

Sunny Communications Mobile Business Airtime Agreement - Terms and Conditions

1.	Definitions and Interpretation:	7.2	If Sunny in their sole discretion reinstate the Services following suspension the Subscriber may be liable for an administration fee of £50.00 if suspension is due to the default of the Subscriber.
(a)	CALL CHARGE: means a predetermined charge unit of time, costed at the rates set out in the tariff sheets published by Sunny from time to time, which are available on request from Sunny. The initial call charges are those set out in the Agreement overleaf.	7.3	During any technical failure, modification or maintenance of the Network, if the Services are suspended under this clause for a period of seventy two (72) hours or more, Sunny will on a pro-rata basis credit to the Subscriber any line rental or additional Services that may have been charged during the unavailability of the Network.
(b)	CONNECTION: means the connection of the mobile phone/BlackBerry handheld or SIM card to the Network.	8.	Termination
(c)	CONNECTION DATE: means the date of the Connection.	8.1	Without prejudice to any other claims or remedies which Sunny may have against the Subscriber, Sunny may Terminate the Agreement by giving notice to the Subscriber with immediate effect in any of the following circumstances:
(d)	CREDIT LIMIT: means a monthly financial limit applied for charges incurred under the agreement.	8.1.1	if the Subscriber fails to comply with any of the Terms of these Terms and Conditions including but not limited to failure to pay any charges due;
(e)	DATA CHARGE: means the pre-determined charge per megabyte of data costed at the rates set out in the tariff sheets.	8.1.2	if the Subscriber enters into a deed of arrangement or commits an act of bankruptcy or compounds with creditors or if a receiving order is made against it (being a company) it shall pass a resolution or the court shall make an order that the Subscriber shall be wound up (otherwise than for the purposes of amalgamation or reconstruction) or if a receiver (including an administrative receiver) shall be appointed of any of the assets or undertaking of the Subscriber or if the Subscriber suffers the appointment or the presentation of a petition for the appointment of an administrator or if circumstances shall arise which entitle the court or a creditor to appoint a receiver (including an administrative receiver) or a manager or which entitle the court to make a winding-up order or if the Subscriber takes or suffers any similar action in consequence of debt;
(f)	INVOICE DATE: means the same date as appears on the invoice raised by 4com.	8.1.3	if the Subscriber does or allows to be done anything which in Sunny's opinion will or may have the effect of jeopardising the operation of the Services;
(g)	Sunny: means Sunny Communications Ltd of 2 Watt Road, Churchfields, Salisbury SP2 7UD. Registered in England No. 6472837.	8.1.4	any licence to operate or use the Network whether under the Wireless Telegraphy Act 1949 to 1967 or the Telecommunications Act 1984 or otherwise is revoked or terminated for any reason;
(h)	MONTHLY CHARGE: means the relevant sum for access to the Network and provision of Services as provided in the Agreement under Service Information or any additional Services requested.	8.1.5	if the operation of the Network is terminated or if the provision of the Services to Sunny is discontinued for any reason;
(i)	NETWORK: means any telecommunications network available from Sunny.	8.1.6	if information supplied to Sunny by the Subscriber is false or misleading.
(j)	SERVICES: means the telecommunications services provided by means of the Network.	8.2	Sunny may Terminate the Agreement with immediate effect for any reason whatsoever by giving notice in writing to the Subscriber during the period of twenty eight (28) days following the Connection Date of the Business Airtime Agreement.
(k)	SIM Card: means the "Subscriber Identity Module" which is a unique card containing information and when used with a mobile phone/BlackBerry handheld, enables access to the Services.	8.3	Upon the Termination of the Agreement Sunny shall disconnect the mobile phone/BlackBerry handheld/SIM card from the System. If Sunny in their sole discretion reconnect the Subscriber following such disconnection and such disconnection arises as a result of circumstances set out in Clauses 8.1.1, 8.1.2 or 8.1.3, the Subscriber shall be liable for the Connection Charge and the Agreement shall be deemed to continue.
