



SmartCall  
VIRTUAL BUT PERSONAL

## SmartCall Terms & Conditions

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Registered in Jersey Company No: 115938

Registered in Jersey for GST No: 0040071



## **1. Definitions**

**1.1** In these Conditions the following terms shall have the meaning indicated: "the Agreement" shall mean the contract between SmartOffice and the Customer to which these Conditions apply; "the Customer" shall mean the person, company or organisation to whom SmartOffice agrees to provide the Services in accordance with these Conditions; "SmartOffice" means Smart Office Limited trading as "SmartOffice, SmartCall and SmartAssistance", Jersey Registered Company Number: 115938 whose registered office is at Sunnyside, Roussel Street, St Helier, Jersey JE2 3PP (and where the context requires shall include its successors assignees); "Services" means the services to be provided by SmartOffice to the Customer under the Agreement.

**1.2** A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

**1.3** A reference to writing or written includes faxes and e-mail.

**1.4** Any obligation in the Agreement on a person not to do something includes, without limitation, an obligation not to agree, allow, permit or acquiesce in that thing being done.

## **2. Scope of Conditions**

**2.1** These Conditions shall apply to and be incorporated into the Agreement; and

**2.1.1** These Conditions shall prevail over any inconsistent terms or conditions contained, or referred to, in the Customer's purchase order, confirmation of order, acceptance of a quotation, or specification or other document supplied by the Customer, or implied by law, trade custom, practice or course of dealing.

**2.2** The commencement of the provision of the Services by SmartOffice (including provision during any trial period) constitutes an offer by SmartOffice to supply the Services in accordance with these Conditions and the Customer agreeing to use the Services constitutes acceptance of these Conditions.

## **3. SmartOffice's Duties**

**3.1** SmartOffice's duties to the Customer shall consist of the provision of the Services to include the receiving of incoming telephone calls intended for the Customer and the dispatch to the Customer of messages by telephone, e-mail or SMS. The receiving of incoming telephone calls intended for the Customer and the forwarding of calls to the Customer by telephone. The provision of a Disaster Recovery service whereby SmartOffice would upon invocation receive of incoming telephone calls intended for the Customer and dispatch to the Customer of messages by telephone, e-mail or SMS.

**3.2** SmartOffice may at any time without notifying the Customer make any changes to the Services which are necessary to comply with applicable statutory requirements, or which do not materially affect the quality of the Services.

## **4. Duration**

**4.1** Subject to clause 4.2 and unless otherwise agreed in writing the Agreement shall be for a fixed period of two months from the date specified as the service commencement date in the first invoice issued by SmartOffice and thereafter it may be terminated (on written notice by either party) on one month's notice.

**4.2** In the event that the Services comprise temporary or holiday cover the Agreement shall be for a period of one month only without the requirement for notice from either party.



4.3 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Agreement without liability to the other in accordance with this clause 4 or immediately on giving notice to the other if:

4.3.1 the other party fails to pay any amount due under the Agreement on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment; or

4.3.2 the other party commits a material breach of any of the terms of the Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or

4.3.3 the other party repeatedly breaches any of the terms of the Agreement or conducts itself in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Agreement; or

4.3.4 the other party commences negotiations with its creditors, appoints an administrator or receiver or suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts OR (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case (being a partnership) has any partner to whom any of the foregoing apply.

4.4 On termination of the Agreement for any reason:

4.4.1 the Customer shall immediately pay to SmartOffice all of SmartOffice's outstanding unpaid invoices and in respect of Services supplied but for which no invoice has been submitted SmartOffice may submit an invoice, which shall be payable immediately on receipt;

4.4.2 the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

## **5. Charges and Payment**

5.1 Unless otherwise agreed in writing by SmartOffice all sums due to SmartOffice under the Agreement shall be payable by the Customer by direct debit within 14 days of receipt of SmartOffice's invoice. The customer will be notified by e-mail of the amount and date that the funds will be debited from the Customers nominated account. If the agreement commences part way through a month then the first Direct Debit will include the proportion of the monthly retainer calculated on a pro-rata basis.

5.2 All invoices submitted by SmartOffice shall be treated as agreed unless the Customer notifies SmartOffice of any discrepancies within 7 days of the date of the invoice.

5.3 All charges under the Agreement shall be subject to GST at the prevailing rate.

5.4 SmartOffice may at its discretion assign to the Customer a credit limit and shall notify the Customer of such limit in writing. In the event the aggregate value outstanding from the Customer exceeds this limit SmartOffice reserve the right to terminate provision of the Services forthwith in accordance with clause 4.

5.5 The parties agree that SmartOffice may review and increase the charges for the Services. SmartOffice will give the Customer one month's written notice of any such increase.

5.6 Charges relating to call diversion facilities to SmartOffice are payable by the Customer directly to their telephone services provider.



## **6. Information**

The Customer undertakes to provide SmartOffice with all information and co-operation that SmartOffice reasonably requires to enable SmartOffice to perform the Services and to observe its obligation under the Agreement.

## **7. Diversion Facility**

7.1 It is the Customer's responsibility to ensure that the divert facility is properly set-up by their network provider to ensure that the respective call traffic is directed to the appropriate SmartOffice telephone number.

7.2 It is the Customer's responsibility to ensure that all medium or means required to receive communications is fully operational.

