    - (c) the occurrence of any event giving the Company a right to immediately terminate the Contract and cease providing the Services.
- 5.2 In the event the Customer reaches the Cap Value or the Call Time Cap the Company may in its absolute discretion suspend the provision of the Services or require a payment on account by the Customer in either case until the next invoice issued by the Company has been paid.

# PART C - CHARGES AND PAYMENT

## 1 Charges

- 1.1 The Charges shall be calculated using the prices set out in the Order Form (as increased from time to time pursuant to section 1.3 below) and as confirmed by the Company in accordance with section 3.2 of Part B (in respect of Additional Services). The Order Form will also specify whether any of the following will apply to the Contract:
  - 1.1.1 Management / Service Charge;
  - 1.1.2 Included Calls;
  - 1.1.3 Included Minutes;
  - 1.1.4 Included Call Rate;
  - 1.1.5 Included Minute Rate;
  - 1.1.6 Excess Call Rate;
  - 1.1.7 Excess Minute Rate.
- 1.2 The Charges shall be calculated by reference to the Chargeable Call Time and in the Company's discretion can be charged as a fixed Call amount or by the Minute. The Company reserves the right at any time to change from a fixed Call amount to a by the Minute calculation and where it implements any change of this nature (Calculation Change), the Calculation Change will be reflected in the monthly invoices and the provisions of section 2.1 and 2.2 of this Part C shall apply.
- 1.3 All sums quoted by the Company in quotations and the Order Form (including the Charges) are exclusive of any applicable value added tax which the Customer shall be additionally liable to pay to the Company and the Company shall add to its invoices at the applicable rate in force from time to time.

## 2 Increases in Charges

- 2.1 The Company shall be entitled and reserves the right to:
  - 2.1.1 increase its Charges; and/or
  - 2.1.2 make a Calculation Change; and/or



2.1.3 remove or include or vary any of those items specified in sections 1.1.1 to 1.1.7 of this Part C (**Variations**);

in each case at any point during the term of the Contract.

2.2 Any increase in the Charges, Calculation Changes or Variations shall be reflected in the monthly invoices raised by the Company to the Customer and, where the Customer does not raise any objections to the increase in Charges or Calculation Changes or Variations within 14 calendar days of the date of the first invoice reflecting the increased Charges or such Calculation Changes or such Variations, the Customer shall be deemed to have accepted the increase in Charges or such Calculation Changes or such Variations.

### 3 Additional Charges

3.1 The Company reserves the right to make additional Charges to the Customer for:

3.1.1 Call Script Set Up Fee;

3.1.2 any additional programming required when setting up the Customer's account;

3.1.3 any screen changes required to be made to accounts of the Customer;

3.1.4 Calls which are outside the scope of the Services including but not limited to an excess of 15 or more Calls taken outside of Standard Office Hours (8am-6pm Monday-Friday) in a Billing Period;

3.1.5 Call Script Changes.

### 4 Invoicing and Payment

4.1 The Company shall, subject to section 3 of this Part C, invoice the Customer on a monthly basis for all Charges and any additional Charges. Charges shall be invoiced monthly in advance whilst additional Charges shall be invoiced monthly in arrears.

4.2 In the event of breach of the Contract or where the Customer is deemed by the Company, acting in its absolute discretion, to be a credit risk, the Company reserves the right to invoice the Customer on a weekly basis.

4.3 All invoices raised by the Company pursuant to the Contract shall be paid as follows:

4.3.1 where an invoice is raised by the Company in accordance with section 4.1 of this Part C, the Customer shall pay such invoice by direct debit, via GoCardless or by such other means of payment as is agreed by the Company from time to time, within 14 days of the date of the invoice;

4.3.2 where an invoice is raised by the Company in accordance with section 4.2 of this Part C, the Customer shall make payment of the invoice by credit or debit card or by electronic bank transfer immediately upon receipt of the invoice.

