

## **PhoneLink Standard Conditions for Provision of Tel-Me Service**

### **1. INTERPRETATION**

1.1 In this Contract unless the context otherwise requires, the following expressions have the meanings set opposite them:

"Acceptance Date" the date upon which the Customer's application for the Service is accepted pursuant to Condition 2.

"Access Charges" the monthly charges to be made to Customers by PhoneLink for access to the Service as set out in PhoneLink's Service Literature from time to time.

"Subscription Fee" the subscription fee specified in PhoneLink's Service Literature from time to time for the supply to and licensed use of the Software by Customers.

"Monthly Rental Charge" the charge to be made by PhoneLink to the Customer, monthly in advance, for the ongoing supply of the TEL-ME service as set out in PhoneLink's Service Literature from time to time.

"Annual Support Fee" the annual software support fee for Support specified in PhoneLink's Service Literature from time to time.

"Billing Period" each period of a calendar month commencing during the term of this Contract the first of which shall commence on the Acceptance Date.

"Customer" the person named in this program with whom PhoneLink makes this contract.

"Customer's Address" the customer address or addresses set out in this program.

"Data" all data and information of any kind accessible by the Customer as a user of the Service.

"Enquiry Products" an information product accessible upon an enquiry made through the Service, as listed in PhoneLink's Service Literature.

"Equipment" the equipment, media, documentation and accessories provided to the Customer to enable him to gain access to the Service.

"UIN Code" the unique identity number or numbers to be allocated to the Customer under the Contract.

"PhoneLink plc" being PhoneLink plc whose registered office is John Douglas House, 620 Woodchurch Road, Prenton L43 OTT.

"PhoneLink's Service Literature" any brochure, price list, user guide instructions or software specifications issued by PhoneLink in connection with the Service from time to time.

"Registration Form" the screens in this program which require information to be entered.

"Service" PhoneLink's TEL-ME service permitting Customers access to and use of the Data.

"Service Options and Accessories" the service options and accessories provided to the customer.

"Software" PhoneLink's proprietary software in machine readable form enabling the Customer to gain access to the Service.

"Software Specification" the functional specification of the Software referred to in PhoneLink's Service Literature.

"Source Data Owner" the owner of any data, information or compilation supplied from time to time to PhoneLink for use by PhoneLink in supplying the Service.

"Support" the software support particulars of which appear in Condition 6.

"Usage Charge" the charge to be made by PhoneLink to the Customer for an Enquiry Product as set out in PhoneLink's Service literature from time to time.

## 2. ACCEPTANCE

This Contract shall take effect when the Customer's application set out in this program is accepted by PhoneLink, which acceptance shall be deemed to take place when PhoneLink allocates a UIN Code to the Customer or provides the Service to the Customer, whichever happens first.

## 3. ALLOCATION OF UIN CODE

3.1 PhoneLink may withdraw the UIN Code and allocate a new UIN Code whenever PhoneLink considers it necessary, including (without limitation) if the UIN Code has been obtained or used (or there is reason to believe that it has been obtained or used) without the Customer's consent.

3.2 The UIN Code may be cancelled or withdrawn by PhoneLink:

- (a) if this Contract is suspended or terminated; or
- (b) if there are reasonable grounds for believing that the Customer has failed to observe the terms of this Contract.

3.3 The Customer shall use the UIN Code in accordance with the conditions set out in PhoneLink's Service Literature.

3.4 The UIN Code is confidential and personal to the Customer who shall keep it secure and safe.

3.5 PhoneLink undertakes not to disclose the UIN Code to any person other than the Customer.

## 4. CUSTOMER SERVICE AND PROVISION OF INFORMATION

4.1 PhoneLink will be available to provide sales and billing enquiries from 8.30a.m. to 5.30p.m. Monday to Friday (excluding public holidays).

4.2 At the request of the Customer PhoneLink will also provide additional manuals and user guides, at the price published in the PhoneLink Service Literature.

## 5. DEPOSITS, ACCOUNT LIMITS AND PAYMENTS

5.1 PhoneLink may require at any time from the Customer the payment of a deposit as security for the payment of any charges payable or which may become payable by the Customer which notwithstanding termination of this Contract PhoneLink may continue to hold until receipt from the Customer of all charges payable under this Contract.

5.2 At any time PhoneLink may impose a limitation on the level of Charges which may accrue to the Customer's account which shall not be exceeded.

