

Definitions

- 1.1 "Anticipated Expenditure" means the higher of (1) the customer's Estimated Monthly Expenditure as stated overleaf or (2) the customer's average monthly spend since the start of the supply period. Where the Customer's Estimated Monthly Expenditure is not stated overleaf, the sum of £40 shall be taken as the Customer's Estimated Monthly Expenditure for the purpose of this clause.
- 1.2 "Customer Equipment" means any equipment, the property of the Customer or rented by the Customer from a third party, connected to the public telephone network and used by the Customer in order to use the Service.
- 1.3 "FraudDefender" means kinex using reasonable endeavours to monitor telephone landline(s) it has provided to the Customer during the Initial Fixed Supply Period and any Subsequent Supply Period for any unusual activity, which may result in kinex using its sole discretion to suspend any such landline(s) using CDRs where it deems necessary, thereafter notifying the Customer of such suspension.
- 1.4 "Initial Fixed Supply Period" means the minimum period during which Service is provided as agreed between the Customer and kinex, which shall commence on the day that Service is first provided.
- 1.5 "kinex" means Verastar Ltd.
- 1.6 "Network" means a telephone network of kinex, over which Service is provided pursuant to this Agreement.
- 1.7 "Number" means the telephone line(s) and/or CLI(s) over which Service is provided to the Customer.
- 1.8 "Rate Schedule" means the schedule of charges applicable from time to time in respect of the Usage Charges.
- 1.9 "Service" means line rental, direct or indirect access telecommunication service and/or any other services provided by kinex to the Customer.
- 1.10 "Standard Variable Rate" means kinex's published Standard Variable Rate tariff, which is available at www.kinex.co.uk/SVR.pdf.
- 1.11 "Subsequent Supply Period" means any period during which Service is provided, subsequent to the Initial Fixed Supply Period, as agreed between the Customer and kinex.
- 1.12 "Supply Period" means either the Initial Fixed Supply Period or the Subsequent Supply Period, during which Service is provided.
- 1.13 "Usage Charges" means the charges made by kinex to the Customer for the provision and use of the Service.

Service

- 2.1 kinex will procure Service to the Customer subject to the terms of this Agreement. kinex, or its principals, may at any time without notice vary the Service for technical, operational or other reasons within its entire discretion.
- 2.2 kinex will use reasonable endeavours to procure a continuous high quality Service in accordance with the terms and conditions set out herein.

Charges & Payment

- 3.1 kinex will make Usage Charges in accordance with its Rate Schedule.
- 3.2 kinex may vary its Rate Schedule in accordance with clause 9.6, but subject to the Customer's right to terminate referred to at clause 8.1 (d).
- 3.3 The Rate Schedule includes an annual price increase, which will be the annual percentage increase in the Retail Price Index (RPI) published by the Office for National Statistics, such price increase to take effect in January of each year of the Initial Fixed Supply Period and any Subsequent Supply Period.
- 3.4 Invoices are due for payment by Direct Debit in accordance with the advance notice given on the customer's invoice. If an invoice is not paid by Direct Debit, then the Usage Charges for Service to which that invoice relates, together with all other Usage Charges for Service to be invoiced for during the remainder of the Supply Period shall be charged at the Standard Variable Rate.
- 3.5 Usage Charges for Service provided by kinex at any time other than the Initial Fixed Supply Period or any Subsequent Supply Period shall be charged at the Standard Variable Rate.
- 3.6 If invoices are not paid monthly by Direct Debit then collection costs incurred by kinex, including administration charges, will be charged to the Customer.
- 3.7 Interest will be charged on unpaid invoices from the due date until payment at a rate of 1.5 per cent per month or part thereof.
- 3.8 Value Added Tax, or any other levy or tax, at the rate prevailing will be added on to all sums due to kinex, which are quoted as exclusive of Value Added Tax, or any other levy or tax.
- 3.9 The Customer shall not be entitled to delay or withhold payment or claim any set off against any payment due hereunder in respect of any claim or complaint, which the Customer may have for any reason whatsoever. Any payments made by the Customer to kinex, including payments made for other services that the Customer may receive from kinex, may be applied by kinex as it deems fit.
- 3.10 The Customer agrees that kinex may make credit status enquiries. Subject to credit status, kinex may require a pre-payment or a non-interest bearing deposit.
- 3.11 In the event of any action taken by kinex in relation to any charges due from the Customer to kinex whatsoever, the Customer shall reimburse and indemnify kinex, with and in respect of all expenses relative thereto, including all legal charges and professional fees on a full indemnity basis.
- 3.12 Usage Charges shall be invoiced monthly in arrears or monthly in advance, depending on the nature of the Usage Charges (normally, calls will be invoiced monthly in arrears and fixed monthly charges, including line rental, will be invoiced monthly in advance). Usage Charges may be required to be pre-paid by way of deposit. Usage Charges may relate back to months prior to the previous month.
- 3.13 In the event that the Customer fails to provide kinex with at least 30 days notice of any change in personal details of

the Customer including change of address, in accordance with clause 4.1(g), then the Customer shall pay all Usage Charges in respect of the Number until 30 days after notice of any such change has been given by the Customer.

