

Definitions



The following words have the following meaning:

"The Agreement" means these terms and conditions and the Customer Order Form.

"LAKE" means LAKE, trading name for Lake Technologies Limited.

"LAKE Designated Carrier Network" means the telecommunications network.

"BT" means British Telecommunications PLC

"Customer" means the company, partnership, sole trader or other legal entity named in the Customer Order Form.

"Customer Order Form" means the accompanying document titled Customer Order Form containing details of the Customer and the Services.

"Equipment" means any Equipment supplied by LAKE to the Customer.

"Line Rental" means rental of the Customer's ISDN or Analogue line(s) previously supplied by BT or any other Network Services provider.

"Minimum Term" means the minimum term detailed in the Customer Order Form or, where applicable, the term specified in a particular section of these terms and conditions.

"MLU Access" means the automatic insertion of the unique LAKE access code by a unit provided by LAKE.

"Network Services Plan" means the particular Network Services Plan specified in the Customer Order Form.

"Owner" means LAKE.

"Preferred Commencement Date" means the preferred date on which that particular Service is due to commence.

"Services" means the services requested by the Customer as particularised in the Customer Order Form.

"Site" means the place of business at which the Services and Equipment are to be provided as specified in this Agreement.

"Software" means any computer programme that was on the Equipment when supplied or that the Customer received separately.

Network Services

2 Period of Service

2.1 Subject to any other rights of termination in the Agreement, either party may cancel the provision of the Services at any Site by giving no less than 90 days written notice to the other party not to expire before the end of the Minimum Term.

2.2 If the customer migrates its call traffic from LAKE's network before the expiry of the notice referred to in 2.1, LAKE reserves its right to invoice an amount equal to the Customer's average monthly invoice value multiplied by the number of months remaining in the Minimum Term.

3 Changes to the LAKE Designated Carrier Network, Services or Equipment:

3.1 LAKE may at any time change the LAKE Designated Carrier Network, the Services or any Equipment;

(a) If it needs to do so to comply with any applicable safety or other statutory requirements; or

(b) Where the change does not materially detract from the quality or performance of the Services.

3.2 LAKE will pay for any change to the LAKE Designated Carrier Network, Services or Equipment made under this clause.

4 Charges and Payment

4.1 LAKE will charge the Customer at the prices set out in the Network Services Plan (as amended by LAKE from time to time). LAKE will invoice the Customer monthly in arrears and the Customer must pay the charges by the fourteenth day after the date of invoice by Direct Debit. If the Customer fails to make any payment within 14 days of the date of invoice LAKE may require the Customer to pay all sums due under this Agreement on demand.

4.2 LAKE may at any time change the charges specified in the relevant LAKE tariff by (a) decreasing the charges without notice or (b) increasing the charges by giving the Customer 30 days written notice or if less as much notice as reasonably possible in the circumstances.

4.3 LAKE may, on seven days written notice to the Customer, stipulate a reasonable monetary limit that will apply to all charges due or which may become due to LAKE from the Customer. If at any time the amount of charges payable to LAKE exceeds the stipulated monetary limit, LAKE will immediately notify the customer and any amounts incurred in excess of the stipulated monetary limit will immediately become due and payable.

Line Rental

5 Terms of service

5.1 The Customer agrees that signing this Agreement will terminate any prior line rental agreement with BT or any other Network Services provider. The Customer authorises LAKE to use all information the Customer provides in order to liaise directly with BT or any other Network Services provider. In signing this Agreement the Customer agrees to take the line rental services specified in the Customer Order Form for a The Minimum Term. Following the Minimum Term, the line rental services shall continue until terminated by either party giving no less than 90 days written notice to the other party.

5.2 Any telephone or circuit numbers provided under the agreement can not be guaranteed or confirmed until the associated network service has been installed, tested and proven to operate with the proposed number.

6 Charges and Payment

6.1 LAKE will invoice the Customer in advance for Line Rental and the Customer must pay the charges by direct debit by the fourteenth day after the invoice date. If the Customer fails to make any payment within this time frame LAKE may require the Customer to pay all sums due under this Agreement on demand.

6.2 LAKE may, by giving the customer 30 days written notice, increase the charges for the service.

7 Mobile Services Agreement

Period of Service

7.1 Under the terms of this agreement the Customer may be supplied with a number of cellular connections (lines) at different times at the Customer's own request. Each supply will be for a minimum term of 13 months from the date of the order and, subject to any other right of termination under the Agreement, may only be terminated by giving 90 days notice in writing not to expire before the end of the minimum term.

