

# TERMS AND CONDITIONS

## 1. SERVICE

Gold Telecom Ltd of Unit 1, St Johns Mews, 13 St Johns Rd, Hampton Wick, Kingston Upon Thames, Surrey ("GT") agrees to provide one or more of the following Services and/or Products to the Customer as specified in this Agreement and the Customer agrees to use the Service and/or Products on the terms set out in this Agreement:

- a) Least Cost Routing (LCR)
- b) Mobile Telephony
- c) Voice Mail / Auto Attendant Solutions
- d) Call Management Solutions
- e) Internet Monitoring Software
- f) Telephone Systems & Equipment
- g) Web Hosting and Design
- h) IT Solutions
- i) Any other service or product specified

**1.1** GT is committed to high quality customer service and will endeavor to deal with all problems or faults promptly, however no liability will be accepted by Gold Telecom for any losses resulting from any delays in dealing with them.

**1.2** GT does not support any of the listed below services, unless the customer is also utilising the GT LCR or CPS Services for outbound fixed-line telephone calls:

**1.2.1** Telemarketing Numbers – 0800 Freephone numbers, 0845 Local-Rate numbers, 0870 National-Rate Numbers, 0871 Numbers and Premium-Rate numbers (as classified by OFTEL) be they originating from GT or ported into GT Services from Other Licensed Operators;

**1.2.2** Mobile Phones be they originating as GT Services or ported into GT Services from other Mobile Service Providers;

**1.2.3** Data Services – including: Frame Relay, Leased Circuits, IP-VPN, ATM, etc.;

**1.2.4** Call Management Solutions;

**1.2.5** Voice Mail / Auto Attendant Solutions;

**1.2.6** Internet Services.

**1.3** In the event of termination by either party of the GT LCR Service, the above services (**1.2.1 to 1.2.6**) may also be terminated at the discretion of GT Management.

## 2. DURATION / TERMINATION

**2.1** This Agreement shall come into full force and effect from the date of signing the Service Order Form provided to the "Customer" by GT. The Standard Agreement is for a Minimum Term of 12 consecutive months. Either party may terminate the agreement provided it notifies the other in writing, no less than 30 working days before the expiry date of the 12-month Minimum Term, which is also

applicable when an **Extension of Service Agreement** is used. The agreement applies to all services provided to the Customer by GT.

**2.2** If a varied Minimum Term agreement is indicated in writing signed by both parties either on the Service Order Form, by a **Letter of Amendment**, or by an **Extension of Service Agreement** or any other written instrument, the agreement is binding for the Specified Term and is subject to these same Terms and Conditions as 2.1. At the end of the Specified Term, unless terminated, the Agreement shall continue for another 12 months – as per the stipulated terms outlined in 2.1, applicable to all services provided to the customer by GT.

**2.3** If a varied Minimum Term Agreement is indicated, as in **2.2**, resulting in the Minimum Term being less than 12 consecutive months and the services and or products provided to the customer includes Mobile Telephony then Mobile Telephony will be excluded from the varied agreement, as no Mobile contract can last for less than 12 months (see **6**).

### **3. LEAST COST ROUTING**

**3.1** The Customer agrees to utilise the GT Service LCR exclusively, that is to the exclusion of all other LCR providers – unless specified otherwise by GT in writing.

**3.2** The Customer agrees that, in the event of a breach of the Agreement by the Customer, the Customer is liable for compensatory damages equivalent to GT's profit based on the average monthly billing of the Customer for the same number of months as are remaining on the Term of the Agreement at the time of the breach, notwithstanding any other costs GT is entitled to recover (see **12.3**).

**3.3** GT will use its best efforts to ensure that it will route all calls that can be routed via LCR, but cannot be held liable for the actions of any other either third-party Network Providers or the Customer deliberate or otherwise resulting in calls routing over British Telecom (BT). GT shall not be liable for any compensation to the Customer for any calls intended to route via LCR, but routed over BT due to whatever cause.

### **4. AUTODIALLER EQUIPMENT**

In the event that GT must supply and maintain any automatic dialling equipment for the purpose of providing LCR and the Customer agrees to utilise such equipment (usually at no charge unless otherwise specified) the following terms and conditions shall apply:

**4.1** GT shall deliver the equipment to the Customer. Any delivery date specified shall be treated as an estimate only and whilst GT will take all reasonable steps to deliver within the period quoted, such date shall be treated as an estimate only and shall not be a term of this Agreement. GT accepts no liability for failure to meet the delivery date.