4.4 Time for payment shall be of the essence of the Contract.

4.5 The Company reserves the right to require the Customer to provide credit card details for the six month period following the Contract Start Date as security for the payment of invoices throughout that period. Where payment of an invoice has not been received by the Company by the due date for payment specified in section 4.3 of this Part C, the Company reserves the right and the Customer acknowledges and accepts that the Company may take payment of the invoice by using such credit card details that the Customer has provided to the Company.

### 5 Failure to Pay

5.1 If the Customer fails to make payment of an invoice on the due date then without prejudice to any other right or remedy available to the Company the Company shall be entitled, acting in its sole discretion and at the Company's option, to:

5.1.1 immediately terminate the Contract or suspend provision of the Services to the Customer;

5.1.2 charge the Customer interest (both before and after any judgment) on the amount unpaid at the rate of 6% per annum above the base rate of Lloyds Bank plc from time to time until payment in full is made;

5.1.3 in circumstances where the Services have been suspended or disconnected as a result of non-payment by the Customer, charge the Customer a reconnection fee of £25.00; and

5.1.4 recover from the Customer the Company's costs of recovering overdue payments to include, non-exhaustively, legal and professional fees and costs.

## PART D - YOUR OBLIGATIONS

### 1 Network and Services

- 1.1 The Customer accepts and acknowledges that the provision of the Services is reliant upon the Network (and the third parties who operate the Network) and therefore the Customer hereby undertakes to the Company that it shall not:
  - 1.1.1 use the Network or the Services for any unlawful immoral or improper purpose;
  - 1.1.2 act or omit to act in any way which may damage or prejudice the Customer's access to the Network or cause the quality of the Services to be impaired or to jeopardise the provision of the Services or the Network in any way.

### 2 Co-operation

- 2.1 During the term of the Contract, the Customer:
  - 2.1.1 shall cooperate with the Company in all matters relating to the provision of the Services and shall comply with all applicable laws at all times;
  - 2.1.2 shall provide the Company with such information as the Company may reasonably request or require in order for it to perform the Services and shall ensure that such information is accurate in all material respects;
  - 2.1.3 accepts and acknowledges that atmospheric conditions may cause interference to the provision of the Services;
  - 2.1.4 accepts and acknowledges that calls may be routed over national and international public telecommunications systems, the Network and other telecommunications networks which are outside of the control of the Company.

### 3 Call Diversion Costs

The Customer is liable for any call diversion costs incurred as a process of diverting calls to the Company and it is the sole responsibility of the Customer to effect the successful diversion of calls from its normal telephone number to the number provided for the provision of the Services by the Company.

### 4 Prevention by you

- 4.1 If the Company's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
  - 4.1.1 without limiting or affecting any other right or remedy available to it, the Company shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Company's performance of any of its obligations;
  - 4.1.2 the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this section 4.1.
- 4.2 The Customer shall keep the Company indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Company as a result of or in connection with any breach by the Customer of any terms of the Contract.

## PART E - OUR LIABILITY

### 1 Limitation of Liability

- 1.1 Nothing in these Terms shall limit or exclude the Company's liability for:
  - 1.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
  - 1.1.2 fraud or fraudulent misrepresentation;



- 1.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
- 1.1.4 any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.
- 1.2 Subject to section 1.1 above, the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 1.3 Subject to section 1.1 above, the Company shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profits, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of use or corruption of software, data or information, loss of or damage to goodwill and indirect or consequential loss.
- 1.4 The Company's 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 in no circumstances exceed the amount paid to the Company by the Customer under the Contract in the 12 months prior to the liability arising.
- 1.5 The Company shall not be liable for the acts or omissions of any other party.

## 2 Force Majeure

- 2.1 Neither the Company nor any of its employees, agents or sub-contractors shall be considered in breach of the Contract or under any liability whatsoever to the Customer for non-performance, part performance, defective performance or delay in performance of any obligation performed or to be performed by the Company, its employees, agents or subcontractors under the Contract which is directly or indirectly caused or is a result of an event of Force Majeure and the timescales for performance of the Services shall be extended by a fair and reasonable period of time which is sufficient to enable the Company to perform or re-perform the relevant contract obligation.
- 2.2 Upon becoming aware of an occurrence of the relevant event of Force Majeure the Company shall promptly issue a notice in writing to the Customer detailing such event and its anticipated effect upon the performance of the Contract by the Company.