5.3 PhoneLink shall record enquiries by the Customer to the Service against the UIN Code.

5.4 The Customer shall pay when submitting his application for registration:

(a) in all cases, any deposit required by PhoneLink as a condition of the Customer's registration as a user of the service.

(b) the price of the equipment, and in all cases the price of any goods or services supplied by PhoneLink other than those mentioned elsewhere in this condition 5: and

(c) any applicable VAT.

5.5 PhoneLink shall give not less than 14 days' notice to the Customer before applying to the Customer's account any increase in the amount of any Access or Usage Charges, or in the Annual Support Fee, for the purposes of this Condition 5.

## 6. SOFTWARE LICENCE AND LIMITATIONS ON USE AND PROTECTION OF DATA AT THE CUSTOMER'S ADDRESS

6.1 PhoneLink shall provide the current release of the Software available from time to time either on diskette or by direct download which PhoneLink shall have used its reasonable endeavours to have screened for viruses using a third party proprietary virus detection kit selected by PhoneLink.

6.2 The Software remains the property of PhoneLink, but title to the media in which it is recorded, and in any packaging and supporting documentation, passes to the Customer on delivery.

6.3 PhoneLink grants to the Customer the non-exclusive non-transferable licence to use the Software at the Customer's Address to access the Service subject to the terms of this Contract.

6.4 The Customer agrees to ensure that the Software does not leave its control and is not removed from the Customer's Address.

6.5 The Customer acknowledges and agrees that:

(a) the copyright and all other intellectual property rights in the Software and the Data (including the form or manner in which the Data is arranged or presented by PhoneLink) and in all information and documentation provided by PhoneLink relating to the Software and the Data and any compilation of the data is and shall continue to be the property of PhoneLink and/or the Source Data Owner who supplied it to PhoneLink;

(b) the Data may not be disclosed to any third party and may only be used for internal purposes and in particular not for any journalistic objectives whatsoever, nor for the supply of any news service, telephone directory enquiry service, talking yellow pages or directory publication and the Customer may not by itself, its agents or associates (save as provided in Condition 6) copy or republish, reproduce (by electronic means or otherwise) use, sell or lend the Data or any information comprised in the Data its extracts or derivatives, or use the Data for any purpose which is unlawful or likely to bring PhoneLink or any Source Data Owner into disrepute;

(c) the Customer may without special permission from PhoneLink or any relevant Source Data Owner make less than 100 hard copies of printer output reproducing any screen or screens of data or downloaded data generated by a single enquiry, provided that any copyright acknowledgement or notice appearing or contained in the screen or downloaded data from which the output is derived is reproduced in full, but may not make any other copies of any such screens or data without the prior written permission of PhoneLink and the Source Data Owner or Owners concerned;

(d) all such hard copies resulting from any enquiry are for the personal use of the Customer (where the Customer is an individual) or for the use in the internal business only of the Customer (where the Customer is a company, sole trader or partnership). Hard copies may not be distributed for sale outside of the business or otherwise sold without prior permission from PhoneLink and its licensors;

(e) PhoneLink may, subject to Condition 20, from time to time amend, alter, vary and/or extend the terms and conditions and restrictions on use, disclosure, copying, republishing or reproduction applicable to the Data;

(f) nothing in this Condition 6 permits the Customer to download or store Data in bulk, or copy, reproduce or electronically store the Data, either wholly or in part, so as to create a separate similar database, or, in the case of the Teledirectory, to generate lists for direct or other marketing purposes.

6.6 The Customer recognises and agrees that:

(a) the title to any trade mark used in connection with the Service vests in PhoneLink or one of its Source Data Owners and the Customer will not at any time do or allow to be done any act or thing which may impair the owner's rights;

(b) the Customer will not represent now or in the future that it has any right or title of ownership in any such trade mark;

(c) the Customer will not acquire or claim any title in or to any such trade mark.

6.7 The Customer will at the request of PhoneLink give full co-operation to PhoneLink in any action, claim or proceedings brought or threatened in respect of intellectual property rights of PhoneLink or its Source Data Owners in the Software or any of the Data.

