

INDEPENDENT AGENT AGREEMENT CHARGEABLE CONSUMABLES (v4)



Set-out below are the terms and conditions applicable to Your Order of the selected pre-pay SIMs using PayPoint's terminal ("Terms"). If PayPoint accepts your Order a binding contract between you and PayPoint shall be formed in accordance with the Terms. The Terms are binding on You from the date of delivery of SIMs for the entire period during which you promote and sell SIMs supplied to You by PayPoint.

DEFINITIONS

"Activation" means the events that must occur before PayPoint will pay Commission to You as set-out in the relevant Commission Schedule for each Provider

"Agreement" means the Terms and includes any documents referred to in the Terms as accepted by You when placing an Order and all validly made amendments

"Artificially Inflated Traffic" means any situation where the usage is disproportionate to what would be expected from good faith commercial practice and use of the Provider's network;

"Bank Account" means the bank account into which PayPoint pays You for existing services

"Collections" means PayPoint Collections Limited (registered number 03581551) having its registered office at No. 1 The Boulevard, Shire Park, Welwyn Garden City, Hertfordshire AL7 1EL

"Commission" means the commission payable to You by PayPoint upon Activation as notified to You by PayPoint from time to time in accordance with this Agreement

"Commission Schedule" means the schedule setting-out the rates of commission (updated from time to time on notice to You by PayPoint) payable by each Provider to You

"Customers" means an individual who purchases a SIM from You, which has been provided to You by PayPoint

"Fraudulent Activity" means any behaviour or activity which is deemed to be fraudulent in order to unlawfully inflate Commission payments in circumstances where no Commission is payable to You; "Group Company" means any group company of PayPoint as defined in the Companies Act 2006 as updated or amended

"Inappropriate Activity" means any behaviour or activity which is deemed as inappropriate or inconsistent with the good faith sale of SIMs in order to unlawfully inflate Commission payments in circumstances where no Commission payment is payable to You

"Information" means any information about You or Your business (including any personal data and activation records) obtained by PayPoint under this Agreement

"Marketing and Promotion Guidelines" means any marketing and promotion instructions or guidance (in whatever form) as issued by PayPoint and/or any Provider and as advised by PayPoint.

"Network" means PayPoint Network Limited (company number 02973115) having its registered office at No. 1 The Boulevard, Shire Park, Welwyn Garden City, Hertfordshire AL7 1EL

"Order" means an order made by You to purchase SIMs via PayPoint's terminal or another method agreed by PayPoint at the prices advised by PayPoint from time to time

"Party" or "Parties" means You or PayPoint or both as the context requires

"PayPoint" means either "Network, Collections" or both as the context requires

"Provider" or "Providers" means the relevant provider of SIMs for use on that provider's electronic communications system to provide mobile telecommunications services

"SBI" means a self-billing invoice

"SIMs" means the Subscriber Identification Module cards provided to You for promotion and sale in accordance with this Agreement

"Trade Marks" means the Providers' and/or PayPoint's (as the case may be) trade marks, service marks, or logos on any material provided to You for the purposes of selling SIMs

