

## Definitions

**Act** means the Communications Act 2003 and includes any amendments to the Act that may be made from time to time.

**Agreement** means the agreement entered into by and between Tamar and the Customer and is subject to these Standard Terms and Conditions.

**Customer** means the person, partnership or company requesting the Service.

**Customer Group** means the Customer, any subsidiary company of Customer for the time being, Customer's holding company for the time being and/or any holding company or subsidiary of the Customer's holding company for the time being.

**Data Protection Legislation** means the EU General Data Protection Regulation (EU 2016/679) ("GDPR") and the UK Data Protection Act 2018 (as amended or replaced from time to time) and any related legislation, regulations or guidance from time to time and the terms "controller", "processor", "data subject", "personal data", "personal data breach", "processing" and "third country" used in this letter agreement shall have the meanings ascribed to them in the Data Protection Legislation, and their cognate terms shall be construed accordingly.

**Intellectual Property Rights** means any and all intellectual property rights including patents, trademarks, design rights, copyright, rights in databases, domain names, topography rights, and all similar rights (whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world) together with any and all goodwill relating or attached thereto and the right to apply for registration of and/or register such rights and all extensions and renewals thereof.

**OFCOM** means the Office of Communications.

**Premium Rate Services** means a telephone number that enables a form of micro-payment for content, data and value-added services to be charged to an end-users telephone bill.

**PSA** means Phone-paid Services Authority.

**Service** means the service or services requested by the Customer and to be provided to the Customer by Tamar.

**Tamar** means Kalnet4u Ltd. T/A: Tamar Telecommunications, 19 Research Way, Derriford, Plymouth, PL6 8BT, company registration number 04655311.

### 1. Duration

This Agreement shall come into full force and effect from the date of acceptance (being the date upon which the Customer agrees to the Tamar terms and conditions as stated on the website) by Tamar whereupon it will then continue unless terminated by either party giving the other not less than one month's prior written notice or unless terminated by Tamar subject to clause 9 of this Agreement.

### 2. Customer's Obligations

2.1 The Customer shall notify Tamar immediately upon becoming aware of any failure or malfunction in the Service.

2.2 The Customer shall use the service in accordance with the Acceptable Usage Policy as detailed in clause 10 of this Agreement.

2.3 The Customer accepts that they shall not receive any right, title or interest in the telephone numbers, and that Tamar reserves the right to change the allocated number should they be

required to do so by OFCOM or other network operator. The Customer indemnifies Tamar against any subsequent prefix or other numbering changes imposed by Ofcom, PSA, Network Operator or regulatory body.

- 2.4 The Customer recognises that the service is not guaranteed to be "continuous" and that there may be periods of time when the service is unavailable for operational or other reasons.
- 2.5 The Customer shall use the services only for business purposes.
- 2.6 It is the Customer's responsibility to ensure that all callers to numbers starting 08 or 09 are made aware of the cost to call the numbers.
- 2.7 The Customer acknowledges that calls to Tamar's 0800/0808 numbers from pay phones are blocked.
- 2.8 The Customer shall not use the service in conjunction with or as a call through/dial through service.
- 2.9 The services provided are not to be used to generate artificially inflated traffic (AIT). Where AIT or fraudulent traffic is detected/suspected, services would be terminated immediately.
- 2.10 Advanced number services are subject to availability and may vary dependent on the number purchased. Not all advanced services are available on all numbers issued by Tamar.

### **3. Tamar's Obligations**

- 3.1 Tamar shall provide the Service to the Customer subject to the Agreement and subject to availability and shall exercise all due care in the provision and maintenance of the Service to provide high quality and reliability.
- 3.2 Tamar shall use their reasonable endeavors to correct any failure or malfunction in the Service within two working days or as soon as is reasonably practicable.

### **4. Charges & Payment**

- 4.1 The Customer shall pay for use of the Service according to Tamar's tariff list as amended from time to time.
- 4.2 Usage charges payable by the Customer shall be calculated by Tamar according to data recorded by Tamar.
- 4.3 Tamar shall invoice the Customer monthly in advance for use of the Service and for any standing charges, and any usage charges monthly in arrears.
- 4.4 Invoices are due within 14 days of invoice date without set off or deduction, and payable by Direct Debit to such account as shall be notified to the Customer.
- 4.5 In the event of any late payment, Customer shall be liable to pay interest on the amount of the late payment from the due date to the date of receipt by Tamar at the annual rate of the higher of 4% above the Lloyds Bank base rate from time to time. Such interest shall accrue on a daily basis both before and after any judgment.
- 4.6 All sums due to Tamar under the terms of the Agreement are exclusive of Value Added Tax and/or any other taxes applicable at the appropriate rate which will be charged in addition to other amounts paid by the Customer under this Agreement.
- 4.7 In the event the Customer in good faith reasonably disputes any portion of the charges contained in an invoice, the Customer will pay the undisputed portion of the invoice on the due date in full and submit a documented claim for the disputed amount. If the Customer does not submit

a documented claim prior to the due date for payment of the invoice, the Customer waives all rights to dispute or query the invoice.

