

JERSEY TELECOM DISASTER RECOVERY SERVICE

TERMS AND CONDITIONS

These terms and conditions are important and should be read carefully. If you have any queries regarding the terms and conditions please telephone 0800 735 2345 or E-Mail businesssolutions@jerseytelecom.com

1. DEFINITIONS

In the Conditions (as defined below) the following terms shall have the following meanings unless expressly stated otherwise:

- 1.1. "Activate" or "Activated" or "Activation" means the commencement and/or implementation of the disaster recovery plan as described in the Product Description.
- 1.2. "Application Form" means the completed application or quotation or proposal form for the Service as signed by the Customer and submitted to Jersey Telecom.
- 1.3. "Conditions" means these terms and conditions, the Application Form and Product Description and any variations thereto.
- 1.4. "Contract" means the agreement made between the Customer and Jersey Telecom for the provision of a Service which agreement is governed by the Conditions.
- 1.5. "Customer" means the person or persons named in the Application Form.
- 1.6. "GST" means Goods and Services Tax charged, where applicable, by Jersey Telecom to the Customer at a rate of 3% of the cost of Services supplied, pursuant to the Goods and Services Tax (Jersey) Law 2007 and/or the Goods and Services Tax (Jersey) Regulations 2007.
- 1.7. "Jersey Telecom" means Jersey Telecom Limited having its office at P.O. Box 53, 1 The Forum, Grenville St., St Helier, Jersey, JE4 8PB, its successors or assigns as notified to the Customer from time to time.
- 1.8. "Jersey Telecom group" means any direct or indirect subsidiary for the time being of JT Group Limited.
- 1.9. "Minimum Contract Period" means a period of twelve months from the commencement of the Contract or such other period as may be stated in the Application Form.
- 1.10. "On-line" means accessible over the world wide web at Jersey Telecom's site at www.jerseytelecom.com or such other site as may be notified from time to time.
- 1.11. "Product Description" means the description and any technical specification of the relevant Service, together with any applicable Customer specific service level agreement, as available from Jersey Telecom's offices or On-line or as provided to the Customer.
- 1.12. "Service" means the provision by Jersey Telecom of disaster recovery service (as selected by the Customer in the relevant Application Form) or any other service selected by the Customer in the Application Form, where these Conditions are stated to apply.
- 1.13. "Service Charges" means the sums, including GST where applicable, charged to the Customer by Jersey Telecom for the provision and use of the Service.

2. COMMENCEMENT AND DURATION

- 2.1. Unless otherwise expressly agreed in writing or provided for by law or regulation, the Contract shall have effect when the Application Form has been received and accepted by Jersey Telecom and / or the Service is provided to the Customer.
- 2.2. Subject to the provisions of sub-clauses 13.1 and 13.2 hereunder the Contract shall remain in force for the Minimum Contract Period and thereafter shall continue in force until terminated by either party in accordance with sub clause 13.3 below.
- 2.3. Save where termination is notified by the Customer to Jersey Telecom under sub-clause 13.2 below if the Customer terminates the Contract during the Minimum Contract Period the Customer shall pay a sum equal to the Service Charge and any extra charges which would have been payable to Jersey Telecom for the balance of the Minimum Contract Period.
- 2.4. Nothing in this clause shall prevent either party from terminating the Contract in accordance with clause 13 below.

3. VARIATION

- 3.1. Jersey Telecom may from time to time vary the Conditions and Product Description applicable to the Service and will as soon as practicable and in any event not less than one calendar month before any such variation is to take effect give notice of such variation On-line and / or at Jersey Telecom's office.
- 3.2. Notwithstanding the above, Jersey Telecom may vary all or any of the Service Charges by publishing any such variation in a schedule of tariffs to be displayed and / or available at Jersey Telecom's office and / or On-line and / or in writing to the Customer such variation to have immediate effect unless stipulated otherwise.
- 3.3. Other than as stated above any variations to the Contract shall be made in writing by Jersey Telecom and signed by a duly authorised officer of the same.