6.8 Subject to Conditions 6.9 and 6.10, PhoneLink shall provide the following software support in any year commencing on the Acceptance Date or any anniversary of the Acceptance Date in respect of which the Customer has paid the annual Support Fee:

(a) a telephone help line for the current release of the Software during the hours of 8.30a.m. to 5.30p.m. Monday to Friday but excluding Bank Holidays;

(b) fault diagnosis and, where possible, correction. Serious faults preventing computer processing will be given priority;

(c) recommendations on the course of action to recover from any faults or failures arising from the Software;

(i) providing such updates to the Software as are reasonably feasible and necessary for the Software to operate under new releases of any operating system and minor alterations to any specified operating environment;

(ii) providing such minor enhancements or amendments to the Software as PhoneLink in its sole discretion considers appropriate, including the provision of new releases of the Software;

(iii) providing amendments to the documentation as may be necessary to reflect all changes made by PhoneLink to the Software;

(iv) provided that if the Software is at any time altered or modified by persons other than PhoneLink or its employees or agents, then PhoneLink may cease to provide Support.

6.9 The Support does not include the provision of support in respect of apparent errors which are not consistently repeatable or support occasioned by or requested as a result of, for example, any alteration to the Software not made by PhoneLink (or its Source Data Owners) (even though authorised by PhoneLink) misuse of the Software, misuse of or failure of or major alteration to the configuration of the Customer's hardware, operator error, use of non-current versions of the Software or use of the Software under a non-current release of the operating system; and any services provided by PhoneLink to the Customer outside the scope of Support (which shall include without limitation to the generality of the foregoing tests and checks requested and specified by the Customer which are outside PhoneLink's normal test and specifications and procedures) shall be charged additionally as set out in PhoneLink's Service Literature.

6.10 The terms and conditions of any third party supplying or owning any part or parts of the Data Enquiry Products, Equipment, Software or Support of which PhoneLink are the subject of shall be incorporated where relevant into these terms and conditions as if they were written in full herein.

## 7. EQUIPMENT

7.1 PhoneLink shall deliver the Equipment to the Customer. PhoneLink does not guarantee that any agreed delivery date will be met and any such date shall be considered an estimated delivery date only.

7.2 Except as otherwise stated the price of the Equipment includes delivery to the Customer Address and, if expressly agreed between the parties, installation at the Customer Address.

7.3 PhoneLink warrants that the Equipment will be free from defects in design, manufacture or materials, but this warranty shall not apply to minor defects of those which are caused by:

(a) fair wear and tear; or

(b) failure to use the Equipment strictly in accordance with the manufacturer's or Phonelink's instructions and without modification or alteration; or

(c) interference with or maintenance of the Equipment by persons other than PhoneLink.

7.4 In the event of a valid claim under the warranty contained in this Condition 7, PhoneLink shall either correct the defect, replace the defective Equipment or refund the price paid at its option in total satisfaction of any such claim. PhoneLink reserves the right to charge for replacement or repair not covered by the warranty.

7.5 PhoneLink reserves the right to vary the price on notification to the Customer before delivery. PhoneLink shall be entitled to maintain action for the price of the Equipment at any time after payment becomes due.

7.6 Equipment shall from the time of delivery be at the Customer's risk, and until PhoneLink has received payment in full for all Equipment, the Equipment shall remain PhoneLink's property and ownership shall not pass to the Customer.

## 8. DURATION, SUSPENSION AND TERMINATION

8.1 This Contract shall come into force on the Acceptance Date, continue for a minimum period of 6 months and thereafter, subject to the following, shall continue in force until terminated:

(a) by at least 14 days notice in writing by either party to expire on an anniversary date of the Acceptance Date;

(b) by PhoneLink by notice in writing with immediate effect in the event that the Customer:

(i) fails to make any payment when due or defaults in due performance of any other obligation under this Contract and, in the case of a remediable breach, fails to remedy it within 7 days after receiving written notice requiring him to do so;

(ii) becomes bankrupt or unable to pay his debts as they fall due or compounds with his creditors or (in the case of a company) in the event of a resolution being passed or proceedings being commenced for the administration or liquidation of the Customer (other than for a voluntary winding up for the purposes of reconstruction or amalgamation) or if a receiver or manager is appointed of all or any part of its assets or undertaking;

(iii) modify or alter or allow any person to modify or alter any part of the Software.

8.2 PhoneLink may (without prejudice to any other or additional recourse) elect to suspend the provision of the Service upon notice to the Customer in writing that PhoneLink:

(a) is entitled to give notice of breach or to terminate the Contract;

(b) is entitled to withdraw the UIN Code under Condition 3.2;

(c) is required to comply with any order or request of the Government or other competent authority to suspend the Service;

(d) suspects (with reasonable cause to do so) that any matter in the Customer's application for the Service is untrue or misleading.