## **PART F - WHEN WE CAN END THE CONTRACT**

### 1 Termination

- 1.1 Notwithstanding any other provision of these Terms and without prejudice to any other rights claims or remedies of the Company the Company may by notice to the Customer terminate the provision of the Services and the Contract immediately upon the happening of any one of the following events:
  - 1.1.1 if the Customer shall (in the case of an individual or sole trader) become bankrupt or (in the case of a corporate entity) become insolvent, be wound up, make any arrangements or composition with its creditors, pass a resolution for or is the subject of a winding up order or any event should occur which is analogous to the aforementioned events;
  - 1.1.2 if the Customer shall commit any breach of any of its obligations hereunder and fails to remedy such breach if capable of remedy within 14 days of receipt of the Company's written notice specifying such breach;
  - 1.1.3 in the event of non-payment by the Customer of any amount due under the Contract by the due date for payment;
  - 1.1.4 upon or subsequent to the happening of an event of Force Majeure.

### 2 Effect of Termination

- 2.1 Termination of the Contract shall not affect the rights and liabilities of either party subsisting at the date of termination.
- 2.2 On termination of the Contract for any reason:
  - 2.2.1 the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Company may submit an invoice to the Customer, which shall be payable immediately on receipt;

- 2.2.2 the Customer shall immediately cease to make use of the Services in their entirety, including but not limited to ceasing to use any telephone lines provided by the Company and ceasing to divert calls to the Company; and
- 2.3 On termination of the Contract (however arising), Part C, Part D, Part E, Part G and Part H shall survive and continue in full force and effect.

## PART G - PROTECTING INFORMATION

### 1 Keeping things Confidential

- 1.1 Each of the Company and the Customer undertakes to the other that it will not disclose the terms of the Contract or divulge, cause or knowingly permit any third party to become aware of any Confidential Information relating to the other provided that this section 1.1 shall not restrict the disclosure of any Confidential Information to the extent that:
- 1.1.1 such disclosure is required by law or any judicial or regulatory authority;
  - 1.1.2 such information is or becomes (otherwise than by reason of a breach of this undertaking) within the public domain;
  - 1.1.3 subject to section 1.2 below, such disclosure is necessary to enable either party to perform or enforce any of its rights under the Contract.
- 1.2 Each of the Company and the Customer shall be entitled to use the information received from the other for the purposes of the Contract only and shall not disclose such Confidential Information or any part thereof to any other person, firm or corporation except to its employees, agents or third parties to whom it is necessary for them to have access to it in order to perform the disclosing party's contractual obligations provided that the entity to whom such disclosure is made receives and holds the Confidential Information on the same basis as it is held by the disclosing party under the terms of the Contract.

### 2 Data Protection

- 2.1 Each of the Company and the Customer undertake to the other that they will comply with all applicable requirements of the Data Protection Legislation. This section 2 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. The terms **Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures** shall have the meaning given to them in the Data Protection Legislation.
- 2.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Company is the Processor.
- 2.3 Without prejudice to the generality of section 2.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Company for the duration and purposes of the Contract.
- 2.4 By entering into the Contract, the Customer consents to the Company processing Personal Data for the purposes of taking telephone and other telecommunication messages from customers, clients and third parties trying to contact the Customer who have been diverted to the Company and for the Company to pass those customers, clients or third parties' details and messages to the Customer. Such details may include bank account details and/or credit card details provided by the caller and/or the collection of such payment details and inputting the same into the Customer's payment systems.
- 2.5 Without prejudice to the generality of section 2.1, the Company shall, in relation to any Personal Data processed in connection with the performance by the Company of its obligations under the Contract:
- 2.5.1 process that Personal Data only on the documented written instructions of the Customer unless the Company is required by Domestic Law or EU Law to otherwise process that Personal Data. Where the Company is relying on Domestic Law or EU Law as the basis for processing Personal Data, the Company shall promptly notify the Customer of this before performing the processing required by the Domestic Law or EU Law unless the Domestic Law or EU Law prohibits the Company from so notifying the Customer;
  - 2.5.2 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from