- Appointment:** You are appointed to promote, market, and sell SIMs to Customers subject to the Terms. You must at all times act in accordance with all relevant laws and may not sell more than 2 SIMs from the same provider to any Customer at any one time.
- Orders:** PayPoint may at its absolute discretion accept or reject Orders. Normally orders will be processed within 2 working days. PayPoint may cancel Orders at any time (including after acceptance) without liability if any Provider(s) refuses to supply SIMs.
- Payment:** PayPoint will issue an SBI once an Order is accepted. Network will raise a direct debit over Your Bank Account the day after Your Order is accepted using the existing variable direct debit mandate given by You to PayPoint. Payment will be taken two (2) days after the direct debit is raised.
- Delivery:** PayPoint's distributor will deliver the SIMs to Your normal place of business.
- Risk:** All risk in the SIMs shall pass to You once You sign confirming receipt. You have 5 days from the delivery date to inspect the SIMs. PayPoint shall at its election issue a refund or replace and be responsible for cost of delivery of the SIMs if:
 - the SIMs delivered are not those referred to in the applicable Order; or
 - there is a discrepancy between the amount of SIMs Ordered and that delivered; or
 - there is visible damage to the pack containing the SIMs.
 - If for any reason (other than (a) to (c) above): (i) PayPoint is unable to deliver Your Order through no fault of its own; or (ii) You refuse or are unable to accept Your Order; then PayPoint may recover cost of processing and/or delivery at its discretion by way of set-off, deduction, or by direct debit of our Bank Account.
- Promotion and Sales:** You will promote and sell the SIMs in accordance with the Marketing and Promotion Guidelines and as instructed by PayPoint or the Provider from time to time. You must not at any time:
 - represent to any customer or third party that You are a representative or agent of PayPoint or any Provider.
 - make any public statement about PayPoint or any Provider.
 - PayPoint may provide marketing and promotional material on behalf of Providers from time to time.
- Customer Service:** You will direct any customer enquiries to the Provider unless notified otherwise by PayPoint.
- Use of Trademarks:** You are licensed to use the Trade Marks subject to this Agreement.
 - You will not: (i) obliterate, interfere with, mutilate or otherwise remove any of the Trade Marks and will not affix Your trade marks, service marks, or logos (or that of a third party), either in addition to or in place of any existing trade marks, service marks, or logos; or (ii) register or attempt to register any Trade Marks or any other word or logo likely to be confused with the Trade Marks.
 - You will:
 - comply with all reasonable conditions and instructions that PayPoint and/or any Provider attaches to such license;
 - notify PayPoint or the Provider if You become aware of any actual or threatened infringement of the Trade Marks or You suspect infringement of the Trade Marks;
 - provide assistance to PayPoint and/or any Provider to action and execute documents for the purpose of registering the grant of any license under the Trade Marks Act 1994.For the avoidance of doubt, you will not make any such application in Your own name.
 - In the event that You are found to be using the Trade Marks contrary to the Marketing and Promotion Guidelines, You shall immediately remove such Trade Marks upon written instruction from PayPoint or the Provider.
 - Upon termination of this Agreement you will immediately cease to make use of any Trade Marks unless authorised in writing to do so by PayPoint in order to promote and sell SIMs You have in stock as at the date of termination.
- Title:** You are licensed to market, promote, and sell SIMs in accordance with the Terms however each Provider retains title in its SIMs and its Trade Marks.

- Recall and Expiry:** PayPoint may recall SIMs held by You if instructed to do so by Providers. If so, You must offer-up the recalled SIMs and cease selling them. PayPoint will provide a refund for recalled SIMs subject to this Agreement and receiving a refund from the Provider. Providers may recall the telephone number of a SIM after the expiry of a certain period indicated on the packaging ("Expiry Period"). DETAILS OF THE EXPIRY PERIOD WILL BE PRINTED ON THE PACKAGING OF SIMS. IT IS YOUR RESPONSIBILITY TO SELL SIMS BEFORE THE END OF THE EXPIRY PERIOD AND PAYPOINT WILL NOT BE LIABLE TO REPLACE OR EXCHANGE EXPIRED SIMS. ONCE RECALL HAS OCCURRED YOU WILL BE UNABLE TO SELL SIMS; YOU WILL NOT RECEIVE A REFUND; AND YOU MUST OFFER-UP SUCH EXPIRED SIMS AS DIRECTED BY PAYPOINT.

- Commissions:** PayPoint will pay Commission monthly in arrears into Your Bank Account for Activated SIMs sold by You. Commission is only payable by PayPoint to You once PayPoint has received payment from the Provider and in corresponding proportions. In certain circumstances Providers may refuse to pay, or recall paid, Commission. PayPoint will notify you of these circumstances in the relevant Commission Schedule. The Commission rates may be changed by PayPoint on 14 days' notice or immediately if so changed by any Provider. You acknowledge that PayPoint will pay Commission in accordance with commission payment it receives from Providers and may withhold or recall Commission in accordance with any withholding or recall by Providers and this Agreement. These arrangements may differ between providers (particularly, but not limited to, payments dates and the proportions of Commission payable).

- Self-Billing Invoice:** PayPoint will generate and send to You an SBI containing: a statement of transactions for which commission is due; and the period covered by the billing invoice.