**4.2** GT or its appointed agent shall install the equipment at the Customer's site.

**4.3** The equipment shall at all times remain the property of GT and under no circumstances shall this be disputed by the Customer or any other third party.

**4.4** The Customer shall be responsible for the equipment whilst it is in the Customer's custody and shall indemnify GT against any loss or damage to the equipment caused due to any negligence. The Customer shall not be responsible for any loss or damage to the equipment attributable to the wilful act, fault or omission of GT, or as a result of its normal use. It shall be the responsibility of the Customer to notify GT immediately of any loss or damage to the equipment has occurred.

**4.5** Upon notification of a fault, GT shall use its reasonable endeavours, during GT's normal working hours, to attend to such fault PROVIDED THAT the fault has arisen from normal use of the equipment.

**4.6** GT will not be responsible for faults arising from:

**4.6.1** the Customer's negligence or default: or

**4.6.2** any act or omission associated with other telecommunications system not run by GT; or

**4.6.3** any other cause beyond the control of GT

**4.7** GT shall have the right to charge the Customer in the event that the need for maintenance results from any of the events in Conditions 4.6.

**4.8** The Customer agrees not to carry out or procure the execution of any alterations, modifications, replacements, extensions, attachments, disconnection or re-connection and any other additions or otherwise after the equipment has been installed except with the prior written consent of GT, which consent will not be reasonably withheld. Any alterations or changes as aforesaid will, if appropriate, be executed by GT.

**4.9** GT reserves the right to apply charges to the Customer for all costs incurred as a result of carrying out maintenance or repair work, which in GT's reasonable opinion is considered unnecessary.

## **5. Call Management, Voice Mail/Auto Attendant, Internet Monitoring Software/Hardware**

In the event that GT agreed to supply and maintain such Software/Hardware (hardware may include a Personal Computer) the following terms and conditions shall apply:

**5.1** GT shall deliver Software/Hardware to the Customer. Any delivery date specified shall be treated as an estimate only and whilst GT will take all reasonable steps to deliver within the period quoted, such date shall be treated as an estimate only and shall not be a term of this Agreement. GT accepts no liability for failure to meet the delivery date.

**5.2** GT or its appointed agent shall install the software/hardware equipment at the Customers site.

The software/hardware equipment shall at all times remain the property of GT and under no circumstances shall this be disputed by the Customer or any other third party.

**5.3.1** If the Customer terminates or unilaterally modifies in any material way all or part of the Least Cost Routing (LCR) services provided under the initial Agreement to them by GT, GT has the right to disconnect and remove the Software/Hardware by giving at least 5 days written notice to the customer.

**5.3.2** GT reserves the right to charge a one-off disconnection fee of £250.00 (plus VAT) per each Call Management Software/Hardware and/or Voice Mail/Auto Attendant unit that is disconnected.

**5.3.3** The Customer shall be responsible for the Call Management Software/Hardware and or Voice Mail/Auto Attendant equipment whilst it is in the Customer's custody and shall indemnify GT against any loss or damage to the equipment caused due to any negligence by whatever price GT paid to its supplier for the it, plus a one-off fee of £250.00 (plus VAT) as a compensation for the engineering time needed to install/reinstall the unit. The Customer shall not be responsible for any loss or damage to the equipment attributable to the wilful act, fault or omission of GT, or as a result of its normal use. It shall be the responsibility of the Customer to notify GT immediately of any loss, damage or malfunction of the Call Management Software/Hardware and/or Voice Mail/Auto Attendant equipment that may have occurred.

**5.4** Upon notification of a fault, GT shall use its reasonable endeavours, during GT's normal working hours, to attend to such fault PROVIDED THAT the fault has arisen from normal use of the equipment.

**5.5** GT will not be responsible for faults arising from:

**5.5.1** the Customer's negligence or default

**5.5.2** any act or omission associated with other telecommunications system not run by GT

**5.5.3** any other cause beyond the control of GT

**5.6** GT shall have the right to charge the Customer in the event that the need for maintenance results from any of the events listed above in Condition **5.5.2**

**5.7** The Customer agrees not to carry out or procure the execution of any alterations, modifications, replacements, extensions, attachments, additions or otherwise after the equipment has been installed except with the prior written consent of GT, which consent will not be reasonably withheld. Any alterations or changes as aforesaid will, if appropriate, be executed by GT.

