

# RADIUS CONNECT

## TERMS AND CONDITIONS FOR EQUIPMENT PROVIDED IN CONNECTION WITH NETWORK BILLED MOBILE SERVICES

### THE BASICS

#### 1. What words mean

##### 1.1 In these Terms:

**Agreement** means each agreement between the Customer and the Supplier for the provision of Equipment, comprising these Terms and an applicable Order Form;

**Business Day** means any day which is not a Saturday, a Sunday or a public holiday in England;

**Charges** means the charges by the Supplier for the Equipment as set out in the applicable Order Form;

**Commencement Date** means in relation to an Agreement the earlier of (i) the date of signature of the Order Form by the Customer (which, for the avoidance of doubt, shall include electronic or digital signature) and (ii) the date the Supplier starts to provide the Equipment and/or Services to the Customer;

**Confidential Information** means information of commercial, proprietary or other value disclosed by one Party to the other Party which is identified as confidential or might reasonably be considered to be confidential and that has not come into the public domain or been independently developed;

**Customer** means the entity or person identified as such in the Order Form;

**Equipment** means any tangible equipment to be supplied by or on behalf of the Supplier to the Customer and the SIM Cards as set out in an Order Form;

**Force Majeure Event** means an event, or a series of related events, that is outside the reasonable control of the Supplier;

**GDPR** has the meaning given to it in clause 11;

**Legislation** means any applicable legislation, rules, regulations, directives, orders and guidelines including without limitation any directives or other requirements issued by Ofcom from time to time;

**Network** means the telecommunications network provided by the Network Supplier;

**Network Supplier** means the mobile network operator from whom the Supplier has arranged the mobile network access and SIM Cards;

**Order Form** means the form that specifies the information required for the Customer to order the Equipment and SIM Cards including amongst other things the tariff, network and number of connections;

**Party** means the Customer or the Supplier as the case may be;

**Services** means account management services to be provided by the Supplier to the Customer;

**SIM Cards** means Subscriber Identity Module cards providing Network airtime;

**Statistical Data** has the meaning given in clause 10.3;

**Supplier** means Radius Connect Limited, a limited company incorporated in England and Wales (registration number 12553628) having its registered office at Eurocard Centre, Herald Park, Herald Drive, Crewe CW1 6EG;

**Technology Fund** means the credit made available to the Customer by the Supplier as set out in the Order Form for the purpose of the Customer acquiring Equipment from the Supplier in accordance with the Supplier's Equipment price list;

**Terms** means these terms and conditions.

1.2 The singular shall include the plural and vice versa and words denoting persons shall include bodies corporate and unincorporated associations of persons.

1.3 In the event of any conflict between the provisions in any of the documents comprising an Agreement, they shall be interpreted according to the following descending order or precedence:

1.3.1 any agreed amendment (with the most recent taking precedence);

1.3.2 the Order Form;

1.3.3 the Terms.

#### 2. How the contract is formed and when it starts

2.1 The Agreement is formed and comes into force on the Commencement Date.

2.2 Each Order Form and these Terms when taken together shall constitute a separate and independent Agreement.

### THE EQUIPMENT AND SERVICES

#### 3. What the Supplier shall do

3.1 The Supplier shall provide the Services to the Customer.

3.2 The Supplier shall use reasonable endeavours to provide the Equipment and/or Services within any timeframe specified in an Agreement but such timeframes are only estimates and provided for planning purposes only. The Supplier shall have no liability for any failure to meet the dates in an Agreement.

3.3 The Supplier shall be entitled to refuse an order for Equipment and/or Services at its sole discretion.

3.4 The Supplier shall be entitled to record any or all calls to the Supplier in order to monitor the quality of support for training purposes.

#### 4. What the Customer shall do

4.1 The Customer shall provide to the Supplier, on request, any information and assistance that may be reasonably required to enable the Supplier to perform its obligations under an Agreement.