4.8 Failure to pay on time may result in services being suspended or terminated at the discretion of Tamar and will be subject to a late payment fee.

4.9 The Customer agrees that Tamar may search the files of credit reference agencies for information on the Customer. Tamar may, on 14 calendar days' notice to the Customer, specify a reasonable monetary limit that will apply to all or any of the Charges due or which will become due to Tamar and require a particular payment method or period for the Charges. If any monetary limit set by Tamar is exceeded, Tamar reserves the right to suspend provision of the Services. If Tamar forecasts that such limit may be exceeded, the Customer shall deposit, within 7 calendar days of being given a notice to this effect, the amount by which Tamar forecasts the limit will be exceeded in the relevant billing period. Tamar may retain any amount deposited until the end of this Agreement and no interest will be paid on this sum.

4.10 Call rebate payments, where offered, for 0843 and 0844 numbers are made on a monthly basis direct into a nominated bank account provided that a minimum rebate balance of £50.00 has been accrued net of any sums due from the Customer to Tamar and a valid invoice from the Customer has been received. Where the balance is below the £50.00 threshold, the call revenue will remain on the account until £50.00 has been accrued.

4.11 Any call rebate revenue on an account that has been dormant for six months or more will be written off. A dormant account is defined as an account that has failed to produce 10 minutes of call traffic for six consecutive months.

## **5. Fraud**

5.1 The Customer shall be liable for all Charges incurred and other sums owed under this Agreement regardless of the identity of the person using the relevant Services, whether incurred in the course of the Customer's business or any other use (including fraudulent or improper use) save where such use arises out of the fraudulent actions of Tamar or its agents.

5.2 The Customer further acknowledges that in no circumstances shall Tamar have any liability to the Customer or any third party in respect of any fraud perpetrated by the Customer Group or any third party howsoever occurring, including any access gained through fraudulent access to the Services. The Customer shall immediately notify Tamar if it becomes aware of or suspects any fraudulent use of the Services.

## **6. Suspension of Service**

6.1 In the event that the Customer is in breach of the Agreement, provision of the Service to the Customer may be suspended forthwith by Tamar upon written notification to the Customer of such suspension.

6.2 Tamar may suspend the service in the event it determines the Customer's usage of the service has breached the Acceptable Usage Policy.

6.3 Tamar may suspend the service in the event of maintenance needing to be completed on the equipment, location or network which provides the service.

6.4 Suspension of the Service will entitle Tamar to payment on demand of all amounts owed by the Customer under the Agreement whether already invoiced or not.

6.5 The Customer shall pay Tamar a reconnection fee of £25.00 per number should reconnection take place, once the breach of the Agreement has been resolved.

## **7. Termination**

7.1 Without prejudice to their rights under the Agreement expressed or implied, the Customer or Tamar shall have the right to terminate the Agreement in the event that the other party is in default either in observation of or in performance of its obligations under the Agreement and in the case of rectifiable default fails to rectify the default within a reasonable time specified by the non-defaulting party in writing.

7.2 Without prejudice to their rights under the Agreement expressed or implied, Tamar may terminate the Agreement in the event that a liquidator, trustee in bankruptcy, receiver or administrator is appointed in respect of the assets and/or business of the Customer or if the Customer is deemed insolvent according to the Insolvency Act 1986.

7.3 Without prejudice to their rights under the Agreement expressed or implied Tamar may terminate the Agreement in the event that its licence under the Act is revoked.

7.4 Seven working days after the suspension of service in accordance with Clause 6.1, and in the event of the breach of the Agreement which caused the suspension not being remedied within this seven working days' time period.

## **8. Provision of Information**

8.1 The Customer undertakes that in providing or disclosing any personal information in respect of this Agreement (including the User Details) it has made a proper notification to Office of the Information Commissioner in respect of its use and processing of personal data, that it has collected and transferred such personal information to Tamar in accordance with the Data Protection Legislation. In particular, Customer warrants that it has obtained any relevant consent (or it is relying on another legal basis in relation) to such collection and transfer and the processing of the personal data by Tamar to provide the Services. Tamar will use such information in accordance with its Privacy Policy and Data Protection Policies. The Customer shall indemnify Tamar in respect of all losses incurred by Tamar as a result of a breach by the Customer of this Clause 8.1.