7.2 Where LAKE has provided further equipment in respect of any line at a subsidised price (upgrade) or financial support in lieu of equipment (upgrade support) then the minimum term that relates to that line is extended by a further period equal to the minimum term from the date of supply of the upgrade or upgrade support.

7.3 If the Customer terminates the Agreement in breach of these terms and conditions the Customer will be obliged to pay the monthly access charges in relation to each line supplied until the earliest date that the Customer would have been entitled to end each supply.

7.4 When this Agreement is terminated LAKE will disconnect the Customer from the network and the customer must pay all charges owed to LAKE under the Agreement.

8 The Service

- 8.1 LAKE will connect the Customer to the appropriate cellular network and will maintain that connection so far as it remains within its reasonable control to do so. LAKE shall not be responsible for the coverage or quality of the service that the Customer receives from the cellular network.
- 8.2 LAKE's standard service does not include the facility to make international calls or to make or receive calls whilst abroad. These facilities can be made available by prior request to LAKE and may require payment of a deposit.

9 Charges and Payment

The Customer will be charged for all use of the lines supplied including:

- (a) A monthly access charge which is payable one month in advance, together with payment for any extra services which LAKE is providing to the Customer;
 - (b) Call charges for all calls made in the previous month according to the LAKE tariff which the Customer has chosen;
 - (c) In the event that the Customer chooses to use the telephone abroad, these charges will include all incoming calls that the Customer receives during that period.
- 9.2 The Customer must pay all invoices issued by LAKE within 14 days of the date of invoice by Direct Debit. If the Customer fails to make any payment within 14 days of the date of invoice LAKE may require the Customer to pay all sums due under this Agreement on demand.
 - 9.3 If the network provider exercises any right against LAKE to withhold or claw-back payments made by the network operator to LAKE, LAKE shall be entitled to charge, claw-back or adjust payments, tariffs or discounts made or given by LAKE to the Customer to the extent that they are based upon payments from the network operator.
 - 9.4 If any cellular connection is not being used for commercial purposes then LAKE shall be entitled to charge, claw-back or adjust any payments, tariffs or discounts made or given in respect of that connection.

10 Transfer of Number

In the event that the Customer wishes to change its mobile services supplier after the relevant minimum term has expired, LAKE will arrange for the transfer of the telephone number to the new supplier providing that the Customer has given the appropriate period of notice to terminate that supply and upon the payment of a reasonable administration fee and upon all sums due to LAKE under this Agreement being paid up to date, together with the payment of a deposit in respect of unbilled calls.

Sales and Maintenance Agreement

11 Charges and Payment for Sale-of Equipment

The Customer shall pay 50% in respect of the order value on signing the Agreement and 50% on the installation date. Payment shall be due on receipt of the invoice.

12 Start Date and Period of Maintenance

The period of maintenance will start on the preferred commencement date and will continue for at least the Minimum Term of the contract. The contract will remain in place year to year until terminated by either party giving the other not less than three (3) calendar months written notice prior to the next anniversary of the preferred commencement date.

13 Maintenance Payment Terms

The Customer must pay all LAKE Invoices for maintenance by direct debit within 14 days of the invoice date, which will be before the period of cover starts. LAKE shall have the right to stop servicing the Equipment if the Customer does not pay on time.

14 Quality and Reliability

If requested within the manufacturer's warranty period, LAKE will replace faulty items free of charge with an identical model or one with similar capabilities. LAKE will do this only if LAKE supplied the Equipment to the Customer, the equipment has been maintained only by LAKE, the Customer is not at fault and liability is not excluded.

15 Servicing & Exclusions

15.1 Throughout the term of the Agreement LAKE shall ensure that the performance of the Equipment and the servicing meet the approved standard of the manufacturer including:

- (a) Telephone technical support for maintenance
- (b) An engineer's visit to the Site when required
- (c) Service of the central control unit and all components within it
- (d) Service of key phone instruments
- (e) Service of Voicemail - auto attendant hardware
- (f) Headsets (only covered if stated in the Agreement)

15.2 LAKE will endeavour to respond to reported faults within the level of service taken by the Customer but at no time will a failure by LAKE to do so be construed as a material breach of the Agreement.

15.3 Maintenance will not cover the following:

- (a) Failure due to changes to or disconnection from the approved system
- (b) Failure of any supplies of connected services
- (c) Changes in the environment
- (d) Ancillary items including but not limited to answer phones, call loggers, pay phones, public address systems, printers, external music on hold sources, system cabling and consumables unless otherwise agreed in writing
- (e) A force majeure event as defined in the Agreement

16 Connections

- (a) If the equipment is to be connected to the BT Network or other outside services it is the customer's responsibility to arrange for provision or any required circuits.
- (b) The Customer must pay all costs for circuit rentals, connection charges, inspections, commissioning and any other costs necessary to provide the services in clause (a).
- (c) LAKE shall not be responsible for any delays in the provision of services referred to in clause (a). Any such delay will not give the Customer the right to refuse installation of the Equipment or payment due to us.