You agree:

- that PayPoint's self billing invoices will be the only tax invoices raised for the transaction;
- to pay the amount of VAT shown on the SBI to HMRC as output tax;
- not to apply to HMRC to be deregistered without first notifying PayPoint in writing by means of recorded postal delivery;
- to inform PayPoint immediately of any changes to Your VAT registration number and/or Your local VAT office by means of recorded postal delivery;
- to indemnify Collections for any VAT or other expense it may incur as a result of a breach by You of any of the matters contained in this clause including a refund in any over payment of commission.

You will check the accuracy of the billing invoice and will within 5 days of receipt notify PayPoint in writing of any discrepancy in or omission from the SBI. If You do not within 5 days of receipt of the SBI notify PayPoint of any discrepancy in or omission from the SBI You are deemed to have accepted it as a true and accurate record of all transactions for which Commission is due to You. PayPoint will pay You Commission due within eleven banking days following the issue of the SBI. You shall retain and keep secure copies of SBIs.

- Set-Off:** PAYPOINT MAY SET-OFF ANY AMOUNTS DUE TO YOU UNDER THIS AGREEMENT AGAINST OTHER AMOUNTS OWED BY YOU TO PAYPOINT OR ANY GROUP COMPANY UNDER ANY EXISTING AGREEMENTS WITH PAYPOINT OR ANY GROUP COMPANY

- Obligations and Restrictions:** Notwithstanding Your obligations and restrictions set out elsewhere in this Agreement, You promise that You will:

- comply with Providers' reasonable instructions as issued from time to time including (i) those that are necessary to ensure that the Provider can comply with its regulatory obligations; and (ii) those regarding fraud, Fraudulent Activity, Inappropriate Activity, crime prevention or other security procedures;
- not interfere with the SIMs or assist any other person to do so;
- not facilitate any pre-pay connections (including the sale of SIMs) that (i) are used in a gateway; (ii) generate Artificially Inflated Traffic; or (iii) are acquired through Fraudulent Activity or Inappropriate Activity. In the event that PayPoint and/or the Provider believe that you have breached this clause 14c), PayPoint or the Provider will be entitled to claw back any amounts paid to You in respect of such SIMs;
- not engage in (i) dishonest, misleading or deceptive conduct in relation to Customers; or (ii) engage in aggressive conduct in relation to Customers;
- not contact Customers in an inappropriate manner;
- not offer any Customer a sales incentive that is to be supplied by a Provider;
- not make any promises or representations or given any warranties or guarantees in respect of the SIMs or promotional material

- Liability:** PAYPOINT SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE WHETHER DIRECT OR INDIRECT FOR ANY FINANCIAL LOSS OR LOSS OF PROFITS, REVENUE, BUSINESS, CONTRACTS, ANTICIPATED SAVINGS, USE OR GOODWILL HOWEVER ARISING OR ANY CONSEQUENTIAL OR CONTINGENT, AND WHETHER FORESEEABLE OR NOT HOWSOEVER CAUSED (EXCEPT IN THE CASE OF FOR DEATH OR PERSONAL INJURY RESULTING FROM PAYPOINT'S PROVED NEGLIGENCE) ARISING OUT OF THE SUPPLY OF SIMS. YOU WILL INDEMNIFY PAYPOINT AGAINST ALL LOSS IN RESPECT OF:

- ANY BREACH BY YOU OF THESE TERMS; AND/OR
- DEATH OR PERSONAL INJURY OR LOSS OR DAMAGE TO PROPERTY CAUSED BY YOUR DELIBERATE OR NEGLIGENT ACT OR OMISSION;

PAYPOINT DOES NOT WARRANT THE AVAILABILITY OF THE SIMS AND SHALL NOT BE LIABLE FOR ANY ACTS OR OMISSION ATTRIBUTABLE TO THIRD PARTIES, INCLUDING BUT NOT LIMITED TO PROVIDERS.

- Force Majeure:** Neither Party will be liable for delay in performing or failure to perform obligations if the delay or failure results from events or circumstances outside its reasonable control including but not limited to Acts of God, industrial action or governmental action. Such delay or failure shall not constitute a breach of this Agreement, and the time for performance shall be extended by a period equivalent to that during which performance is so prevented provided that if such delay or failure persists for more than three months nothing in this clause shall be taken to limit or prevent the exercise by either Party of its right of termination forthwith.