8.2 Tamar will use personal data transferred to it by the Customer in accordance with its Privacy and Data Protection Policies. The parties agree that the Agreement and Tamar's policies set out the details of the types of personal data which may be processed by Tamar, as well as the categories of data subjects, the permitted nature, purpose and duration of that processing. In relation to any personal data provided to or obtained by Tamar in connection with the provision of the Services (the "**Data**") which Tamar processes on behalf of the Customer as a processor, Tamar:

8.2.1 shall process the Data only in connection with the provision and monitoring of the Services, to fulfil its obligation under the Agreement, for the purposes set out in Tamar's privacy and data protection policies and/or as otherwise agreed by the parties (which constitutes the Customer's documented instructions), unless Tamar is required by applicable laws to otherwise process the Data (in which case, Tamar shall inform the Customer of such requirement, unless prohibited by applicable law on important grounds of public interest);

- 8.2.2 shall ensure that any persons authorised by it to process the Data are bound by confidentiality obligations;
- 8.2.3 shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risks that are presented by the processing;
- 8.2.4 may engage other processors (each a “**Sub-Processor**”) to carry out processing activities on its behalf. Tamar shall inform the Customer of changes to Sub-Processors where Tamar is required to do so, by providing written notice or listing the new or replacement Sub-Processor on its website before Tamar permits the new or replacement Sub-Processor to process the Data, in order to give the Customer the opportunity to reasonably object to such changes. Tamar will enter into a contract with Sub-Processors which impose substantially the same obligations as those imposed under this Clause 8.2.1 to 8.2.9.
- 8.2.5 shall not transfer the Data to a third country unless an adequacy decision or derogation applies or there is an appropriate safeguard in place as required under Article 46 of the GDPR;
- 8.2.6 shall provide reasonable assistance (at the Customer's costs) to the Customer in fulfilling its obligations under the Data Protection Laws (including those at Articles 32 to 36 of the GDPR) taking into account the nature of processing and the information available to Tamar;
- 8.2.7 shall inform the Customer, without undue delay (i) if Tamar become aware of a personal data breach relating to the Data and/or (ii) if in Tamar's opinion an instruction from the Customer infringes the Data Protection Legislation;
- 8.2.8 shall delete or return (at Customer's option) the Data held by Tamar on termination of the Agreement, unless the Customer opts to enter into a new agreement with Tamar or if applicable laws require the storage of that Data;
- 8.2.9 shall make available (at the Customer's costs) to the Customer such information as may be reasonably necessary to demonstrate Tamar's compliance with the obligations under clauses 8.2.1 to 8.2.9, and shall allow for and contribute to audits and inspections (at the Customer's costs) conducted by the Customer or another auditor mandated by it relating to Tamar's compliance with those obligations, provided that Customer shall (a) not carry out an audit or inspection more than once per annum and only on reasonable notice during normal business hours, and (b) enter into, and shall procure that its auditor enters into, a confidentiality agreement prior to an audit or inspection taking place.
- 8.3 The Customer is solely responsible for ensuring the accuracy of any information it submits to Tamar and Tamar shall not be liable in any way for the consequences of any incorrect information submitted. The Customer undertakes to notify Tamar of any inaccuracy it discovers promptly.
- 8.4 The Customer undertakes to provide to Tamar free of charge and in full co-operation any information reasonably required by Tamar in order to fulfil its obligations under the Agreement.
- 8.5 Tamar shall at its sole discretion use this information for any credit reference or debt collection purpose including disclosure to and use by its agent or agents acting on its behalf. Tamar may carry out further credit searches on the Customer during the agreement and after the agreement has ended for credit control and debt collection purposes.
- 8.6 All information relating to the Customer collected by Tamar in the course of providing the Service shall remain confidential between the Customer and Tamar subject only to the permitted uses of that information under the Agreement or as may be required under the Act or any other regulations relating to the Service and except that Tamar at its sole discretion may use data

about use of the Service by the Customer as part of any report or publication without revealing the identity of the Customer.

## **9. Changes to the Agreement**

- 9.1 Tamar may amend the terms and conditions of the Agreement from time to time and when new legislative changes or regulatory bodies make it necessary.
- 9.2 The prices of services provided under the Agreement may be changed subject to thirty days' written notice being provided to the Customer.