- 3.4. Save as herein expressly provided no servant or agent of Jersey Telecom shall have the authority to agree any variation or addition to the Contract. Any representation or warranty so made is of no force or effect unless made in accordance with this clause.

4. THE SERVICE

- 4.1. Where part or parts of the Service will be provided and / or supported by a telecommunications provider other than Jersey Telecom, Jersey Telecom shall not be responsible for those parts so provided.
- 4.2. The Service does not include the provision of any telephone lines that will be used by the Customer to make and/or receive calls once the Service is Activated or otherwise.
- 4.3. Jersey Telecom reserves the right to vary the technical specification of the Service at any time.
- 4.4. Jersey Telecom will deliver the Service using the most appropriate method, medium or technologies as decided by Jersey Telecom at its sole discretion.
- 4.5. Jersey Telecom reserves the right without cost or penalty to itself, to alter the Customer's telephone numbers provided by Jersey Telecom or any other names, codes or numbers allocated from time to time by Jersey Telecom for use in connection with the Service and all and such addresses, names, codes or numbers remain the property of Jersey Telecom.
- 4.6. Where the Customer comprises more than one person Jersey Telecom reserves the right to provide information with respect to the Service provided to the Customer to any of the persons named in the Application Form.
- 4.7. Jersey Telecom reserves the right to disclose the name, telephone and / or facsimile numbers and / or e-mail address of the Customer to any person making any complaint or enquiry in relation to use of the Service.
- 4.8. The Customer acknowledges that Jersey Telecom is unable to exercise control over the content of data made available to, accessed by, transmitted by, or published by the Customer and undertakes to use the Service only for lawful purposes.
- 4.9. The Service will only be deemed Activated by Jersey Telecom if the process for Activation by the Customer described in the Product Description is executed correctly.

5. SUSPENSION OF THE SERVICE

- 5.1. Jersey Telecom may (without prejudice to any other right or remedy) suspend limit or cancel the Service to the Customer without penalty and with immediate effect:
 - 5.1.1. during any technical failure, modification or maintenance of the Service or where it is unable to provide the Service for reasons beyond its control or otherwise for reasons not its fault provided that Jersey Telecom will use its reasonable endeavours to procure resumption of the Service as soon as reasonably practical;
 - 5.1.2. if the Customer fails to observe or perform the Conditions.
- 5.2. Notwithstanding any suspension of the Service under this clause the Customer shall remain liable for all charges due hereunder throughout the period of suspension unless Jersey Telecom at its sole discretion determines otherwise but the Customer shall not be liable for any line rental charge for any period beyond a seven day period of suspension.

6. CHARGES AND PAYMENT

- 6.1. The Service Charges shall comprise any connection or set-up charge for the Service, whether initial or after suspension, and rental charge (payable in advance) for the Service where such charges depend on the relevant service options selected in the Application Form.
- 6.2. The Service Charges do not include any charges for call forwarding which shall be billed to the Customer in addition to the Service Charges when the Service is Activated.
- 6.3. In addition to charging GST in respect of the supply of Services, Jersey Telecom will, where applicable, charge the Customer GST in respect of the supply of other goods and/or services under this Contract and the Customer will pay that amount in addition to the charges for those other goods and/or services.
- 6.4. Where more than one person is named as a Customer liability for the Service Charges and/or any additional sums relating to the Service shall be joint and several.
- 6.5. Where the Customer requests work to be carried out which is not included in the Service Charges Jersey Telecom may charge additional sums. Jersey Telecom will, for example, make extra charges where:
 - 6.5.1. it responds to a fault report and no fault is found to exist;
 - 6.5.2. repair of a fault reported by the Customer is made more difficult or costly by breach of the Customer's obligations under the Contract;