- the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- 2.5.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- 2.5.4 not transfer any Personal Data outside of the UK or EEA unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
- (a) the Customer or the Company has provided appropriate safeguards in relation to the transfer;
  - (b) the Data Subject has enforceable rights and effective legal remedies;
  - (c) the Company complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - (d) the Company complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- 2.5.5 assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 2.5.6 notify the Customer without undue delay on becoming aware of a Personal Data Breach; and
- 2.5.7 at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Contract unless required by Domestic Law or EU Law to store the Personal Data.
- 2.6 The Customer consents to the Company appointing any member of the Company's Group as a third-party processor of Personal Data under the Contract. The Company confirms that it has entered or (as the case may be) will enter with the third-party processor(s) into a written agreement incorporating terms which are substantially similar to those set out in this section 2 and in either case which the Company confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and the Company, the Company shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this section 2.6.

## **PART 4 - EVERYTHING ELSE**

### **1 Assignment**

- 1.1 The Company may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- 1.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Company.

### **2 Notifications by the Company**

Where the Terms provide for the Company to notify the Customer of certain information from time to time such as, but not limited to, changes to the Call Time Cap or changes to the Cap Value, any such notification shall be effective by any written communication sent to the Customer (which shall for these purposes include email) or where the notification (or resultant change) is reflected in the next monthly invoice raised by the Company to the Customer.

### **3 Notices**

- 3.1 Notices sent by the Customer
- 3.1.1 Any notice or other communication given to the Company by the Customer under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid

first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).

3.1.2 Any notice or communication shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt; and
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting.

3.2 Notices sent by the Company

Any notice or other communication given to the Customer by the Company under or in connection with the Contract shall be sent by email and shall be deemed to have been received by the Customer on the day the email is sent provided that it is sent before 5.00pm on a Business Day. If the email is sent after 5pm or otherwise not on a Business Day, it shall be deemed received at 9.00am on the next following Business Day.

3.3 General

This section 3 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

## 4 Waiver

A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

## 5 Variation of Contract Terms

5.1 The Company may:

- 5.1.1 vary the Terms from time to time acting in its absolute discretion. Any variation shall be effective from the date the Company posts the revised Terms on its website;
- 5.1.2 otherwise make such changes, variations or amendments to the Contract as permitted by and in accordance with the Terms.

5.2 Subject to section 5.1 above, no variation of the Contract shall be effective unless it is in writing and agreed by the parties (or their authorised representatives).

## 6 No Partnership

Nothing in these terms and conditions is intended to, or shall be deemed to, establish any partnership or joint venture between the Customer and the Company or constitute either party the agent of the other party, or authorise either party to make or enter into any commitments for or on behalf of the other party.

## 7 Third Party Rights

Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

## 8 Entire Agreement

8.1 The Contract constitutes the entire agreement between the Customer and the Company and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral relating to its subject matter.

8.2 The Company and the Customer agrees that they shall have no remedies against each other in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract.

## 9 Governing Law and Jurisdiction

9.1 The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

- 9.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

## **PART 1 - OUR TERMS EXPLAINED**

Below sets out the meaning of the different terms that apply to the Services the Company has agreed to provide the Customer.