## **10. Acceptable Use Policy**

- 10.1 The Customer shall only use the Services in accordance with such conditions as Tamar may notify it in writing from time to time and in accordance with the relevant provisions of any legislation, authorisation or licence applicable or any direction, code of practice or regulation of any competent regulatory authority. Tamar may from time to time vary the technical and/or operational procedures for use of the Services.
- 10.2 Tamar may allocate the Customer a password to enable use of the service or for access to the Equipment. The Customer must keep such passwords safe and confidential and notify Tamar immediately if any third party becomes aware of it. Tamar reserves the right to change the password without notice.
- 10.3 Tamar shall have no liability or responsibility for the contents of any communications transmitted via the Services and the Customer, will hold Tamar harmless from any and all claims related to such content.
- 10.4 The Customer shall not use any of Tamar's services:
- (a) as a means of communication for a purpose which is specifically prohibited or unlawful;
  - (b) for any communication which is or is intended to be a hoax call to emergency services or is or may be reasonably considered to be of a defamatory, indecent, malicious, immoral, fraudulent, offensive or abusive or of an obscene or menacing character;
  - (c) to violate or infringe any rights of or to cause unwarranted inconvenience or anxiety to any third party;
  - (d) in such a way as to constitute a violation of any laws or regulations of any country;
  - (e) to make fraudulent offers to sell or buy products,
  - (f) to add, remove or modify identifying calling line identity information in an effort to deceive or mislead.
  - (g) to access, or attempt to access, the accounts of others, or to penetrate, or attempt to penetrate, security measures of Tamar's or another entity's computer software or hardware, electronic communications system, or telecommunications system, whether or not the intrusion results in the corruption or loss of data;
  - (h) to collect, or attempt to collect, personal information about third parties without their knowledge or consent;
  - (i) for any activity which adversely affects the ability of other people or systems to use Tamar's systems.
- 10.5. Tamar reserves the right to restrict accounts generating exceptional volume usage where such usage may cause a detrimental impact to other customers and Tamar services.

## **11. Premium Rate Services**

If the Numbers allocated to the Customer by Tamar are Premium Rate Services, the following terms shall apply in addition: -

- 11.1 The Customer shall be responsible for the quality and delivery of the content of the services and that these services shall comply with the PSA code of practice and the Agreement.
- 11.2 The Customer is responsible for obtaining all necessary approvals, permissions or authorisations for use of the numbers.
- 11.3 The Customer shall provide Tamar with such information or material relating to the services as may be requested including without limitation copies of recorded messages and any other information supplied to callers or potential callers.
- 11.4 The Customer shall ensure that the services neither infringe any intellectual property rights nor are defamatory.
- 11.5 The Customer shall liaise with Tamar in relation to any complaints, enquiries or investigations by callers, the media, PSA or Ofcom relating to the Service.
- 11.6 The Customer shall neither state or imply any approval of the services by Tamar, and shall use no words, names or expressions which in any way connect Tamar to the services.
- 11.7 The Customer shall reimburse Tamar in full any fines or charges incurred from PSA or any other third party in connection with failure to comply with the relevant rules and regulations issued by the relevant third party.
- 11.8 The Customer shall ensure that any third party utilising its facilities shall be bound by clauses 11.1 to 11.7.

## **12. Ownership & Content**

- 12.1 Intellectual Property Rights in all materials (including software) supplied to the Customer in connection with this Agreement shall remain the property of Tamar or its relevant licensor. The Customer will comply with (and where reasonably required, execute) any agreement required by the owner or licensor of such Intellectual Property Rights. Tamar and its licensors expressly reserve all Intellectual Property Rights not expressly granted to the Customer under this Agreement.
- 12.2 Software is licenced to the Customer not sold, and is provided on the terms of the relevant software manufacturer's licence. If the Customer fails either to communicate its acceptance of the terms of the software licence in accordance with this clause or to pay any relevant licence fee for the software, the Customer's right to use the software shall immediately cease, and Tamar may be unable to provide the related Services. Upon the termination of this Agreement, or of the Customer's right to use the software in accordance with the previous sentence, the Customer shall remove the software from its computer systems or mobile devices. The Customer shall indemnify Tamar in respect of all Losses incurred as a result of a breach by the Customer of this clause 12.

## **13. Liability**

- 13.1 The Customer shall indemnify and hold harmless Tamar against all liabilities, claims, losses, damages or expenses arising directly or indirectly or in any way associated with any use of the Service by the Customer or provision of the Service by Tamar.