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- 6.5.3. it corrects any defect or fault caused by the Customer or anyone using the Service;
- 6.5.4. it performs any task requested by the Customer outside Jersey Telecom's normal or contracted hours of business.
- 6.6. Service Charges and/or any additional sums are payable in full on demand or as otherwise agreed between the Customer and Jersey Telecom. If payment is agreed in writing to be made by instalments and if the Customer fails to pay any instalment on its due date then Jersey Telecom shall be entitled to demand immediate payment of the unpaid balance (including all arrears).
- 6.7. Jersey Telecom reserves the right to charge interest on any balances which remain unpaid for more than 30 days from the due date at 3% above the short term base lending rate from time to time prevailing in England.
- ### 7. OBLIGATIONS OF THE CUSTOMER
- 7.1. The Customer **shall**:
- 7.1.1. only use, make use of, cause, allow or permit to be used the Service in accordance with the specification contained in the Application Form, Product Description and any instructions provided by Jersey Telecom and shall only use the Service for the purpose for which it was designed;
- 7.1.2. enter into an appropriate contract with any other telecommunications provider that provides part or parts of the Service;
- 7.1.3. comply with Jersey Telecom's reasonable requests for assistance in order to diagnose existing or potential faults;
- 7.1.4. keep any login code and / or password assigned by Jersey Telecom or otherwise for use of the Service secure and not disclose the same to any unauthorised person;
- 7.1.5. immediately notify Jersey Telecom should the Customer know or suspect that:
- (a) a login code and / or password has been obtained by any unauthorised person;
- (b) unauthorised access to Customer Equipment, either physical or otherwise is being or has been made;
- 7.1.6. be responsible for all and any charges of any nature that may be incurred by Jersey Telecom as a result of any use, authorised or not, of the login code and / or password;
- 7.1.7. be responsible for all damage or loss caused to Jersey Telecom or third parties by misuse of the Service other than due to the acts or omissions of Jersey Telecom its employees, agents and / or subcontractors;
- 7.1.8. take all appropriate measures to safeguard the security of data sent by means of the Service;
- 7.1.9. promptly advise Jersey Telecom in writing of any change of billing address, contact address or contact number;
- 7.2. The Customer **shall not** by themselves or otherwise:
- 7.2.1. use the Service in breach of any terms of any licence applicable to the Customer;
- 7.2.2. use the Service for purposes or to send, transmit, publish, display, advertise or make available material, information, messages or communications which infringe/s copyright or any other intellectual property right held in any country are/is offensive, abusive, obscene, pornographic, threatening, annoying, defamatory, incite/s hatred, panic or anxiety, breach/es confidence, are/is otherwise unlawful or infringe/s any third party's legal rights of whatever nature under the laws of any jurisdiction;
- 7.2.3. use the Service for any purpose which may result in the illegal access to or collection of data whilst in transit, illegal access to computers or networks, spamming, flooding or other such broadcasts together with any other activity which may adversely affect Jersey Telecom or any third party.
- ### 8. ASSIGNMENT
- 8.1. The Customer may only assign the Contract with the prior consent of Jersey Telecom, such consent not to be unreasonably withheld.
- 8.2. Jersey Telecom reserves the right to assign all or part of the Contract to any person and / or to sub-contract any of its obligations hereunder upon giving 28 days notice to the Customer.
- ### 9. EXCLUSION AND LIMITATION OF LIABILITY
- 9.1. The following provisions set out Jersey Telecom's entire liability (including any liability for the acts and omissions of its employees agents and sub-contractors) to the Customer in respect of any breach of contract, misrepresentation, tortious act or omission including negligence or otherwise arising under or in connection with the provision of the Service. **The Customer's attention is in particular drawn to these provisions.**
- 9.2. Jersey Telecom does not exclude or restrict liability for death or personal injury resulting from its own negligence.