17 Acceptance

After LAKE has installed the Equipment at the Site, the engineer will confirm to the Customer that the Equipment is working satisfactorily. When this is confirmed the Customer will be taken to have accepted the Equipment. Any warranties for the Equipment from the manufacturer will be passed to the Customer for 30 days.

18 Annual Price Increases

LAKE may from time to time increase the charge for maintenance to account for cost increases. If this increase exceeds 10%, the Customer may by writing to LAKE within 30 days of the invoice for the increased price terminate the Agreement. Customers will not be allowed to terminate the Agreement if the increase has resulted from additions or amendments made to the system.

General Provisions

19 Sites

- 19.1 The Customer must prepare the Site(s) in accordance with LAKE's instructions so that any necessary Equipment can be installed. The Customer will meet the costs of preparing the Site(s).
- 19.2 The Customer must provide adequate electricity supply and suitable earth connection for the operation of any Equipment to be installed at the Site(s) and, in the case of MLU Access, a designated carrier network test and termination point.
- 19.3 The Customer must assist and co-operate with LAKE to enable LAKE to carry out its obligations under the Agreement including giving access to the Site(s) to install and maintain the Equipment.
- 19.4 LAKE will normally carry out installation and maintenance work during normal working hours but may, on reasonable notice, require the Customer to provide access at other times. At the Customer's request LAKE may agree to work outside normal working hours but the Customer shall be liable for paying to LAKE any overtime charges for relevant staff.

20 Installation

- 20.1 LAKE shall attempt to install the Equipment at the Premises so that the Service can be provided on or before the Preferred Commencement Date agreed by LAKE. Any installation date shall be an estimate only and LAKE shall not be liable for any failure to meet such installation date.
- 20.2 Should the Customer prevent LAKE from delivering or installing the Equipment, including where the Site(s) is unprepared, LAKE reserves the right to charge its costs to the Customer.
- 20.3 LAKE shall attempt to comply with the Customer's reasonable requests in respect of installation but LAKE's decision on the routing of cables and wires and the positioning of outlets and Equipment shall be final.
- 20.4 When requested to do so, the Customer must return to LAKE a programming information sheet at least 7 days prior to the installation date. Without this installation may not be possible.
- 20.5 LAKE accepts no liability whatsoever for any loss the Customer or any third party may suffer as a result of installation of the Service.

21 Provision of Services

- 21.1 LAKE will provide the Services at the Site(s) from the Preferred Commencement Date until the Services are cancelled or the Agreement expires or is terminated in accordance with the Agreement.
- 21.2 LAKE will make all reasonable efforts to provide the Services in a reliable manner and in accordance with good industry practice but cannot be held responsible for any fault or loss of Service arising as a result of incorrect information given to LAKE by the Customer.
- 21.3 The Customer must notify LAKE as soon as it becomes aware of any fault in the Services and LAKE will endeavour to supply support to the Customer in an attempt to correct the fault as soon as is reasonably possible. If LAKE provides assistance to the Customer for the resolution of a fault but it is subsequently discovered that the fault lies with neither the Equipment nor the Service provided by LAKE then the Customer shall pay LAKE for the resolution of the fault on a time and materials basis at LAKE's current rates from time to time.
- 21.4 LAKE may occasionally have to interrupt the Service or change the technical specification of the Service for operational or planned maintenance reasons, for upgrades or because of an emergency. LAKE will give the Customer as much notice as reasonably possible of any planned interruption to the Service.

22 Equipment

- 22.1 Ownership of the Equipment shall remain with LAKE unless it is paid for in full by the Customer. Until that time the Customer will hold it as LAKE's fiduciary agent and bailee. The Customer must keep the Equipment separate from other equipment and it must be properly stored, protected, Insured and identified as LAKE's property. The Customer is not permitted to sell the Equipment and LAKE can insist on its return.
- 22.2 The Customer must not move or make any changes to the Equipment without LAKE's permission or allow access to the system without LAKE's consent.
- 22.3 LAKE will maintain the Equipment as per the terms of the Agreement. Allowing a third party to work on the Equipment is a repudiatory breach of the Agreement.