4.2 The Customer acknowledges that the provision of mobile telephony and other services will be provided under a separate agreement between the Customer and the Network Supplier.

#### 5. Delivery and use of and title to Equipment

5.1 Unless otherwise agreed in writing:

5.1.1 all Equipment will be delivered by the Supplier to the Customer at the Customer's registered office (as recorded at Companies House) or to such other address as may be agreed by the Parties (or where applicable collected by the Customer);

5.1.2 the risk in the Equipment shall pass from the Supplier to the Customer when the Equipment is delivered to (or where applicable collected by) the Customer;

- 5.1.3 title to any Equipment (if applicable) shall only pass to the Customer under an Agreement where the Customer has been charged for the Equipment by the Supplier and provided there are no outstanding Charges or other amounts due from the Customer to the Supplier under any Agreements; and
- 5.1.4 the Supplier does not guarantee the continuing availability of a particular item of Equipment. The Supplier reserves the right to add to, substitute or discontinue any Equipment.
- 5.2 Until title to the Equipment (if applicable) has passed to the Customer, the Customer shall:
- 5.2.1 maintain the Equipment in satisfactory condition and keep it insured against all risks from the date of delivery or collection (as applicable); and
- 5.2.2 not sell, lease, charge, assign by way of security or otherwise deal in or encumber in any way the Equipment.
- 5.3 The Customer may supply the Equipment to its individual end users, but the Customer shall not resell or otherwise distribute the Equipment unless title in that Equipment has passed to the Customer. The Customer is responsible for all obligations relating to the Equipment including the compliance of its individual end users with the terms of an Agreement, all applicable Legislation and the terms of its agreement with the Network Supplier.
- 5.4 Unless it is supplied by the Supplier under separate terms and conditions, the Supplier shall have no liability and will not provide any support to the Customer in relation to any third party software installed on Equipment by or on behalf of the Customer.
- 6. What to do with faulty Equipment**
- 6.1 The Customer shall notify the Supplier as soon as possible in writing and in any event within 5 Business Days of receiving damaged or faulty Equipment, and within 7 Business Days if the Customer does not receive the relevant Equipment.
- 6.2 The Customer acknowledges that the Supplier is not the manufacturer of the Equipment and that the Equipment is subject to the relevant manufacturer's warranty. If faulty Equipment is covered by the relevant manufacturer's warranty, the Customer's exclusive remedy and the Supplier's sole liability shall be, at the Supplier's option, to repair, replace, substitute or credit the Customer in relation to faulty Equipment. If faulty Equipment is not covered by the relevant manufacturer's warranty, the Supplier shall have no liability to the Customer in relation to that Equipment.
- 6.3 If faulty Equipment is returned by or on behalf of the Customer to the Supplier, the Customer is responsible for backing up or taking a copy of any data stored on that Equipment.
- 6.4 The Customer shall notify the Supplier as soon as is reasonably practicable after the Customer becomes aware that Equipment is lost, stolen or damaged.

## **PAYMENTS**

- 7. Paying what the Customer owes the Supplier and the Network**
- 7.1 The Charges for the Equipment shall be as set out in the Order Form. The Customer shall pay the Charges, via

direct debit, to the Supplier in accordance with this clause 7 and as specified in the applicable Order Form. Unless otherwise specified in the Order Form, payment of all amounts due shall be made by the Customer within 14 days of the date of invoice.

- 7.2 All Charges payable under an Agreement are exclusive of all value-added and other taxes and duties applicable to the sale of the Equipment, which will be payable by the Customer.
- 7.3 The Order Form also sets out the Network Supplier's charges for the services it provides to the Customer. The Customer shall pay the Network Supplier direct for the services it provides to the Customer.
- 7.4 The Customer acknowledges that the Supplier shall receive a payment in the form of commission from the Network Supplier in consideration for reselling the Network Supplier's services to the Customer.