- 9.3. Unless otherwise expressly agreed in writing by the parties (in a service level agreement or otherwise), Jersey Telecom shall not be liable to the Customer or to any other person for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with the provision of the Service except as provided in 9.2 above. Whilst Jersey Telecom will use its reasonable endeavours to maintain the quality of the Service and to ensure that the Service is available at all times it makes no representation or warranty in relation thereto.
- 9.4. Without prejudice to the generality of 9.2 or 9.3, Jersey Telecom shall not be liable to the Customer or to any other person for:
- 9.4.1. any defect in, poor quality of, unavailability, interruption or discontinuance of the Service or any website or e-mail address (and without prejudice to the generality of the foregoing and 9.2, Jersey Telecom shall in no circumstances be liable for any defect in, poor quality of, unavailability or interruption lasting less than 3 (three) days);
- 9.4.2. any loss of profits, business revenue, goodwill or anticipated savings, or any type of special, indirect or consequential loss (including but not limited to loss or damage to data, equipment or property even if in the care, custody or control of Jersey Telecom) whether direct, indirect, foreseeable or unforeseeable;
- 9.4.3. any use of the Service by or activities of the Customer, in particular but not limited to any acts which under the laws of any jurisdiction infringe any third party's intellectual property rights (including the use of any domain name) infringe obscenity laws, constitute threats, are in any way defamatory or are illegal or give rise to any liability in any way.
- 9.5. Jersey Telecom is not responsible for maintaining any insurance cover of any nature to cover any loss by the Customer or any other party arising from the provision or unavailability of the Service or otherwise and any such insurance cover shall be the responsibility of the Customer.
- 9.6. If any exclusion or limitation of liability contained in this clause is invalid and Jersey Telecom becomes liable for any loss or damage, the Customer (acknowledging that Jersey Telecom is not able to evaluate any potential loss to the Customer) agrees that Jersey Telecom's liability shall in any event be limited to the Service Charges payable by the Customer for the Minimum Contract Period for any one event or series of events.
- 9.7. Each provision of this clause shall operate independently of each other provision of this clause.
- 9.8. The Customer agrees to indemnify Jersey Telecom and hold Jersey Telecom harmless in respect of all costs, damages, awards and expenses and professional fees of any kind (without limit) arising from or in connection with any claim brought against Jersey Telecom by any third party located in any jurisdiction arising from any use of the Service provided to the Customer (by either the Customer or any other party) constituting any unlawful act or otherwise giving rise to any liability. The Customer shall immediately notify Jersey Telecom in writing of any such claims of which it becomes aware. The Customer further agrees to offer all reasonable assistance to Jersey Telecom in defending such claims at the sole expense of the Customer.
- ### 10. FORCE MAJEURE
- Jersey Telecom shall not be liable in respect of any breach of the Contract due to any cause beyond its reasonable control including (but without limitation): act of God, pandemic, inclement weather, lightning, flood or fire; industrial action or lockouts; the act or omission of Government, highway authorities, or any other competent authority; war or armed conflict, military operations, vandalism or riot; the act or omission of any other party (including any other party that provides any part of the Service or upon which Jersey Telecom relies in order to provide any part of the Service) and national and / or civil emergencies.
- ### 11. ENTIRE AGREEMENT
- The Conditions supersede all prior oral or written communications regarding the Service and contain the whole agreement between the parties relating to the Service, unless specifically otherwise agreed in writing.
- ### 12. NOTICES
- 12.1. Any notice or other communication required to be given or served for the purposes of the Contract except where otherwise provided shall be in writing and shall be deemed to have been duly given and served if sent by post, facsimile or delivered by hand. Notices shall be deemed received 48 hours after posting or transmitting.
- 12.2. The Customer's address for correspondence shall be the contact address as specified in the Application Form or an address notified to Jersey Telecom by the Customer in writing as an address to which bills may be sent or the Customer's usual or last known place of abode or business or if the Customer is a limited company its registered office.