23 Software

The rights to the Software belong to LAKE. The Customer is allowed to use the Software subject to the terms set out in the Agreement and in any other relevant documentation. The Customer shall not copy, change, interfere with or take apart the Software in any way, reveal its contents to a third party or grant a sub-licence. The Customer must ensure that the Software is used only in the permitted territories and for the permitted purpose.

24 Suspension of Service

- 24.1 LAKE may, without terminating this Agreement, suspend the Services if any of the following apply:
 - (a) LAKE believes or is advised it is necessary because of technical problems or work on the network or for reasons of safety.
 - (b) LAKE believes it is necessary to prevent fraud taking place.
 - (c) LAKE is obliged to comply with an order, instruction or request of Government or persons purporting to act with Governmental authority, an emergency service organisation, or other competent administrative authority.
 - (d) LAKE needs to maintain or upgrade the LAKE Designated Carrier Network at the Site.
 - (e) The Customers total charges incurred are more than the Customer's credit limit.
- 24.2 The Customer acknowledges and agrees that in certain circumstances it may not be possible for LAKE to provide notice of the suspension. LAKE will use reasonable endeavours taking account of the circumstances to provide the Customer with as much notice of the suspension and to maintain the suspension for as short a period as is reasonably possible
- 24.3 If suspension occurs for technical reasons or to prevent fraud and that suspension lasts for more than 24 hours, the Customer will receive a pro-rata credit against the monthly access charge for the period of the suspension.
- 24.4 If the Customer fails to pay a sum due under the terms of the Agreement then LAKE reserves the right to suspend the Service and levy an administration fee of £50 for lifting such a suspension.

25 Termination

- 25.1 Without prejudice to any other rights or remedies under the Agreement or at law, LAKE may terminate this Agreement or cancel the Services at any Site immediately by serving written notice on the customer if:
 - (a) the Customer becomes insolvent or is subject to a court winding up order; or
 - (b) the Customer commits a breach of any material obligation under this Agreement and (in the case of a remediable breach) fails to remedy the breach within 14 days of receiving written notice to do so from LAKE; or
- 25.2 The Customer may terminate this Agreement immediately by serving written notice on LAKE if:
 - (a) LAKE becomes insolvent; or
 - (b) LAKE commits a breach of any material obligation under the Agreement and (in the case of a remediable breach) fails to remedy the breach within 14 days of receiving written notice to do so from the Customer.

26 After Termination

- 26.1 Upon termination for any reason of any part of the Agreement, all amounts owed by the Customer to LAKE shall become immediately due and payable in full on demand and the Customer must:
 - (a) Immediately stop using the Services that have been terminated;
 - (b) Immediately stop using the Equipment, and

(c) Permit LAKE to enter the Site(s) during normal business hours to remove the Equipment. The Customer's obligations in respect of the Equipment will continue to apply until LAKE has removed the Equipment.

26.2 LAKE will not be liable for any further programming required by the Customer.

26.3 The provisions of this clause remain in force despite the termination of the Agreement.

27 Limitation of Liability

27.1 The parties shall not be liable to the other except as expressly set out in the Agreement.

27.2 Unless otherwise expressly stated, either party's liability in contract, tort or otherwise including any liability for negligence howsoever arising out of or in connection with the performance of either party's obligations under the Agreement is limited to £1 million for one event or series of related events and £2 million in total for all events arising in any twelve month period.

27.3 Without prejudice to the Customer's obligations to pay LAKE the charges for any Equipment, the parties shall not be liable to the other party under the Agreement in contract, tort (including negligence) or otherwise for any loss of revenue, business, contracts, anticipated savings or profits.

27.4 Nothing in this Agreement excludes or restricts either party's liability: for death or personal injury resulting from that party's negligence or its employee's negligence while acting in the course of their employment; or for anything else for which the parties cannot at law limit or exclude their liability.

27.5 The provisions of this Clause continue to apply despite the termination or expiry of the Agreement.

28 Force Majeure

28.1 Neither party will be obliged to carry out any obligation and/or delivery under the Agreement where performance of such obligation and/or delivery is prevented due to any cause beyond the party's reasonable control, including but not limited to any act of God, severe weather, failure or shortage of power supplies, flood, drought, lightning or fire, labour shortage or labour dispute, the act or omission of Government, highways authorities, other telecommunications operators or administrations or other competent authority, war, military operations, or riot, or difficulty, delay or failure in manufacture, production or supply by third parties of either the Equipment or Services or both resulting from the same or a similar type of force majeure event.

28.2 During any force majeure event charges associated with maintenance of equipment and /or rentals of network services continue to be payable.