Obligations

- 4.1 The Customer undertakes:
- (a) To use the Service in accordance with the reasonable instructions of kinex or its principals;
- (b) Not to use the Service in any improper or unlawful manner or in any manner, which may cause offence;
- (c) To allow kinex or its duly appointed agents access to the Customer's premises for the purposes of installation, programming and maintenance, or for any other reason whatsoever;
- (d) To ensure that the Customer Equipment is in good working order and is maintained by a competent maintainer or service provider;
- (e) To use only BABT approved Customer Equipment. All Customer Equipment must comply with all relevant legislation relating to its use from time to time;
- (f) To pay for all Service provided by kinex within the time limits and in the manner set out herein and to be responsible for the usage of the Service, whether the use of the Service has been authorised by the Customer or not (and the Customer agrees that kinex is not obliged to monitor the level of telephone calls and/or report unusual telephone call patterns);
- (g) To inform kinex, giving at least 30 days written notice, of any changes in personal details of the Customer including change of address, in accordance with clause 9.10;
- (h) Not to in any way whatsoever modify the programming of the Customer Equipment, where the Customer Equipment has been programmed with access codes by kinex;
- (i) Not to in any way whatsoever, cause calls to be routed over any networks, other than the Network (save in respect of calls to the exempt numbers, notified to the Customer from time to time);
- (j) In the case of payment not being made by Direct Debit, to pay the increased charges in accordance with clause 3.4;
- (k) Not to enter into any contracts with alternative suppliers to provide the Customer with services which are similar to the Service, other than in accordance with clause 8.1 (a);
- (l) To provide kinex with explicit consent to allow telecommunication service providers to disclose relevant information about the Customer to kinex;
- (m) Not to claim any ownership rights over any Number, nor to attempt to sell or agree to transfer any Number provided to it.

Faults

- 5.1 kinex will use reasonable endeavours to report to its principals any fault on the Network, which is reported to it by the Customer. kinex shall not be liable to the Customer for any losses incurred as a result of a fault on the Network, or as a result of any delays in repairing a fault on the Network.
- 5.2 kinex shall not be liable to the Customer for any losses incurred as a result of any interruption to the Service.
- 5.3 If a fault is caused by the Customer Equipment, by breach of this Agreement by the Customer, or by the Customer's negligence, or if a fault occurs on the Customer's premises or land, then kinex may recover all reasonable costs incurred from the Customer.

Suspension of Service

- 6.1 kinex shall be entitled to suspend Service in order to maintain or improve the Network or if obliged to do so by virtue of any direction or request from any government department, emergency service, regulatory or administrative authority, or by its principals, or for any other reason whatsoever.
- 6.2 kinex will use reasonable endeavours to give the Customer notice of such suspension as reasonably practicable.
- 6.3 kinex shall be entitled to suspend any part of or all of the Service without notice in the event that any payments are not made within 14 days. Such suspension will not affect the Customer's obligation to pay for the Service during the period of suspension or thereafter, and will not affect kinex's rights to charge a termination fee.

Liability

- 7.1 Neither the Customer nor kinex excludes or limits its liability for death or personal injury caused by its negligence.
- 7.2 kinex shall not be liable for any loss or damage caused to the Customer except where caused by kinex's negligent acts or negligent omissions or kinex's breach of contract and in such event kinex's total liability to the Customer under this Agreement for any loss or damage shall be limited to £5000.
- 7.3 Subject to clause 7.1 kinex shall not be liable to the Customer for: any indirect, consequential and/or special loss or damage; loss of profit; loss of revenue, loss of production or loss of business; loss of contracts; loss of goodwill, loss of reputation or loss of opportunity; loss of anticipated savings or loss of margin; loss or destruction of data; wasted management, operational or other time; liability of the Customer to third parties; or the acts or omissions of network operators or other telecommunication service providers on whom kinex has to rely to provide the Service.
- 7.4 The Customer is advised to obtain its own business continuity insurance.
- 7.5 In relation to FraudDefender, kinex shall not be liable to any party for any losses suffered in the event of delays or other non-performance, whether due to delayed delivery of CDRs which are provided by third parties, or for any other reason.
- 7.6 kinex shall not be liable for any losses to any party that arise as a result of fraudulent activity, whether or not due to any failure or non-performance in FraudDefender. FraudDefender does not prevent such activity from taking place.