## **8. Data**

8. Information about individual clients and their employees is kept strictly confidential in accordance with the Data Protection (Jersey) Law 2005.

8.2 All information disclosed by and/or relating to (i) the customer and its directors, employees, contractors and consultants, and (ii) any person or organisation from whom SmartOffice receives a telephone call for or on behalf of the customer (a "caller"), will be treated as strictly confidential and not disclosed to any person, except to such of the customer's directors, employees, contractors and consultants as the customer may notify to SmartOffice from time to time:

8.3 "Information" includes (without limitation) (i) the name, company, firm or organisation, telephone number and other personal and contact details of the caller, (ii) the nature and content of the call (including any messages or voicemails left by the caller), and (iii) the existence of the call, whether disclosed, recorded or stored verbally, in writing, electronically, or by any other means;

8.4 SmartOffice will process all "personal data" (as defined in the Data Protection (Jersey) Law 2005) relating to the customer, the customer's directors, employees, contractors and consultants, and callers strictly in accordance with the Data Protection (Jersey) Law 2005. For the purposes of this agreement, "process" will include (without limitation) the collection, recording, storage and disposal of personal data; and

8.5 In the event that SmartOffice breaches any or all of the abovementioned provisions, the customer reserves the right to terminate the agreement forthwith without notice to SmartOffice.

## **9. Assignment**

SmartOffice shall have the right to assign, sub-contract or otherwise delegate all or any of its rights and obligations under the Agreement.

## **10. Damages**

10.1 This Condition 10 sets out the entire financial liability of SmartOffice (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to the Customer in respect of:

10.1.1 any use made by the Customer of the Services that have been supplied to the Customer under the terms of this Agreement or any part of them; and

10.1.2 any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Agreement.

10.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Agreement.

10.3 Nothing in these Conditions limits or excludes the liability of SmartOffice:

10.3.1 for death or personal injury resulting from negligence; or

10.3.2 for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by SmartOffice; or



10.4 Subject to condition 10.2 and condition 10.3:

10.4.1 SmartOffice shall not be liable for: loss of profits; or loss of business; or depletion of goodwill and/or similar losses; or loss of anticipated savings; or loss of goods; or loss of contract; or loss of use; or loss of information; or any special, indirect, consequential or economic loss, costs, damages, charges or expenses.

10.4.2 SmartOffice's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance, or contemplated performance, of the agreement shall be limited to an amount equal to the last monthly invoice for the Services used by the Customer.

## **11. Confidentiality**

SmartOffice shall treat all messages as confidential. However, should SmartOffice be served with an appropriate order or warrant SmartOffice shall disclose such information as required by law.

## **12. Force Majeure**

SmartOffice shall have no liability to the Customer under the Agreement if it is prevented from, or delayed in performing, its obligations under the Agreement or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including (without limitation) strikes, lock-outs or other industrial disputes (whether involving the workforce of SmartOffice or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

## **13. Propriety**

The Customer agrees that it will not use the Services for any matter which in the reasonable opinion of SmartOffice constitutes any improper, immoral or illegal purpose and confirms that such use constitutes grounds for immediate termination of the Services by SmartOffice.

## **14. Customer's Obligations**

14.1 The Customer shall co-operate with SmartOffice in all matters relating to the Services

14.2 The Customer shall provide such access to the Customer's premises, telephony and data, and other facilities as may reasonably be requested by SmartOffice and agreed with the Customer in writing in advance, for the purposes of the Services;

14.3 The Customer shall provide such information as SmartOffice may reasonably request and the Customer considers reasonably necessary, in order to carry out the Services in a timely manner and ensure that it is accurate in all material respects;

14.4 In order to utilise the Service Customers must have in place their own business telephone number or numbers. SmartOffice does not provide telephone numbers for commercial use by Customers.

14.5 The Customer shall not publicise, disclose or market any technical information that SmartOffice provides to them for the purposes of call handling. The information provided is to be considered as confidential. This is shared with the Customer for the sole purpose of undertaking Services relating to the Customer's own business telephone number(s). Any misuse of this information will result in the Service being terminated immediately.

## **15. Entire Agreement**

The Agreement constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.



## **16. Rights**

A person who is not a party to the Agreement shall not have any rights under or in connection with it.

## **17. Waiver**

17.1 A waiver of any right under the Agreement is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a party in exercising any right or remedy under the Agreement or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.

17.2 Unless specifically provided otherwise, rights arising under the Agreement are cumulative and do not exclude rights provided by law.

## **18. Variation**

No variation of the Agreement or these Conditions shall be valid unless it is in writing and signed by, or on behalf of, each of the parties.

## **19. Notice**

19.1 Any notice or other communication required to be given under the Agreement shall be in writing and shall be delivered personally, or sent by e-mail, pre-paid first-class post, recorded delivery or by commercial courier to the other party at its registered office or usual place of business.

19.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address for the party or, if sent by email, pre-paid first-class post or recorded delivery, at 9.00am on the second business day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

19.3 This Condition 19 shall not apply to the service of any in any proceedings or other documents in any legal action.

## **20. Governing Law**

This agreement shall be interpreted with Jersey Law and both parties agree to be bound by the jurisdiction of the Courts of the Island of Jersey.