8.3 PhoneLink may charge (in which event the Customer shall be bound to pay) interest on any unpaid amount from the due date until payment is received at a rate to be determined by PhoneLink not exceeding 2% above National Westminster Bank plc base rate for the time being, such interest to be calculated on a daily basis.

## 9. POST TERMINATION RIGHTS AND OBLIGATIONS

9.1 Termination of this Contract shall not affect any accrued right or obligation of either party.

9.2 Upon termination or expiry of this Contract:

(a) the Customer's licence to use the Software under Condition 6 shall cease;

(b) the Customer shall not be entitled to the refund of any payment which has already been made or fallen due for payment to PhoneLink;

(c) the Customer's obligations as to confidentiality under Condition 11 remain in force according to their terms;

(d) the Customer shall erase the Software from the memory and disk drives of any computer in which it has been installed and from any media on which it was supplied or has since been recorded, and shall not take any steps to recover any part of the Software so erased.

## 10. LIABILITY

10.1 Nothing in this Contract excludes or purports to exclude or limit PhoneLink's liability for death or personal injury caused by the negligence of PhoneLink or its agents or employees.

10.2 Save as expressly provided in this Condition 10 all terms, warranties and conditions expressed or implied including without limitation as to merchantability fitness for purpose the

quality, accuracy, or suitability of the Software or the Data, Enquiry Products Service or information are excluded.

10.3 PhoneLink warrants that provided the Software is operated in accordance with PhoneLink's instructions in PhoneLink's Service Literature the Software shall perform in accordance with the Software Specification. The Customer accepts that it is not possible to produce economically (if at all) computer programs known to be error free or which operate in an uninterrupted manner, and that not all errors are necessarily capable of rectification and accordingly save as expressly provided for in this Condition 10.3 all warranties and conditions including without limitation as to the accuracy, quality or fitness for purpose of the Software or of the documentation relating to it, or to the effect that the Service will be uninterrupted or error free, are hereby excluded.

10.4 The Customer acknowledges that the type of information to be provided to the Customer under this Agreement is based on information supplied to PhoneLink and its Source Data Owners from third party sources, that its quality and accuracy cannot be guaranteed or warranted, and that it may contain a degree of error, and therefore the Customer agrees that information provided will not form the sole basis of any business decision and that the Customer is solely responsible for verifying and ensuring that the information is sufficiently accurate for the Customer's purposes. Neither PhoneLink nor its Source Data Owners give any warranty as to the accuracy, completeness, up-to-dateness or suitability of the information, and neither PhoneLink nor any Source Data Owner shall have any liability whatsoever in respect of any such matter nor for any loss suffered by the Customer as a result of his use of or reliance on the Data or any information comprised in it.

10.5 Except as expressly provided in Condition 7:

(a) this Contract contains no condition, warranty or term (whether in each case express, implied, statutory or arising at common law) as to the performance, quality or fitness of the Equipment for any particular purpose;

(b) all such conditions, terms and warranties are hereby expressly excluded;

(c) PhoneLink shall have no liability to the Customer for any loss or damage, direct or indirect, consequential or otherwise, arising out of any defect in or failure of the Equipment, however caused, whether or not attributable to the negligence of PhoneLink, its agents or employees.

10.6 The Customer accepts that PhoneLink cannot be aware of the extent of consequential or indirect loss or damage to the Customer resulting from any failure of the Software to conform to the Software Specification or any failure of PhoneLink to discharge its obligations under this Contract and therefore PhoneLink shall not in any circumstances be liable to the Customer whether in contract, tort (including negligence) or otherwise for any consequential or indirect loss or damage howsoever arising and of whatsoever nature including (without limitation) loss of profit, loss of contract, loss of operation time, loss of any equipment or process or any other form of loss whatsoever (whether or not similar to some or any of the foregoing) suffered or incurred by the Customer.

10.7 Each of the paragraphs of this Condition 10, and each sub-paragraph of condition 10.5 shall be construed as a separate term independently of all the others.

## 11. CONFIDENTIALITY

11.1 The Customer undertakes to keep confidential all information described as or appearing to be confidential (including but not limited to the UIN Code, information regarding the Data, the Software or the Service and the contents of this Contract itself) which is communicated to it by or on behalf of PhoneLink in connection with this Contract, unless PhoneLink's prior written consent to disclosures is obtained, except for information:-

- (a) in the public domain otherwise than by breach of this Contract;
- (b) already in the possession of the Customer and not acquired directly or indirectly from PhoneLink;
- (c) lawfully obtained from a third party who is free to disclose it;
- (d) disclosure of which is required by law; and
- (e) independently developed by or for the Customer by a person or persons, none of whom has had access to or knowledge of the confidential information disclosed under this Contract.