(l)	SUBSCRIBER: means the Customer named overleaf.	8.4	On Termination of the Agreement by Sunny under clauses 8.1.1, 8.1.2, 8.1.3 or 8.1.6 or by the Subscriber then the Subscriber shall pay to Sunny immediately on demand:
2.	Connection to the Network and provision of the Services	(a)	all charges payable up to the date of Termination; and
2.1	Subject to the Agreement and these Terms and Conditions Sunny will connect and maintain the Connection of the mobile phone/BlackBerry handheld/SIM card to the Network and Sunny will use its reasonable endeavours to make the Services available to the Subscriber throughout the Term (as specified in clause 4 below).	(b)	a cancellation charge equivalent to the outstanding Monthly Charges for the remaining Minimum Term as stated in the Agreement.
2.2	The mobile phone/BlackBerry handheld number remains the exclusive property of Sunny, until the end of the Minimum Contract Term as stated in the Agreement.	8.5	In the event that a hardware fund has been established for the Subscriber then any monies due to the Subscriber on Termination of the Agreement shall be determined on a pro rata basis for each month of the Agreement completed prior to the Termination of the Agreement. Where all or part of the fund has been utilised at the time of Termination of the Agreement then the Subscriber shall immediately pay to Sunny any proportion of the original fund value due pro rata. The fund shall be managed by Sunny throughout the Term of the Agreement in accordance with the manner agreed between the Subscriber and Sunny.
2.3	The Subscriber acknowledges that Sunny charges calls to certain businesses (principally access call service providers which have been notified to it) at a premium rate or bars calls to such numbers. The Subscriber acknowledges this and agrees to it.	8.6	In the event of early Termination of the Agreement if the Subscriber has received:
3.	Payment	8.6.1	free or reduced price hardware from Sunny then the Subscriber shall immediately pay to Sunny the difference between the actual price paid for the hardware and the price charged by Sunny in accordance with the monthly schedule of prices issued by Sunny from time to time;
3.1	Payment for the Services will be as follows: Payment is due fourteen (14) days from the invoice date by Direct Debit, unless otherwise specified overleaf.	8.6.2	a subsidy in the form of either money or hardware discount then the Subscriber shall immediately repay to Sunny the money or value of the discount of the hardware; and
3.2	All charges must be paid in full without deduction, set off or withholding.	8.6.3	a free or reduced monthly charge then the Subscriber shall immediately repay to Sunny the difference between the base Monthly Charge and the actual charge paid by the Subscriber subject to such payment being pro rata for the period of the Term from commencement to Termination.
3.3	The Subscriber will be asked to pay the Monthly Charge in advance, dependent upon the particular tariff rate, this may be one or two months Monthly Charge. Call charges will be paid one month in arrears.	9.	Transfer of Liability
3.4	Ordinarily, Sunny will invoice on a monthly basis, where possible on the same date each month. Sunny reserves the right to amend the date and frequency of the invoices and to submit interim invoices if it so chooses. All invoices will be submitted via email.	9.1	Sunny may at any time assign its rights under the Agreement to any third party.
3.5	Value Added Tax is payable on all charges levied by Sunny unless otherwise specified.	9.2	The Subscriber whether selling or otherwise, cannot transfer their obligations to pay charges or bring the Agreement to an end. Any other transfer should be notified to Sunny in advance for Sunny to accept or otherwise as it sees fit. If a new user of the mobile phone/BlackBerry handheld/SIM card is accepted by Sunny and enters into a new Agreement, satisfactory to Sunny, it is Sunny's policy to release the existing Subscriber from liability from future charges.
3.6	Sunny reserves the right to withhold or withdraw discounts on any invoices that remain unpaid in accordance with clause 3.1	9.3	Sunny's acceptance of payment from another person other than the Subscriber does not imply that Sunny has amended any of the rights or obligations of the Subscriber.