28.3 If any force majeure event lasts for more than three months from the date of its commencement and that event prevents either party from performing all or a material part of its obligations during that period either party may by giving 30 days written notice to the other party terminate The Agreement. If the Customer terminates The Agreement under this clause any early-termination charges associated with maintenance of equipment and /or rentals of network services will immediately become payable.

28.4 If the Customer terminates The Agreement under clause 28.3 any early-termination charges associated with maintenance of equipment and /or rentals of network services will immediately become payable.

29 Information and Confidentiality

29.1 The Customer will promptly provide LAKE (free of charge) with any information LAKE may reasonably require to enable it to proceed with the performance of its obligations under the Agreement including any information which LAKE may reasonably request for the purposes of credit verification and debt collection and the Customer permits LAKE to use such information and to provide it to third parties acting on behalf of LAKE for such purposes.

29.2 Unless expressly agreed in writing neither the Customer nor LAKE will use, copy, adapt, alter or part with possession of any information that is disclosed or otherwise comes into its possession under or in relation to the Agreement and which is of a confidential nature unless required to do so by a court order or legislation. This obligation will not apply to information which the recipient can prove was in its possession at the date it was received or which the recipient obtains from some other person with good legal title to it or which is in the public domain otherwise than through the default or negligence of the recipient.

29.3 The Customer acknowledges that LAKE may use information regarding calls routed through the Equipment including but not limited to origin, destination, duration, route and time.

29.4 Both parties must comply with the Data Protection Act 1984 when dealing with information given to the other party under the Agreement.

30 Intellectual Property Rights

Intellectual Property Rights in all documents, drawings and information including if applicable any access codes supplied to the Customer in connection with the Agreement remain vested in LAKE or the intellectual property right owner. Such documents, drawings and information are confidential and will not be copied, disclosed or used (except for the purpose for which they were supplied) without LAKE's prior written consent.

31 Non-Waiver and Severability

31.1 Failure by either party to enforce any of its rights under the Agreement is not to be taken as or deemed to be a waiver of that right unless the waiving party acknowledges the waiver in writing.

31.2 Part or all of any clause of the Agreement that is unenforceable or illegal will be severed from the Agreement and will not affect the enforceability of the remaining provisions of the Agreement.

32 Fraud

LAKE shall not be responsible for call charges resulting from fraudulent use of the Equipment or Service by the Customer or any third parties and the Customer agrees to pay all additional charges related to such fraud.

33 Value Added Tax

All sums due to LAKE under the Agreement are exclusive of Value Added Tax and any other applicable taxes which may from time to time be introduced, which shall be charged in accordance with the relevant regulations in force at the time of making the taxable supply and must be paid by the Customer.

34 Late Payment

The Customer will pay interest at a rate of 3% over the Bank of England Base Lending Rate applicable at the time per month on all overdue amounts from the date payment is due until the Customer has paid in full.

35 The Customer's Obligations Under The Agreement

35.1 The Customer must not use or allow others to use the Equipment or Services provided for any improper, immoral or unlawful purpose. If LAKE incurs any liability to any person or any expense arising from such use, the Customer will promptly reimburse such amounts to LAKE.

35.2 The Customer must report to LAKE as soon as it becomes aware of any fraud, deception, or unauthorised or unlawful use relating to the Equipment or Services.

35.3 The Customer must advise LAKE in writing if it changes its address.

35.4 The Customer must comply with all reasonable instructions given to it by LAKE and provide LAKE with all information relevant to the Services to be provided under the Agreement.

36 Other Standard Terms

36.1 The Agreement is the entire Agreement between the Customer and LAKE.

36.2 The Agreement applies to all items of Equipment individually. If any item fails, it will not affect the rights and liabilities of either party for the other items.

36.3 The Customer's duties under the Agreement will continue and will not be affected by the breakdown, theft, loss, destruction of, or damage to any Equipment.

36.4 Notices under the Agreement must be made in writing and delivered by hand or sent by post to the other party's address. The address will be the one stated in the Agreement, the registered office (for a limited company) or the last known address of the other party. The notice will be taken to have been delivered on the date it was delivered by hand or 24 hours after the date it was posted.

36.5 LAKE reserves the right to assign, sub-contract or otherwise deal with all or any of its rights and obligations arising under the Agreement. The customer may not assign this contract without having first received written authority from LAKE, such authority not to be unreasonably withheld.

- 36.6 There can be no variation to the terms of the Agreement unless approved in writing by both parties.
- 36.7 The unenforceability of any term of the Agreement will not affect the enforceability of any other terms.
- 36.8 No person or body who is not a party to the Agreement has any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the Agreement.
- 36.9 The Agreement is governed by English law and disputes will be subject to the exclusive jurisdiction of the English Courts.