## **8. What happens if the Customer does not pay the Supplier**

- 8.1 If the Customer does not pay any amount properly due to the Supplier under or in connection with any Agreement on or before the due date for payment, the Supplier may, without prejudice to its other rights:
- 8.1.1 either (i) charge the Customer interest on the overdue amount at the rate of 4% per year above the Bank of England base rate from time to time (which interest will accrue daily until the date of actual payment and be payable on demand); or (ii) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998;
- 8.1.2 cancel any outstanding order for Equipment from the Customer and/or suspend the further provision of Goods and/or Services under this or any other Agreement;
- 8.1.3 deduct monies up to the value of the amount due to the Supplier from any sum standing to the credit of the Customer's account with the Supplier; and/or
- 8.1.4 blacklist the Equipment which is not paid for on any central equipment identity register (which renders such Equipment unusable).
- 8.2 Any payments made by the Customer and returned by the bank will incur a £15 administration charge, which will be payable by the Customer. Where the Customer is situated outside the UK the Customer shall be responsible for transferring the relevant funds internationally to the Supplier's nominated account and for paying any fees relating to such transfer.
- 8.3 If the Customer wishes to dispute any invoice, the Customer must notify the Supplier in writing of such dispute within 20 Business Days of receipt of the invoice, failing which the Customer will be deemed to have accepted the invoice.
- 8.4 The Customer shall make all payments properly due under an Agreement without any deduction whether by way of set off, counterclaim, discount, abatement or otherwise.

## **9. Technology Funds**

- 9.1 For the purposes of acquiring Equipment, if specified in the Order Form, a Technology Fund will be made

available to the Customer under the terms of this Agreement. The Technology Fund may only be used to purchase Equipment from the Supplier.

- 9.2 The value of the Technology Fund for the Customer is as set out in the Order Form. This assumes a wireless estate of the number of Connections set out in the Order Form. If the actual number of Connections is less than that in the Order Form, the Technology Fund will be reduced pro-rata.
- 9.3 When purchasing Equipment with the Technology Fund, the order must detail the mobile number with which the Technology Fund will be used.
- 9.4 If this Agreement is terminated or expires prior to the end of the Customer's minimum term with the Network Supplier, the amount of the Technology Fund shall be recalculated on a pro rata basis (i.e. the amount of the Technology Fund shall be divided by the number of days in the minimum term with the Network Supplier and multiplied by number of days the Customer has been contracted to the Network Supplier for) (the "**Recalculated Technology Fund**"). If the Customer has spent more than the Recalculated Technology Fund as at the effective date of termination, it shall repay to the Supplier the amount by which its actual spend exceeds the Recalculated Technology Fund.
- 9.5 Termination of this Agreement will result in the loss of any proportion of the Technology Fund that is unspent at the date of the notice of termination.

## **PROTECTING INFORMATION**

### **10. Ownership and use of data**

- 10.1 The Supplier owns all data generated by it or related to the operation or performance of the Services. This operational and performance data does not include any Personal Data (which, for the avoidance of doubt, shall be dealt with subject to the provisions of clause 11).
- 10.2 The Customer owns all data provided by or on behalf of the Customer to the Supplier in connection with the Services. The Supplier may use this data as required for the purpose of performing the Services.
- 10.3 The Customer authorizes the Supplier to retain and use a copy of the data referred to in clause 10.2 above, in anonymized aggregated form (such that the identity of the Customer and any data subject is not ascertainable) for the purpose of carrying out data analytics in relation to the services provided to its customers and otherwise developing new products and services ("**Statistical Data**").

### **11. Data Protection**

For the purposes of this clause 11, "personal data", "process/processing", "controller", "processor", "data subject", and "personal data breach" shall have the same meaning as in the Data Protection Laws. "**Data Protection Laws**" means in relation to any Personal Data which is processed in the provision of the Equipment and Services, the General Data Protection Regulation (EU) 2016/679 ("**GDPR**") and the Data Protection Act 2018.