<b>"Additional Services"</b>	means all and any extra services (not included in the Services) provided by the "Additional Services" means all and any extra services (not included in the Services) provided by the Company to the Customer in accordance with a request made pursuant to section 3 of Part B which shall include without limitation an End of Day Report.
<b>"Assigned Number(s)"</b>	means the telephone number or numbers for Calls that the Company notifies the Customer as being assigned to the Customer as part of the Services.
<b>"Billing Day"</b>	means the day for each calendar month between day 1 and day 28 from which and to which the Billing Period starts and ends.
<b>"Billing Period"</b>	means the beginning of a Billing Day for a calendar month to end of the day preceding the next following calendar month Billing Day.
<b>"Blocked /Blacklisted Numbers"</b>	means telephone numbers that will not be answered. The Company has a list of such numbers and the Customer is entitled to add to that list or remove from the list via the Portal. Such numbers are automatically blocked and therefore not answered or charged.
<b>"Business Day"</b>	any day which is not a Saturday, Sunday or public holiday in the UK.
<b>"Calculation Change"</b>	has the meaning given to that term in section 1.2 of Part C.
<b>"Call"</b>	means any incoming call from a number that is not a Blocked / Blacklisted Number and will include wrong numbers, auto dialling cold calls and other sales calls, calls that are answered and then dropped by the caller.
<b>"Call Despatch / Time"</b>	means arranging an emergency call out or similar and / or notifying the caller of the outcome as set out in the Call Script.
<b>"Call Patch / Time"</b>	means transferring an incoming Call to a Contact Number.
<b>"Call Script"</b>	means the specific flow of questions and answers to derive the required Message or action agreed with the Customer from time to time.
<b>"Call Script Changes"</b>	means changes to a Call Script for which additional Charges may be levied by the Company.
<b>"Call Script Setup Fee"</b>	means an amount agreed as chargeable for the creation of the first Call Script.
<b>"Call Time Cap"</b>	means a cap on the Chargeable Call Time for any given Billing Period that the Company may notify to the Customer from time to time.
<b>"Cap Value"</b>	means a financial cap on the Chargeable Call Time for any given Billing Period that the Company may notify to the Customer from time to time.
<b>"Chargeable Call Time"</b>	means the aggregate duration of the Telephony Event, the Wrap Up Time, the Call Patch / Time or Call Despatch / Time (as applicable), the End of Call Time and the Rounding Time.

<b>"Company"</b>	means Asset Services Limited a company incorporated and registered in England & Wales with company number 02896329 and whose registered office is at 115 Victoria Road, Ferndown, Dorset, BH22 9HU trading as Message Direct.
<b>"Charges"</b>	means the charges for the Services payable by the Customer to the Company as more particularly set out in the Order Form together with any charges for Additional Services requested by the Customer in accordance with section 3 of Part B , both as amended from time to time in accordance with section 2 of Part C.
<b>"Confidential Information"</b>	means any and all information, data and material of a technical or business nature or relating in any way to the business, products, services, customers and personnel of either the Company or the Customer which the other may receive or obtain in connection with the operation of the Contract or otherwise.
<b>"Contact Number"</b>	has the meaning given to that term in section 2.1.1 of Part B.
<b>"Contract Start Date"</b>	means the contract start date specified on the Order Form.
<b>"Contract"</b>	means the Contract for the provision of the Services as governed by the Terms.
<b>"Creation Date"</b>	has the meaning given to that term in section 2.3 of Part A.
<b>"Customer"</b>	means the company firm or person named as such on the Order Form.
<b>"Customer Default"</b>	has the meaning given to that term in section 4.1 of Part D.
<b>"Data Protection Legislation"</b>	<ul style="list-style-type: none"> <li>a. to the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of Personal Data.</li> <li>b. to the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Customer or Company is subject, which relates to the protection of Personal Data.</li> </ul>
<b>"Domestic Law"</b>	means the law of the United Kingdom or a part of the United Kingdom.
<b>"Emergency Support"</b>	means where the Company contacts the Customer's maintenance staff and arranges a call out in the event of an emergency.
<b>"End of Call Time"</b>	means the time incurred by the Company to prepare, review and transmit a Message.
<b>"End of Day Report"</b>	means a report sent according to a Customer's instructions summarising the Calls and Messages for a day.
<b>"EU GDPR"</b>	means the General Data Protection Regulation ((EU) 2016/679).
<b>"EU Law"</b>	means the law of the European Union or any member state of the European Union.
<b>"Excess Call Rate"</b>	means a call rate for Calls in excess of Included Calls as set by the Company from time to time.
<b>"Excess Minute Rate"</b>	means a call rate for Included Calls as set by the Company from time to time.