- Termination:** PayPoint may terminate this Agreement and Your authorisation to market, promote, and sell SIMs supplied by PayPoint immediately on notice.

- Effect of Termination:** On termination of this Agreement:

- You will immediately at PayPoint's direction and at Your own expense send to the Provider, or dispose of in accordance PayPoint's directions, all samples of the SIM Cards and any advertising, promotional, or sales material relating to the SIMs then in Your possession;
 - You will immediately return any personal information relating to Customers held by You;
 - PayPoint may cancel any Order (regardless of whether the Order has been accepted); and
 - If required by the Provider (as notified by PayPoint) return all unsold SIMs. PayPoint will refund You for any such SIMs.
- Termination shall not affect those clauses in this Agreement expressly or impliedly intended to survive termination.

- Miscellaneous**

Rights of Third Parties: You acknowledge and agree that Providers are a third party beneficiaries of this Agreement in respect of any rights or obligations which are for the benefit of any Provider in accordance with Contract (Rights of Third Parties) Act 1999 and may take such steps and initiate such actions as each Provider deems necessary to enforce any terms of this Agreement without objection based upon lack of privity or similar claims.

Contd./..

INDEPENDENT AGENT AGREEMENT – CHARGEABLE CONSUMABLES (v4)/Contd...



Entire Agreement: The parties acknowledge that this Agreement as varied from time to time constitutes the entire Agreement of the parties and supersedes and cancels any previous understandings, commitments, agreements and representations whatsoever whether written or oral, express or implied in relation to the contents hereof. For the avoidance of doubt, no provision of this Agreement excludes or limits either Party's liability for fraudulent misrepresentation.

Confidentiality: Each Party shall keep confidential all information it knows or ought to reasonably know is confidential including information relating to the other Party, its affairs, business, or method of carrying on business and shall not disclose such information unless authorised to do so by the other Party or compelled to do so by a Court or other authority of competent jurisdiction.

Compliance: You shall perform Your obligations under this Agreement in accordance with all relevant laws and codes of practice (whether voluntary or otherwise) insofar as these are applicable to the Agreement.

Rights of Access: PayPoint and/or the Provider (or their authorised agents) shall have the right of access at all reasonable times and on reasonable notice in writing in advance to Your premises and business records used for/relating to the storage and/or sale of SIMs to:

- a) audit Your compliance with this Agreement and any applicable legal requirements in respect of the sale of SIMs;
- b) audit Your compliance with the Marketing and Promotion Guidelines; and/or
- c) to prevent fraud, money laundering, or any other criminal activity as it relates to this Agreement.

Use of Information: You hereby consent to PayPoint:

- a) transferring any Information to Providers;
- b) and Providers using Information for purposes related to this Agreement; and
- c) and Providers securely storing Information outside of the United Kingdom.

Waiver: Any concession or waiver allowed by one Party to the other shall neither prevent that Party from exercising any of its rights nor prejudice its rights to take any subsequent action.

Notices: Any notice required to be given by either Party hereunder shall be given in writing and shall if sent by first class post be deemed to be delivered 48 hours after posting.

Law: This Agreement and any contract subject thereto shall be governed, construed and shall take effect in accordance with the laws of England and Wales and shall be subject to the exclusive jurisdiction of the English courts.

Commercial Agents: You acknowledge and agree that the Commercial Agents (Council Directive) Regulations and related regulations or EC directives do not apply to this Agreement or to any activities contemplated by it.

OFCOM: You agree to comply with relevant General Conditions issued by OFCOM from time and acknowledge that you are aware of and agree to comply with Condition 23 of the General Conditions once it comes into force located on the same website as this Agreement and summarised at:
<http://stakeholders.ofcom.org.uk/binaries/consultations/mobmisselling/statement/statement.pdf>

Assignment: This Agreement is personal to You and may not be assigned or otherwise transferred in whole or in part without PayPoint's prior written consent. PayPoint may assign its rights in whole or in part.

Severance: If at any time any one or more of the provisions hereof is or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality, and enforceability of the remaining provisions hereof shall not be in any way affected or impaired thereby.

Variation: PayPoint may vary the Terms by providing 28 days' written notice of variation to You or immediately if required to do so by any Provider.