- 11.1 The Parties will each comply with the provisions of the Data Protection Laws in connection with each Agreement. This includes the obligation of the Customer to duly inform involved data subjects about the processing of their personal data by the Supplier under the instruction of the Customer.

- 11.2 The Parties acknowledge that, in respect of any personal data which the Supplier processes on behalf of the Customer in connection with an Agreement, including but not limited to the data generated by or related to the provision of the Equipment and/or Services, the Customer shall be the controller and the Supplier shall be the processor.
- 11.3 The Supplier shall only collect, process, store, and use personal data:
- 11.3.1 as required to meet the Customer's lawful, documented, and reasonable instructions (which shall unless otherwise agreed be to process personal data to the extent that such is necessary for the performance of an Agreement and the improvement of the Equipment and/or Services); and
- 11.3.2 as required to comply with Legislation to which the Supplier is subject, in which case the Supplier shall (to the extent permitted by law) inform the Customer of that legal requirement before processing that personal data.
- 11.4 The Customer instructs the Supplier to collect, process, store and use the personal data for the purpose as included under clause 11.3 above.
- 11.5 The Customer hereby consents to the Supplier's appointment of sub-processors who may from time to time be engaged by the Supplier in support of the Supplier's provision of the Equipment and/or Services to the Customer, including, but not limited to, in relation to the provision of any services from the Network Supplier or functionality.
- 11.6 The Customer may revoke its consent for the processing of personal data in relation to an Agreement at any time. Such revocation must be presented to the Supplier in writing and shall not affect such Agreement or the Customer's obligations (including payment obligations) under such Agreement. The Customer acknowledges that as a result of such revocation the Supplier may not be able to provide the Equipment and/or Services. To the extent that the revocation of the Customer's consent materially impacts the Supplier's ability to provide the Equipment and/or Services, the Supplier shall be entitled to terminate the applicable Agreement without liability with immediate effect by notice in writing.
- 11.7 The Supplier shall implement appropriate technical and organisational measures to protect any personal data collected under an Agreement against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing. Having regard to the cost of their implementation, such measures shall ensure a level of security appropriate to the risks represented by the processing and the nature of the data to be protected.
- 11.8 Upon becoming aware of a personal data breach, the Supplier shall use reasonable endeavours to:
- 11.8.1 notify the Customer without undue delay and in any event within 72 hours; and
- 11.8.2 co-operate with the Customer in the investigation, mitigation and remediation of that personal data breach.
- 11.9 The Supplier shall:

- 11.9.1 ensure that its employees who may have access to the personal data are subject to confidentiality undertakings or professional or statutory obligations of confidentiality; and
- 11.9.2 on termination or expiry of an Agreement or, if sooner, the Service to which it relates, at the Customer's request, either delete or return to the Customer all personal data processed by the Supplier and any copies of it or of the information it contains except where it is necessary to retain such personal data for the purposes of compliance with Legislation applicable to the Supplier. For the avoidance of doubt this shall not apply to the Statistical Data which the Supplier shall be entitled to retain.
- 11.10 The Customer as controller warrants that:
- 11.10.1 it has all authority, licences, approvals and consents necessary or required to enable the Supplier to process the personal data in accordance with the Data Protection Laws for the purposes of each Agreement; and
- 11.10.2 it has complied with and shall, during the term of each Agreement, continue to comply with the obligations of a controller under the Data Protection Laws.
- 11.11 The Parties acknowledge that they have agreed that the Customer will respond to enquiries from data subjects, any governmental, regulatory and/or judicial body concerning the processing of personal data by the Supplier and the Customer should have sufficient processes in place to handle such enquiries.
- 11.12 The Annex to each Agreement sets out the subject matter and duration of the processing, the nature and purpose of the processing, the type of personal data and categories of data subject as required by Article 28(3) of GDPR or equivalent provisions of any Data Protection Laws. As between the Parties, nothing in the Annex confers any right or imposes any obligation on either Party.
- 12. Keeping things confidential**
- 12.1 Each Party agrees that for the duration of an Agreement and for a subsequent period of three years after such Agreement terminates or expires they will keep any Confidential Information of the other Party as confidential and shall not permit the same to be copied, used, disclosed or disposed of except in accordance with the Agreement. The provisions of this clause 12 shall not apply to Confidential Information which is already in the public domain or becomes so at a future date other than by breach of the Agreement or which such Party is required to disclose by law, any court or any regulatory or governmental body.
- ENDING THE CONTRACT**
- 13. Term and Termination**
- 13.1 Each Agreement shall commence on the applicable Commencement Date and shall continue until terminated by either Party in accordance with its terms.
- 13.2 The Supplier may, without prejudice to any of its other rights arising under an Agreement, terminate any or all Agreements with immediate effect by notice in writing, if:
- 13.2.1 the Network Supplier terminates its agreement with the Customer;
- 13.2.2 the Customer commits a material breach of an Agreement which is irremediable or, if capable of remedy, fails to remedy such breach within 20 calendar days after being given notice in writing specifying the breach and requiring the same to be remedied;
- 13.2.3 the Customer breaches Legislation or any regulation or code of conduct;
- 13.2.4 the Customer fails to pay any Charges or other amounts to the Supplier by the due date for payment;
- 13.2.5 any of the following events occur: (i) the presentation of a petition for winding up of the Customer; (ii) the Customer is the subject of an order or an effective resolution is passed for winding up the Customer; (iii) the application for an order or application for the appointment of a receiver (including an administrative receiver), administrator, trustee or similar officer in respect of the Customer; (iv) if a receiver, administrative receiver, administrator or similar office is appointed over all or any part of the assets or undertaking of the Customer; (v) the Customer making a composition or arrangement with its creditors generally or an assignment for the benefit of its creditors or other similar arrangement; (vi) the Customer goes into liquidation; (vii) the Customer becoming unable to pay its debts or otherwise becoming insolvent, (viii) the Customer ceasing, or threatening to cease, to carry on business, or (iv) any similar or analogous event occurs;
- 13.2.6 required to do so by a Network Supplier or any applicable regulatory or administrative body;
- 13.2.7 in accordance with clause 11.6; or
- 13.2.8 there has been any delay or failure in performance under an Agreement resulting from any Force Majeure Event, which delay or failure shall have continued for a period of at least one calendar month.
- 13.3 The Customer may, without prejudice to any of its other rights arising under an Agreement, terminate that Agreement with immediate effect by notice in writing, if the Supplier commits a material breach of that Agreement which is irremediable or, if capable of remedy, fails to remedy such breach within 20 calendar days after being given notice in writing specifying the breach and requiring the same to be remedied.
- 13.4 If the Customer decides to port a mobile telephone number allocated to it, the Supplier shall assist in the transfer of the Customer's mobile telephone numbers to the Customer's nominated mobile network operator or provider in accordance with applicable law and regulation provided there are no outstanding amounts (including Charges) due from the Customer to the Supplier or Network Supplier under any Agreement.
- 14. What the Customer shall pay when the Agreement is terminated**
- 14.1 Upon termination of an Agreement, the Customer shall:
- 14.1.1 pay to the Supplier (i) all outstanding Charges and other amounts, sums and interest due under that Agreement; (ii) any cancellation charges as specified in the Order Form; (iii) any cessation charges incurred by the Supplier from its suppliers

in relation to the Equipment and/or Services; (iv) any porting and/or disconnection fees; (v) any incentives or promotions (or the liquidated value of same) provided to the Customer; (vi) a pro rata amount for the balance of any minimum term in relation to any buy out or other payments or amounts (whether monetary or in kind) (including without limitation credits and rebates) made or provided by the Supplier to the Customer; and (vii) any amounts due under clause 9.4, in each case, within 7 days of the date of termination; and

14.1.2 either promptly return to the Supplier all of the Equipment which has not been fully paid for and where title (if applicable) has not passed to the Customer, and cease using them from the date of termination, or pay the Supplier the amount calculated by the Supplier to purchase the Equipment.