**5.8** GT reserves the right to apply charges to the Customer for all costs incurred as a result of carrying out maintenance or repair work for which GT is not directly responsible.

## **6. MOBILE TELEPHONY**

**6.1** GT Mobile Telephony Services including connection to a mobile network are provided on the basis of a Minimum Term of not less than 12 consecutive months for each mobile telephone individually starting from the date of connection of the mobile phone to the GT service.

**6.2** Termination of a Mobile Phone agreement requires not less than 30 days written notice after the initial 12 month term. If no such written notice is given, the Agreement will continue for a further term of 12 consecutive months and so on thereafter.

## **7. PAYMENT**

**7.1** Pricing the Service shall be as stated in GT's tariff as current from time to time. All prices are exclusive of Value Added Tax and all prices are subject to change upon GT giving not less than thirty days prior written notice to the Customer. All tariffs are subject to 1p (one pence) minimum call charge.

**7.2** All sums due to GT under this Agreement shall be paid in full by the Customer without any withheld amount whatsoever. Billing enquires have to be made in writing, not more than 30 days after receiving the invoice for the enquired month.

**7.3** The Customer shall be invoiced monthly by GT for all charges under this Agreement plus Value Added Tax at the stipulated by the VAT Office rate. Payment is due within fourteen days of the invoice date, unless varied in writing by GT and agreed with Customer. The time of payment of all sums due to GT under this Agreement shall be of the essence of this Agreement. If payment in full is not received by GT upon the due date, GT shall be entitled to levy a late payment daily interest charge at a rate of 2.5% per annum above the lending rate of HSBC Group Plc applied per month on any unpaid overdue balance.

**7.4** All charges payable under this Agreement shall be calculated by reference to data recorded or logged by GT and not by reference to data recorded or logged by the Customer.

**7.5** GT shall be entitled to levy a monthly rental fee for any equipment provided by GT, as agreed with the Customer, either prior to or after the acceptance of the service.

**7.6** GT shall be entitled to levy an installation fee for the equipment, which GT agrees to waive, provided that the Customer does not terminate this Agreement within the minimum period as prescribed by GT.

**7.7** GT shall be entitled to charge a one-off fee of up to £300.00 (plus VAT) for disconnection (inclusive of engineering cost if applicable), suspension or cancellation of its services, if the Customer fails to give the contractual 30-day notice to GT for the termination or temporary suspension of GT's services.

**7.8** Not less than seven days after signing the Agreement, GT shall be entitled to charge a one-off administration/handling fee of £200.00 (plus VAT), if the Customer cancels the Agreement prior to connection.

**7.9** All Line Rental is payable quarterly in advance by Direct Debit unless otherwise agreed. Payment terms are 14 days from date of invoice. Line Rental paid monthly, must be paid by Direct Debit two months in advance without exception.

## **8. USE OF THE SERVICE**

The Customer undertakes to use the Service in accordance with such conditions as may be notified in writing to the Customer by GT from time to time.

## **9. PROVISION OF INFORMATION**

The Customer undertakes to promptly provide GT, free of charge, with all information and co-operation that GT may reasonably require to enable it to proceed without interruption with the performance of its obligations under this Agreement.

## **10. LIABILITY.**

Nothing in this Agreement shall exclude or restrict GT's liability for death or personal injury resulting from the negligence of GT or its employees while acting in the course of their employment.

### **10.1 Subject to Condition**

**10.2** GT shall be liable for the damage to the property of the Customer caused by any negligent act or omission of GT or its employees, provided that such liability of GT in contract, tort or otherwise, including any liability for negligence, howsoever arising out of or in connection with the performance of GT's obligations under this Agreement shall be limited to £20,000 for any one incident or £50,000 for any series of incidents arising from a common cause in any twelve month period.

**10.3** GT shall not be liable to the Customer in contract, tort or otherwise, including any liability for negligence, for any loss of revenue, business, anticipated savings or profit or of any indirect or consequential loss however arising. 3

**10.4** In the event of any failure in the Service, GT shall not be liable to the Customer for any charges incurred by the Customer should the Customer divert its traffic to another provider.

**10.5** The provisions of this Condition **10** shall continue to apply, notwithstanding the termination of this Agreement.

**10.6** GT shall not be liable in any circumstances for making good Customer premises in the event of the removal of the equipment.

