

# Hosted 3CX Terms & Conditions

1<sup>st</sup> May 2022

## 1. Definitions

"Additional Services" means the additional services available such as Installation, Number Porting, Telephone Lines and connectivity

"Agreement" means this Hosted VOIP Service Agreement

"Call" means a signal, message or communication which can be silent, visual (including text) or spoken

"Charges" has the meaning given to it in term 6

"Commencement Date" is the agreed Installation Date or the date We start the provision of the Services (whichever is the later)

"Consumer Protection List" means any of the lists compiled and published from time to time by Ofcom of persons that have caused serious or repeated harm to consumers together with any such persons who are under assessment

"Connected" has the meaning given to it in section 249 of the Insolvency Act 1986

"Equipment" means the supplied handsets

"Extended Term" means any 12 month extension to the duration of this Agreement pursuant to term 7.3

"Fair Usage Cap" means 5,000 minutes to UK landlines and 2,000 minutes per month to UK mobiles per SIP Channel

"Handset Charges" means the total sum for handset and other capital items at the start of the agreement in addition to the monthly service items such as VoIP user licenses and hosting.

"Minimum Term" means thirty six months (36) from the Commencement Date unless a different term is offered as set out in the signed proposal document

"Number Porting" means a regulated facility which enables subscribers to change their service provider whilst keeping their existing telephone number

"Particulars" means the details of the particular Services to be provided as set out in the Schedule earlier in this Agreement

"Services" means the provision of voice over internet protocol (VOIP) services (together with any Additional Services)

"SIP Channels" means the number of concurrent inbound / outbound calls the system is capable of

"SIP Channel Charges" means the monthly charge for the provision of SIP channels calculated by multiplying the number of channels by the monthly cost as set out in the Particulars.

"Support Address" means the address(es) set out in the Particulars where the Equipment is to be installed or any other address to which the Equipment is moved in accordance with this Agreement

"Term" means the period from the Commencement Date until this Agreement is terminated in accordance with its terms

"We", "Us" or "Our" means Pineapple Telecoms Limited

"Website" means [www.pineappletelecoms.co.uk](http://www.pineappletelecoms.co.uk)

"You" or "Your" means the customer named earlier in this Agreement "Your Network" means on the premises hardware and other equipment upon which the telephone system is reliant

## **2. Provision of Equipment and Services**

2.1 During the Term of this Agreement, We will:

2.1.1 provide the Services with reasonable skill and care;

2.1.2 supply and install the agreed quantities of Equipment on the Installation Date;

2.1.3 provide operator training and system administrator training on the Installation Date or any other date agreed between You and Us.

2.1.4 provide ongoing support for the Equipment between 8.30hrs and 17.00hrs Monday to Friday excluding public holidays;

2.1.5 rectify any faults or issues with the Equipment either remotely or on-site at Our option to ensure the system is available; or

2.1.6 We do not warrant that the Services will be fault free or free of interruptions. We will not be liable for any failure to provide the Services provided We use reasonable endeavours to provide such Services with reasonable skill and care.

### **3. Suspension of Services**

Without prejudice to any other rights, We may suspend the provision of the Services and the performance of Our obligations under the Agreement (and such suspension shall not be deemed a repudiation of this Agreement) if:

3.1 We become aware of or hold a reasonable suspicion that a fraud or serious illegal misuse may have taken place;

3.2 We or Our suppliers need to carry out work upgrading or maintaining the underlying network;

3.3 You do not pay any sum due and owing to Us at any time;

### **4. Technical Obligations**

You agree to:

4.1 prepare Your Network in accordance with Our reasonable instructions;

4.2 notify Us in advance of any planned Equipment moves from the Supported Address and / or any intended changes to the Equipment or the way it is used;

- 4.3 appoint a system administrator who will be responsible for the operations and functionality of the system;
- 4.4 allow Us and people authorised by Us access to Your IT department / IT provider who will assist Us with the rectification of faults or issues if the cause is within Your Network;
- 4.5 ensure all internal cabling infrastructure is fit for purpose for any system requirements;
- 4.6 ensure Your broadband / leased line is functioning and has sufficient bandwidth to handle the volume of concurrent calls You make;
- 4.7 only request number porting on numbers that you own or have the express permission to port;

## **5. Indemnity**

You agree to indemnify Us from and against all liabilities, actions, losses, damages, judgments, costs, claims or expenses howsoever incurred, without limit by way of mitigation, foreseeability or remoteness of damage, which We incur as a result of You breaching any obligations set out in term 6. You acknowledge that We may recover such sums from You as a debt.