3.7	During the Term Sunny may ask for a deposit as security for payment in respect of additional Services to be provided. The Subscriber may request the return of any deposit at the expiry of the Minimum Term as stated in the Agreement, but the decision to return any monies prior to termination of the Agreement is at the discretion of Sunny.	10.	Variation
3.8	Sunny reserves the right to set off any deposit against any amounts due and owing by the Subscriber to Sunny (including but not limited to the Agreement).	10.1	Sunny may vary all or any of its charges by publishing any such variation in its tariff sheets or upon its website. (www.sunnycomms.co.uk), such variation to have immediate effect under the Agreement unless otherwise stipulated.
3.9	Sunny reserves the right to review the Credit Limit applicable to the Agreement and if the total charges under the Agreement exceed the Credit Limit Sunny shall be entitled to demand immediate repayment of whole or part of the total charges outstanding.	10.2	Any such variance in prices or tariffs does not allow the Subscriber to Terminate the Agreement.
3.10	If the Subscriber fails to pay any part of the aforesaid charges in accordance with these Terms and Conditions, Sunny reserves the right to charge interest at the rate of 4% above the base rate of National Westminster Bank PLC from time to time calculated from the invoice date until the date of actual payment.	10.3	Although Sunny may vary prices without notice, Sunny will endeavour to provide as much notice as possible.
3.11	Sunny reserves the right to vary payment terms in the event of the Subscriber failing to pay any Charges in accordance with these Terms and Conditions or Sunny having concerns about the Subscriber's financial situation and their ability to pay the Charges.	10.4	Sunny may vary the Terms and Conditions of the Agreement to take account of new legislation, statutory instruments, regulations or licences or similar matters provided that the Subscriber is notified of any such variation in writing or by publishing such variation upon Sunny's website (www.sunnycomms.co.uk).
3.12	The Subscriber shall indemnify Sunny, and keep Sunny indemnified, fully from and against all liability, loss, damage, costs and expenses of any kind whatsoever arising from or in connection with any charges due to Sunny, or the Network Provider direct from the Subscriber for the supply of Services including (but without limitation) connection charges, monthly access charges, call charges and all other valid charges rendered from time to time.	11.	Data Protection
4.	Term	11.1	The Subscriber acknowledges that details of the Subscribers name, address and payment record may be submitted to a credit reference agency.
4.1	Each mobile phone/BlackBerry handheld number connected shall have the Minimum Term as stated in the Agreement.	12.	Miscellaneous
4.2	The Agreement shall commence on the date of supply of the mobile phone/BlackBerry/Services and shall continue thereafter unless suspended or terminated:-	12.1	Each and every mobile phone/BlackBerry handheld/SIM card and ancillary service connected by Sunny to the Network shall be governed by these Terms and Conditions.
4.2.1	At any time by Sunny giving notice under clause 7(suspension) and clause 8(termination)	12.2	The Subscriber must promptly advise Sunny of any change of address in writing and by recorded delivery. Any notice hereunder sent by Sunny to the Subscriber shall be deemed to be served within 48 hours of posting to the last address notified in writing to Sunny by the Subscriber.
4.2.2	By the Subscriber giving not less than thirty (30) days prior written notice to Sunny following the minimum Agreed Term. This notice must coincide with the anniversary of the commencement date or any subsequent anniversary thereof, such notice to be sent to Sunny's place of business via Recorded Delivery.	12.3	The Subscriber must notify Sunny immediately if the SIM Card is stolen or lost.
5.	Business Airtime Agreement	12.4	Sunny reserves the right to add to the Agreement, the reasonable costs incurred in recovering any outstanding debt due from the Subscriber.
5.1	Except as expressly provided in these Terms and Conditions all warranties, conditions or other terms (whether expressed or implied by statute or common law or otherwise) as to the quality of the Services or their fitness for any particular purpose are hereby excluded to the fullest extent permitted by law.	12.5	Sunny will use reasonable endeavours to co-operate with any reasonable request from the Subscriber to transfer any telephone numbers allocated to the Subscriber hereunder to another service provider upon Termination of this Agreement or from one network to another network in either case upon the Subscriber paying Sunny's reasonable costs or charges incurred in complying with that request. Any such request shall be made in the form prescribed by Sunny from time to time and shall be made subject to the Terms and Conditions set out in such form, from time to time.