Termination

- 8.1 This Agreement will remain in force:
- (a) for the Initial Fixed Supply Period or any Subsequent Supply Period and will continue thereafter until terminated by the Customer arranging for Service to be transferred to another supplier of telecommunications services or the Customer requesting Service to be ceased, or,
- (b) until the Customer has committed a material breach of this Agreement (including but not limited to non payment by Direct Debit or non compliance with this Agreement due to ceasing to be responsible for the Number, e.g. when closing, or moving the premises of, the business), or,
- (c) until the Customer has a receiver, administrative receiver, liquidator or supervisor of a voluntary arrangement appointed over it, or over any part of its undertaking or assets or a resolution is passed for its winding up, or if an administration order is made, or if it enters into a voluntary arrangement with its creditors, or ceases to trade in all capacities, proof of which must be provided by a letter from a firm of solicitors regulated by the Solicitors Regulation Authority or a licensed insolvency practice or an accountancy firm currently registered with and regulated by the respective regulatory authority, or,
- (d) unless and until kinex change the Charges to the significant detriment of the Customer, for example by changing any recurring charges, in which case the Customer may give kinex written notice to end the Agreement within 30 days of the date on which kinex informs the Customer in writing of the change(s), or,
- (e) until the Customer, trading as a sole trader, has ceased to trade in all capacities, proof of which must be provided by a letter from a firm of solicitors regulated by the Solicitors Regulation Authority.
- 8.2 kinex may suspend Service in circumstances where it could terminate this Agreement or when the Customer has failed to pay any amount due or it reasonably believes that the Customer will fail to pay any amount due or to become due and any such suspension will be without prejudice to the right to terminate.
- 8.3 If this Agreement is terminated pursuant to clauses 8.1(b), 8.1(c) or 8.1(e), and, in the case of termination under clause 8.1(e), the Customer fails to provide the requisite proof, the Customer shall pay to kinex a termination fee equal to (1) an administration fee of £50; plus (2) 30 per cent of the Anticipated Expenditure during the remainder of the Supply Period; plus (3) 30 per cent of the fee that would have been payable for line rental and other selected services for the remainder of the fixed term Supply Period. The Customer agrees this represents a fair and reasonable estimate of the losses, costs and expenses incurred by kinex in the case of termination.

General

- 9.1 The Customer may not assign or transfer this Agreement or any rights hereunder to any third party, without the prior written consent of kinex. kinex may assign or transfer this Agreement or any rights hereunder.
- 9.2 kinex shall not be liable for breach of its obligations under this Agreement to the extent that such breach is caused by flood, fire, accident, explosion, strike, war, embargo, Government restriction, Act of God, inability to secure materials, industrial dispute or any other cause beyond the parties' reasonable control including in particular acts or omissions of other providers of telecommunication services.
- 9.3 The remaining parts of this Agreement shall remain in full force in the event that any part of this Agreement shall be invalid, illegal or unenforceable, as if the unenforceable part had been omitted from the original Agreement.
- 9.4 All the terms of this Agreement are set out herein. Neither party has relied upon any representations, assurances or other agreements, whether verbal or otherwise, unless set out herein.
- 9.5 In the unlikely event that the customer has a complaint about the service received, please refer to the kinex website www.kinex.co.uk/complaintscodofpractice.pdf for details about the kinex complaints procedure.
- 9.6 kinex may change the terms and conditions of this Agreement and will, save as stated otherwise in this Agreement, provide the Customer with 14 days notice of any such change by publishing such changes on www.kinex.co.uk.
- 9.7 All changes made under clause 3.2 and/or clause 9.6 will be advised either in writing or on kinex's website www.kinex.co.uk or any other website used by kinex as its principal website or any other website notified to the Customer to be used for this purpose.
- 9.8 No waiver by either party shall constitute any variation to this Agreement.
- 9.9 Singular words shall be construed as including words of the plural and vice versa.
- 9.10 Any notices given by the Customer under this Agreement shall be made in writing and sent by registered post. Any notices given by kinex under this Agreement shall be published on its principal website, or sent by post or email. The address for service shall be the address given overleaf for each party, unless changed; in which case, notice of change shall be given in accordance with the terms of this clause, subject to clause 4.1(g).
- 9.11 This Agreement shall be governed by and interpreted in accordance with the Laws of England and shall be subject to the exclusive jurisdiction of the courts of England.