- 13.2 Nothing in this Agreement shall exclude or restrict any liabilities by Tamar for death or personal injury resulting from its negligence.
- 13.3 If the service provided by Tamar is not available for any reason for a continuous period in excess of forty-eight hours and Customer makes a request by telephone and confirms it in writing to Tamar during the period in which the service is unavailable, the Customer shall be paid compensation in the amount of double the amount of monthly charges which the Customer has paid for the period when the service is unavailable. Under no circumstances shall the amount paid in compensation under this clause 13.3 exceed the amount paid in monthly charges by the Customer.
- 13.4 Tamar shall have no liability whatsoever to the Customer in contract, tort or otherwise, including any liability due to negligence for loss of goodwill, revenue, anticipated savings, profit or for any direct, indirect or consequential financial loss howsoever arising except as provided for under Clause 13.2 of this Agreement and Tamar's aggregate liability under or in connection with the Agreement shall not exceed the charges paid by the Customer in any 12 month period of the term of the Agreement.
- 13.5 Subject to Clause 13.1 in no circumstance will Tamar be liable to any third party including any member of the Customer Group other than the Customer. The Customer shall be entitled to treat losses suffered by other members of the Customer Group as losses suffered by the Customer itself, but shall ensure that no other member of the Customer Group shall make any claim or demand against Tamar.
- 13.6 Save for obligations to make payments under the Agreement, neither party shall be held to be in breach of its obligations under the Agreement, to the other party for any loss or damage which may be suffered by the other party due to any cause beyond the reasonable control of the first party including but not limited to any act of God, inclement weather failure or shortage of power supplies, flood, drought, lightning or fire, strike, lock-out, trade dispute or labour disturbance, act or omission of Government authorities, other providers, war, military operations or riot.

#### **14. Assignment**

- 14.1 Tamar shall have the right to assign, delegate or otherwise deal with their rights under the Agreement in part or in whole. The Customer shall not have the right to assign, delegate or otherwise deal with their rights under the Agreement in part or in whole.
- 14.2 Upon 30 days' written notice to the Customer, Tamar may port any telephone number to a different network operator as may be required and the Customer hereby agrees that it shall have no objection to this.

#### **15. Entire Agreement & Waiver**

- 15.1 The Agreement represents the entire understanding between the parties in relation to the subject matter hereof and supersedes all prior agreements, representations or understandings by either party whether oral or written.
- 15.2 Failure by either party to exercise or enforce any right conferred by the Agreement shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof or of any other right



## **16. Miscellaneous**

- 16.1 Any notice, invoice or other document which may be given under the Agreement shall be deemed to have been duly given if sent by email, post or Fax to the address, or email address number on the Customer's account.
- 16.2 The Customer shall notify Tamar of any change of address, telephone number or email address.
- 16.3 This Agreement sets out the entire agreement and understanding between the parties and supersedes any previous agreement between the parties relating to its subject matter. Unless otherwise expressly agreed in writing this Agreement applies in place of and prevails over any terms or conditions contained in or referred to in correspondence or elsewhere or implied by trade custom or course of dealing. In entering into this Agreement, each party acknowledges and agrees that it has not relied on any representations (whether made innocently or negligently) made by the other. Any such representations are excluded. The parties hereby agree that their only rights and remedies arising out of or in connection with any misrepresentation shall be for breach of contract. Nothing in the clause shall limit or exclude any Liability for fraud or fraudulent misrepresentation.
- 16.4 If any provision of this Agreement is determined to be illegal or unenforceable by any court of competent jurisdiction it shall be deemed to have been deleted without affecting the remaining provisions.
- 16.5 Nothing in this Agreement shall constitute or be deemed to constitute a partnership, joint venture or agency between the parties and, save as to the extent required by Tamar to give effect to the Agreement, neither party shall have any authority or power to bind, contract in the name of or create a liability for or against the other.
- 16.6 No provision of this Agreement shall be enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999.
- 16.7 The Customer acknowledges that it will adhere to the provisions of Tamar's Anti-Bribery policy which can be provided upon request.
- 16.8 The 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.

## **17. Interpretation**

- 17.1 References to:
- 17.1.1 Recitals, Clauses, Schedules and Annexes are to recitals, Clauses and sub-Clauses of and schedules and annexes to this Agreement;
- 17.1.2 Any reference to any Legislation shall be interpreted as referring to such Legislation as amended and in force from time to time and/or which replaces, re-enacts or consolidates such Legislation.
- 17.2 Headings (including clause headings) are for convenience only and shall not affect interpretation.