5.2	Sunny shall not be liable for any indirect or consequential costs, claims damages or expenses arising out of any negligent or tortious act or omission or any breach of contract or statutory duty.	12.6	The Subscriber agrees that these Terms and Conditions (and any Service Level Agreement or specifications where applicable) shall govern the Agreement between Sunny and the Subscriber to the exclusion of any other Terms and Conditions oral or written and all representations or communications between the parties relating to the subject matter of the Agreement.
5.3	Sunny shall not be liable or be deemed to be in breach of its obligations by reason of any delay in performing or failure to perform any of its obligations if the delay or failure was due to any cause beyond the reasonable control of Sunny.	12.7	The invalidity, illegality or unenforceability of any provision of these Conditions should not affect the other Conditions of the Business Airtime Agreement
6.	Use of the Services via the Mobile Phone/BlackBerry handheld/SIM Card	12.8	A person who is not party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any Term of this Agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
6.1	The Subscriber should be aware that the current statutory provisions relating to wireless telegraphy and telecommunications services apply to the use of the Services via the mobile phone/BlackBerry handheld/SIM card and in addition the Subscriber must:	12.9	The Agreement (and any proceedings whereby one party might be entitled to join the other as a third party) shall be governed by and construed in all respects in accordance with English law and the parties hereby submit to the exclusive jurisdiction of the English courts.
6.1.1	generally observe the Wireless Telegraphy Acts 1949 to 1967; the Telegraphy Act 1984, other relevant legislation, statutory instruments, and comply with any directions made by the Director General of the Office of Telecommunications or the Secretary of State;		
6.1.2	not use or allow others to use the Services for any improper immoral or unlawful purpose; not act or omit to act in any way which may injure or damage any persons property or the Network or howsoever cause the quality of the Services to be impaired;		
6.1.3	comply with any reasonable instructions issued by Sunny which concern the Subscriber's use of the Services or mobile phone/BlackBerry handheld/SIM card;		
6.1.4	provide Sunny with all such necessary information that Sunny may reasonably require;		
6.1.5	only use the mobile phone/BlackBerry handheld/SIM card supplied under the agreement which is approved for use with the Network.		
6.1.6			
6.2	The Subscriber should recognise that the Services may from time to time be adversely affected by local geography, topography and/or atmospheric conditions and/or other causes of interference.		
6.3	The Subscriber acknowledges that Roaming Services are provided using third party networks and that the availability and performance of such Roaming Services is outside of Sunny's control. Sunny shall have no liability whatsoever to the Subscriber whether in contract, tort or otherwise (including negligence) arising out of or in connection with the use of the Roaming Services.		
7.	Suspension		
7.1	Sunny may from time to time and without notice suspend the Services (and at Sunny's discretion disconnect the mobile phone/BlackBerry handheld/SIM card from the Network) in any of the following circumstances without prejudice to the liability of the Subscriber to continue to pay the Minimum Charge:		
7.1.1	if the Subscriber fails to comply with any of these terms and conditions (including but not limited to failure to pay any charges when due) until the failure to comply is remedied to Sunny's satisfaction;		
7.1.2	if the Credit Limit for this Agreement is exceeded;		
7.1.3	if the Subscriber allows to be done anything which in Sunny's opinion may have the effect of jeopardising the operation of the Services;		
7.1.4	if the Subscriber fails to pay Sunny any sum or sums due to Sunny, and/or any suppliers or fitter in respect of the cost of supply and/or fitting of the mobile phone/BlackBerry handheld/SIM card or any part thereof; or		
7.1.5	if in the absolute discretion of Sunny the Services are being used in a manner prejudicial to the interest of the Subscriber and/or 4com and/or the Network.		