<b>"Force Majeure"</b>	means any circumstance not within the Company's reasonable control including, without limitation: (a) acts of God, flood, drought, earthquake or other natural disaster; (b) epidemic or pandemic; (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; (d) nuclear, chemical or biological contamination or sonic boom; (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent; (f) collapse of buildings, fire, explosion or accident; (g) any labour or trade dispute, strikes, industrial action or lockouts; (h) non-performance by suppliers or subcontractors; (i) the failure of any third party software; (j) interruption or failure of utility service; (k) interruption of any internet service, telephony service or third party data service.
<b>"Free Trial"</b>	means the provision of Services on a trial basis being provided without charge subject always to section 3 of Part B.
<b>"Free Trial Period"</b>	has the meaning given to that term in section 3.1.3 of Part A.
<b>"Goods"</b>	has the meaning given to that term in section 2.2.11 of Part B.
<b>"Group"</b>	means in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company.
<b>"Included Call Rate"</b>	means a Minute rate for Included Calls as set by the Company from time to time.
<b>"Included Calls"</b>	means a number of Calls that are included as part of a fixed element of the Charges for a Billing Period as set by the Company from time to time.
<b>"Included Minute Rate"</b>	means a Minute rate for Included Minutes as set by the Company from time to time.
<b>"Included Minutes"</b>	means a number of Minutes in respect of Chargeable Call Time that are included as part of a Service Charge for a Billing Period.
<b>"Management / Service Charge"</b>	means a fixed monthly amount that is determined by the Company from time to time and charged each Billing Period.
<b>"Materials"</b>	has the meaning given to that term in section 2.2.9 of Part B.
<b>"Message"</b>	means a verbal, written or recorded communication sent or left for a recipient who cannot be contacted directly.
<b>"Minimum Term"</b>	means the period of 3 months commencing on the Contract Start Date or, if longer, the period specified in the Order Form.
<b>"Minute"</b>	means a period of time equal to sixty seconds.

<b>"Network"</b>	means the public telecommunications service and / or any other service used from time to time by the Customer via which (inter alia) the Services are provided by the Company.
<b>"Order Form"</b>	means the Customer Order Form issued by the Company to the Customer setting out the Customer's Contract information together with details of the Services, Charges, Contract Start Date and other information pertinent to the Contract including whether the Contract provides for a Free Trial.
<b>"Outbound Call"</b>	means an outbound Call made by the Company on behalf of the Customer as part of the Call Script.
<b>"Portal"</b>	means the Customer's online account to manage Services.
<b>"Rounding Time"</b>	means the rounding of time up to the nearest Minute taken for a Call or other communication received by the Company on the Customer's behalf.
<b>"Services"</b>	means the telephone answering and Message processing services (including any part or part of them) to be provided by the Company under the Contract, as more particularly described in the Order Form and in clause 2 of these conditions.
<b>"Telephony Event"</b>	means the provision of an individual telephony event pursuant to the Services being provided, for example the making, taking or patching of an individual Message to the Customer.
<b>"Terms"</b>	means the Standard Terms and Conditions of the Company as displayed on the Company's website ( <a href="http://www.message-direct.co.uk">www.message-direct.co.uk</a> ), as amended by the Company acting in its absolute discretion from time to time.
<b>"UK GDPR"</b>	means has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.
<b>"Unacceptable Activity"</b>	has the meaning given to that term in section 2.2.2 of Part B.
<b>"Unacceptable Materials"</b>	has the meaning given to that term in section 2.2.9(b)(iii) of Part B.
<b>"Unauthorised Materials"</b>	has the meaning given to that term in section 2.2.9 of Part B.
<b>"Unused Calls or Minutes at Billing Date"</b>	means Included Minutes or Calls on a Billing Day that are unused at the end of the day preceding the next following calendar month Billing Day and therefore lost.
<b>"Variations"</b>	has the meaning given to that term in section 2.1.3 of Part C.
<b>"Wrap Up Time"</b>	means the time taken following a Call or other communication received by the Company on the Customer's behalf to allow the Company to complete any task associated with such Call or communication.