## **11. AVAILABILITY**

GT will use all reasonable endeavours to ensure that the Services are available for the use by the customer in accordance with the Service standards for the time being set out in GT's service literature. GT may from time to time introduce compensation schemes should GT fail to achieve the standard of Service set out in its service literature.

## **12. TERMINATION.**

Without prejudice to their rights under the Agreement GT and the Customer shall have the right to terminate this Agreement forthwith in the event that:

**12.1.1** the other party is in default in its performance or observance of any of its obligations under this Agreement, and, in the case of a remediable breach, fails to remedy the breach within a reasonable time specified by the non defaulting party in its written notice to do so ; or

**12.1.2** an interim order is applied for or made, or a voluntary arrangement approved, or if a petition for bankruptcy order is presented or a bankruptcy order is made against the other party, or if a receiver or trustee in bankruptcy is appointed of the other party's estate or a voluntary arrangement is proposed or approved or an administration order is made, or a receiver or administrative receiver is appointed or any of the party's assets or undertaking or a winding-up resolution or petition is passed or presented (otherwise than for the purposes of reconstruction or amalgamation ) or if any circumstances arise which entitle the court or creditor to appoint a receiver, administrative receiver or administrator to present a winding-up petition or make up a winding up order.

**12.2** Without prejudice to its other rights, GT shall have the right forthwith to terminate this Agreement by notice in writing to the Customer in the event that;

**12.2.1** the Customer fails to make any payment when it becomes due to GT

**12.2.2** GT's licence expires or it is revoked

**12.2.3** a licence under which the Customer has the right to run its telecommunications system and connect it to the GT system is revoked, amended or otherwise ceases to be valid and is not immediately replaced by another valid license.

**12.3** In the event of termination by GT under conditions **12.1.1**, **12.1.2**, **12.2.1** or **12.2.3** GT shall be entitled to recover from the Customer all costs, losses and expenses including loss of future profits as in **3.2** incurred by GT including but not limited to the cost of disconnecting of the Service(s) and the removal of any equipment as part of and belonging to GT or its agents and located at the Customer's premises.

**12.4** GT will not be responsible and/or liable for de-programming/removing Least Cost Routing Services (other than Carrier Pre-selection Service) and/or any associated charges or costs. Therefore it is solely the responsibility of the customer and/or their new call routing provider.

**12.5** Unless agreed in advance by GT, all remaining line rental must be paid for in full if Customer leaves before the end of the remaining months of the agreement.

### **13. SUSPENSION OF SERVICE**

GT may at its sole discretion elect to suspend, and charge £50.00 (plus VAT) for subsequent re-connection, the provision of the Service until further notice without liability to the Customer on notifying the Customer either orally, (confirming the same in writing) or in writing in the event that;

**13.1** the Customer is in breach of any term of this Agreement, including but not limited to overdue payments; or

**13.2** the Customer prevents or delays prearranged maintenance from being carried out

**13.3** The Customer is suspected in GT's reasonable opinion, of involvement with fraud or attempted fraud in connection with the use of the Service.

#### **14. GENERAL**

**14.1** This Agreement may not be assigned in whole, or in part, by the Customer without the prior written consent of GT, such consent not to be reasonably withheld.

**14.2** Neither party shall be liable to the other for any loss or damage, which may be suffered by the other party due to any cause beyond the first party's reasonable control.

**14.3** This Agreement represents the entire Agreement and understanding of the parties with respect to the subject matter hereof and supersedes all prior undertakings and representations, whether written or oral and this Agreement may only be modified if such modification is in writing and signed by GT and the Customer.

**14.4** Failure by either party to exercise or enforce any right conferred by this Agreement shall not be deemed to be waiver of any such right nor operate so as to bar the exercise or enforcement thereof, or of any other right on any later occasion.

**14.5** Any notice, invoice or other document which may be given by either party under this Agreement shall be deemed to have been given if left or sent by post or facsimile transmission (confirming the same by post) to an address notified by the other party in writing as an address to which notices, invoices or other documents may be sent.

**14.6** GT's address for service of any notice hereunder shall be such address as appears on the last invoice rendered to the Customer or such other address as may be prescribed by GT for that purpose.

**14.7** This Agreement shall be governed by and construed and interpreted in accordance with English law and the parties hereby submit to the exclusive jurisdiction of the English Courts.

**14.8** Gold Telecom does not support Wholesale Line Rental (WLR) without the Carrier Pre-Select (CPS) or Least Cost Routing (LCR). These services and calls to be routed exclusively by Gold Telecom.