## **IF SOMETHING GOES WRONG**

### **15. How far each party can be held responsible**

15.1 Nothing in an Agreement shall be deemed to exclude or limit either Party's liability in respect of:

15.1.1 death or personal injury resulting from negligence;

15.1.2 fraud or fraudulent misrepresentation; or

15.1.3 anything which cannot be excluded or limited by law.

15.2 Subject to clause 15.1, in no event, whether in contract, tort (including negligence), misrepresentation, breach of statutory duty or otherwise shall either Party be liable for (in each case, whether such loss is a direct or indirect loss):

15.2.1 any loss of profits, income, revenue, use, production or anticipated savings, loss of business, contracts or commercial opportunities, loss of or damage to goodwill or reputation, any loss or corruption of any data, database or software; or

15.2.2 any special, indirect or consequential loss or damage whatsoever.

15.3 Subject to clauses 15.1 and 15.2, each Party's maximum aggregate liability under or in connection with an Agreement, whether in contract, tort (including negligence), misrepresentation, breach of statutory duty or otherwise, shall be limited to the Charges paid by the Customer under that Agreement in the calendar year in which the loss or damage occurred.

15.4 If the Supplier is prevented or delayed in the performance of any of its obligations under an Agreement by a Force Majeure Event, then the Supplier will be excused from the performance or punctual performance, as the case may be, of such obligations for the duration of the Force Majeure Event.

## **EVERYTHING ELSE**

### **16. General**

16.1 No breach of any provision of an Agreement will be waived except with the express written consent of the Party not in breach.

16.2 If any provision of an Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of such Agreement

will continue in full force and effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the Parties, in which case the entirety of the relevant provision will be deemed to be deleted).

16.3 The Supplier shall have the right to make reasonable amendments to the Terms at any time upon written notice to the Customer.

16.4 The Supplier may freely assign its rights and obligations under an Agreement without the Customer's consent. Save as expressly provided in an Agreement, the Customer may not, without the prior written consent of the Supplier, assign, transfer, charge, license or otherwise dispose of or deal in an Agreement or any rights or obligations under such Agreement.

16.5 Each Agreement is made for the benefit of the Parties, and is not intended to benefit any third party or be enforceable by any third party. The right of the Parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to an Agreement is not subject to the consent of any third party.

16.6 Each Agreement constitutes the entire agreement between the Parties in relation to its subject matter, and supersedes all previous agreements, arrangements and understandings between the Parties in respect of that subject matter.

16.7 Unless expressly set out in an Agreement, all other warranties, terms, conditions, statements and representations (whether expressed or implied by statute, common law, custom, usage or otherwise) are excluded to the fullest extent permitted by law.

16.8 Failure or delay by either Party in enforcing or partially enforcing any provision of an Agreement will not be construed as a waiver of any of its rights under such Agreement. Any waiver by one Party of any breach of, or any default under, any provision of an Agreement by the other Party will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of such Agreement.

16.9 The formation, existence, construction, performance, validity and all aspects of each Agreement shall be governed by English law and the Parties hereby submit to the exclusive jurisdiction of the English courts.

### **Annex: Personal Data**

This Annex includes certain details of the processing of the personal data as required by Article 28(3) GDPR or equivalent provisions of any Data Protection Law.

#### **Subject matter of the processing of the personal data**

The provision of Equipment and the Services.

#### **Duration of the processing of the personal data**

Personal Data will be processed for the term of an Agreement and as required for the provision of post agreement support.

#### **The nature and purpose of the processing of the personal data**

Personal Data will be processed in the provision of Equipment and the Services and all associated administration.

#### **The types of the personal data to be processed**

Name, job title, email address, telephone number and call data records.

**The categories of data subject to whom the personal data relates**

Employees of the Customer.

**The obligations and rights of the controller**

The obligations and rights of the controller are set out in the Agreement.