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- 12.3. Jersey Telecom's address for correspondence shall be P.O. Box 53, 1 The Forum, Grenville Street, St Helier, Jersey JE4 8PB.
- 12.4. Jersey Telecom's facsimile number for notice by facsimile (with confirmation by post or delivery) shall be 01534 882883.

13. TERMINATION

- 13.1. The Contract may be terminated immediately by Jersey Telecom if the Customer;
- 13.1.1. fails to satisfy Jersey Telecom with regard to any credit check undertaken in respect of the Customer;
- 13.1.2. fails to pay when due any sum payable under the Contract or any other agreement or contract made between the Customer and Jersey Telecom;
- 13.1.3. becomes bankrupt within the meaning of Article 8 of the Interpretation (Jersey) Law 1954 or otherwise commits any act indicative of insolvency under the law of any jurisdiction or enters into any composition with its creditors in Jersey or elsewhere;
- 13.1.4. fails to observe or perform the Conditions of the Contract or the conditions of any other agreement or contract made between the Customer and Jersey Telecom and fails to remedy such breach as soon as possible and in any event within 28 days after the date that Jersey Telecom serves written notice on the Customer in relation to such breach;
- 13.1.5. uses the Service provided in accordance with the Contract in a manner which is unsafe or which has not been approved by Jersey Telecom in accordance with the Conditions or otherwise within its statutory powers;
- 13.1.6. makes improper use, within the meaning of Article 51 of the Telecommunications (Jersey) Law 2002, or any amendment or supervening law thereto, of the Service provided in accordance with the Conditions;
- 13.1.7. does or allows to be done anything which in Jersey Telecom's opinion will or may have the effect of jeopardising the operation of the telecommunications system provided by Jersey Telecom to any of its customers;
- 13.1.8. connects equipment to the Service other than Type Approved Equipment.
- 13.1.9. enters into a contract with another telecommunications provider for part of the Service and such contract is suspended or terminated.
- 13.2. The Contract may be terminated by the Customer if:
- 13.2.1. Jersey Telecom unreasonably exercises its rights of variation or suspension under the Contract, by the Customer giving written notice to Jersey Telecom within 14 days of the notice of variation or suspension;
- 13.2.2. Jersey Telecom exercises its rights of variation of the technical specification of the Service such that performance of the same is materially degraded, such termination to be on 14 days written notice without further obligation;
- 13.2.3. Jersey Telecom fails to observe or perform its obligations under the Contract and fails to remedy such breach as soon as possible and in any event within 28 days after the date that the Customer serves written notice on Jersey Telecom in relation to such breach, by giving written notice to Jersey Telecom of such termination.
- 13.3. Subject to sub clauses 2.2, 13.1 and 13.2 either party may terminate the Contract provided always that the party wishing to terminate the contract gives to the other party written notice of its intention to do so; in the case of the Customer of at least one calendar month and in the case of Jersey Telecom at least six calendar months prior to the effective date of the purported termination of the Contract and such termination shall not affect any rights of either party to enforce any term hereof which right has accrued prior to the effective date of termination.

14. SEVERANCE

If any provision of the Contract is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of the Contract and the remainder of the provisions in question shall not be affected.

15. GOVERNING LAW

The Contract shall be governed by and construed and interpreted in accordance with the law of the Island of Jersey and the parties hereby submit to the exclusive jurisdiction of the Royal Court of Jersey.

16. DATA PROTECTION

- 16.1. Jersey Telecom will not without the Customer's written consent disclose information provided to it by the Customer for the purposes of the Agreement to anyone other than (i) members of the Jersey Telecom group or (ii) subject to the relevant Data Protection legislation, third party sub-contractors or agents engaged by Jersey Telecom, such disclosure being made in either case in order for it to be able to provide the Customer with the Service.

- 16.2. Jersey Telecom adheres to strict data protection policies in accordance with the Data Protection (Jersey) Law 2005, details of which policies are included in the Consumer Code of Practice which can be found On-line at www.jerseytelecom.com.
- 16.3. Jersey Telecom reserves the right to disclose the name, address, telephone and/or facsimile numbers and/or email addresses of the Customer to any judicial, law enforcement, regulatory or governmental body or agency where required by applicable law or by the Order of a court or other body of competent jurisdiction to do so.