## **6. Charges**

- 6.1 You agree to pay the following (the "Charges"):
- 6.1.1 the cost of routers, connectivity and installation as set out in the particulars;
- 6.1.2 the Handset Charges, the SIP Channel Charges and monthly service charges;
- 6.1.3 all Calls made (whether authorised by You or not) to UK landlines and UK mobiles (or, where your contract is expressed to be inclusive of calls, all such Calls in excess of Our Fair Usage Cap) at 0.8p per minute to UK landlines and 6.9p per minute to UK mobiles;

6.1.4 Calls (whether authorised by You or not) to premium rate and international numbers including without limitation any calls made to a number which is not a UK landline or UK mobile number;

6.1.5 the repair or (where repair is not economical) replacement costs (on a new for old basis) of any damaged Equipment (excluding fair wear and tear);

6.1.6 faults We are requested to attend to which are caused by issues within Your Network or Your infrastructure, including without limitation broadband and leased line related problems and faulty internal cabling;

6.1.7 re-siting the Equipment or other adds moves or changes at our Support Rates;

6.1.8 charges in respect of the provision of any Additional Services.

6.1.9 charges we incur for porting any numbers you ask us to which may be classed as single line or multi-line ports. We often only find out these charges after the event but will give our best guide at proposal stage but reserve the right to pass on any costs we latterly incur.

6.2 Unless set out in this Agreement, charges will be as set out in Our tariff which is available on Our Website or upon request.

6.3 You agree to pay the Charges in full without set off or counterclaim by direct debit within 14 days of Our invoice date.

6.4 We may increase Our Charges no more than once during each calendar year after the Commencement Date and no individual increase in any of the Charges shall exceed 5%.

6.5 All Charges are subject to VAT payable at the current rates.

6.6 We may charge a flat fee of £25 or interest on any unpaid invoices at a rate of 3% above the base lending rate of HSBC Bank plc from time to time which shall accrue daily and be compounded quarterly from the date the invoice became due and payable.

## **7. Term and Termination**

7.1 This Agreement shall come into effect on the date stated on the Commencement Date and shall continue for the Minimum Term.

7.2 This Agreement can be terminated by either party in writing giving 90 days prior notice to expire at the end of the Minimum Term.

7.3 If notice has not been provided by either party 90 days prior to the end of the Minimum Term or the end of any Extended Term, the Agreement will continue for a further 12 months after the expiry of the Minimum Term/Extended Term (as the case may be).

7.4 You may terminate this Agreement prior to the end of the Minimum Term or any Extended Term by paying:

7.4.1 any sums which may be due from You to Us up to that date, without set off or counterclaim; and

7.4.2 an amount equal to the aggregate of Handset Charges and SIP Channel Charges which would have accrued during the remainder of the Minimum Term/Extended Term (as the case may be), less 3% of such aggregate sum.

7.5 Without prejudice to any other rights or remedies available to Us, We may terminate this Agreement at any time, and We may invoice You the sums set out in term 6, if:

7.5.1 You are in breach of Your obligations under this Agreement and, in the case of a remedial breach, You have not remedied the breach within 7 days of written notice to You requiring that the breach be remedied;

7.5.2 You or any person Connected with You appears on a Consumer Protection List; or

7.5.3 You become insolvent or if an order is made or a resolution is passed for Your winding up, or if an administrator, administrative receiver or receiver is appointed in respect of the whole or any part of Your assets or business, or if You make any composition with Your creditors or take or suffer any similar or analogous action.

## **8. Limitation of Liability**

8.1 Nothing in this Agreement shall limit or exclude a party's liability for death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; fraud or fraudulent misrepresentation; or breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982, or any other liability which cannot be excluded by the applicable law.

8.2 Subject to term 8.1, neither party to this Agreement shall have any liability to the other, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or for any indirect or consequential loss arising under or in connection with this Agreement.

8.3 Subject to terms 8.1 and 8.2, Our total liability to You, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising in connection with this Agreement, shall be limited to the amount paid by You to Us in the period from the date of this Agreement to the date of Your claim up to a maximum of the amount paid by You to Us under this Agreement in the preceding number of months within the Agreement.

## **9. General**

9.1 Force Majeure: We shall not be liable to You as a result of any delay or failure to perform Our obligations under this Agreement if and to the extent such delay or failure is caused by an event or circumstance which is beyond Our reasonable control which by its nature could not have been foreseen by Us, or if it could have been foreseen was unavoidable.

9.2 Assignment and Subcontracting:

9.2.1 We may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of Our rights under this Agreement and may subcontract or delegate in any manner any or all of Our obligations under this Agreement to any third party or agent.

9.3 Notices:

9.3.1 Any notice or other communication required to be given by You or Us under or in connection with this Agreement shall be in writing and shall be delivered to the other personally or sent by pre-paid first class post to Your or Our registered office (if a company) or (in any other case) to Your or Our principal place of business;

9.3.2 Any notice or communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above, or if sent by pre-paid first class post at 9.00am on the second day after posting.

#### 9.4 Waiver and Cumulative Remedies:

9.4.1 A waiver of any right under this Agreement is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by You or Us in exercising any right or remedy under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy;

9.4.2 Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

#### 9.5 Severance:

9.5.1 If a court or any other competent authority finds that any provision (or part of any provision) of this Agreement is invalid, illegal or unenforceable, that provision or part provision shall, to the extent required, be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected;

9.5.2 If any invalid, unenforceable or illegal provisions of this Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

10 Governing Law and Jurisdiction: This Agreement, and any dispute or claim arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and both You and Us irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.