11.2 Nothing in Condition 11.1(a) to (e) permits the Customer to disclose any confidential arrangement or ordering of the Data.

## 12. INFORMATION AND ASSISTANCE

12.1 The Customer shall provide PhoneLink with all information and assistance reasonably required by PhoneLink to perform its obligations under this Contract.

12.2 The Customer shall immediately advise PhoneLink if there is any change in his name, address, telephone, fax, or other telecommunications number.

## 13. STATUTE

The Customer shall comply with its statutory obligations concerning the operation of this Contract and/or the use of the Software including without limitation under the Data Protection Act 1984 and under the Telecommunications Act 1984.

## 14. ASSIGNMENT AND SUB-CONTRACTING

The Customer shall not assign the benefit of or sub-contract its obligations under this Contract nor any part hereof without the express written authority of the other party.

## 15. FORCE MAJEURE

PhoneLink shall not be liable for any delay in performance of, or failure to perform its obligations under this Contract, where such delay or failure is due to circumstances beyond its control including (without limitation) act of God, war, riot, civil commotion or any governmental restriction, order or regulation or statutory prohibition, failure or breakdown of equipment or failure or breakdown of any billing system or transmission difficulties or the unavailability of materials. If PhoneLink is so affected it shall promptly notify the Customer of the event when practicable and performance of the Contract shall be suspended for the duration of the event of force majeure.

## 16. WAIVER AND FORBEARANCE

The rights of the parties hereto shall not be prejudiced or restricted by any indulgence or forbearance extended to any other party and no waiver by any party in respect of any breach shall operate as a waiver in respect of any subsequent breach.

## 17. SEVERABILITY

If any provision of this Contract is found by a Court or other competent authority to be void or unenforceable, that provision shall be deemed to be deleted from and never to have formed part of this Contract and the remaining provisions shall continue in full force and effect.



## 18. CONTRACT NOT TO CONSTITUTE A PARTNERSHIP

18.1 None of the provisions of this Contract shall be deemed to constitute a partnership between the parties or any of them.

18.2 The Customer shall not hold itself out as the agent or partner of PhoneLink.

18.3 The Customer shall have no authority to bind PhoneLink in any way.

## 19. ENTIRE CONTRACT

This Contract (together with the documents referred to herein) constitutes the entire agreement between the parties with respect to all matters referred to herein. All separate agreements, undertakings and obligations between the parties with respect to such matters are hereby abrogated by mutual consent. This Contract shall prevail over any inconsistent terms or conditions referred to in correspondence or elsewhere and any conditions or stipulations to the contrary are hereby excluded and extinguished.

## 20. VARIATIONS

PhoneLink may vary a term of this Contract (save as to changes in charges) by a document signed by a duly authorised officer. PhoneLink will publish details of any such changes and their effective dates at PhoneLink's registered office at least 14 days prior to the change, and make such details known upon request.

## 21. GOVERNING LAW

21.1 This Contract shall be governed by and construed in accordance with English law.

21.2 The parties hereby submitted to the jurisdiction of the Courts of England.

## 22. TEST DRIVE

22.1 At PhoneLink's sole discretion. Customers may be granted a trial of TEL-ME under PhoneLink's "Test Drive" Promotion.

22.2 The Customer agrees to be bound by the additional conditions of the "Test Drive" offer as set out in PhoneLink's Service Literature from time to time.

22.3 The Customer will be liable to pay for all usage of Tel-Me exceeding the free usage credit specified in the programs or in the associated packaging.

22.4 The Customer will be liable to pay for the Service Options and Accessories, unless within the Test Drive Period specified in the programs or in the associated packaging, the customer notifies Phonelink plc in writing that they do not wish to continue with the Tel-Me Service, in which event at the Customer's expense, the customer shall return to PhoneLink plc within 7 days of the Customer's written notice the Tel-Me software and modem (if applicable) in good condition. In the event that the Tel-Me Software and modem (if applicable) are not returned in good condition the Customer shall be liable for the cost of replacement or repair. The onus of proof of return within the period specified will rest with the Customer.

22.5 Equipment returned to PhoneLink outside of the period specified for trial and return will be returned to the Customer at the Customer's option and expense.