Dated

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Consultancy agreement

between

midland telecom networks limited

and

XXXX

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**THIS AGREEMENT IS DATED** XXXX

Parties

1. **MIDLAND TELECOM NETWORKS LIMITED** incorporated and registered in England and Wales with company number 06299072 whose registered office is at 140 Stourbridge Road, Halesowen, Birmingham, West Midlands, B63 3UL (Client).
2. XXXX (Consultant).

Agreed terms

# Definitions

## The definitions and rules of interpretation in this clause apply in this agreement (unless the context requires otherwise).

Business of the Client**:** the provision of telecommunications equipment and services

Business Opportunities**:** any opportunities which the Consultant becomes aware of during the Engagement which relate to the Business of the Client or which the Client reasonably considers might be of benefit to it.

Capacity**:** as agent, consultant, director, employee, owner, partner, shareholder or in any other capacity.

Commencement Date**:** XXXX

Client Property**:** all documents, books, manuals, materials, records, correspondence, papers and information (on whatever media and wherever located) relating to the Business or affairs of the Client or its customers and business contacts, and any equipment, keys, hardware or software provided for the Consultant's use by the Client during the Engagement, and any data or documents (including copies) produced, maintained or stored by the Consultant on the Client or the Consultant's computer systems or other electronic equipment during the Engagement.

Confidential Information**:** information in whatever form (including without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, customers, products, affairs and finances of the Client for the time being confidential to the Client and trade secrets including, without limitation, technical data and know-how relating to the Business of the Client or any of its suppliers, customers, agents, distributors, shareholders, management or business contacts, and including (but not limited to) information that the Consultant creates, develops, receives or obtains in connection with his Engagement, whether or not such information (if in anything other than oral form) is marked confidential.

Customer: a customer of the Client in respect of whom the Consultant has personally provided the Services.

Engagement**:** the engagement of the Consultant by the Client on the terms of this agreement.

Net Profit: the amount earned by the Client from Customer contracts obtained via the Consultant after the following deductions have been made from the amount charged to the Customer:- (a) any value added tax or other sales tax included in the price (b) any line rental costs, service charges, call costs, bad debts, administration fees or disbursements incurred by the Client in respect of the Customer’s contracts which are payable to third parties and (c) any allowances, discounts or rebates.

Invoice value: the total value of invoiced line rental, internet connection rental and call charges, including V.A.T and any other applicable taxes. This excludes call-out or labour charges arising from the use of BT Openreach and other engineers and any equipment charges or sales.

Pre-Contractual Statement**:** any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the Engagement other than as expressly set out in this agreement.

Services**:** negotiating and selling contracts for the provision of telecommunications services on behalf of the Client.

Termination Date**:** the date of termination of this agreement, howsoever arising.

## The headings in this agreement are inserted for convenience only and shall not affect its construction. A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

## Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders. Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular.

# Term of engagement

## The Client shall engage the Consultant and the Consultant shall provide the Services on the terms of this agreement. The Engagement shall commence on the Commencement Date and shall continue unless and until terminated:

### as provided by the terms of this agreement;

### by either party giving to the other not less than 4 weeks' prior written notice.

# Duties

## During the Engagement the Consultant shall:

### provide the Services with all due care, skill and ability and use his best endeavours to promote the interests of the Client; and

### promptly give to the Client all such information and reports as it may reasonably require in connection with matters relating to the provision of the Services or the Business of the Client.

## Unless he has been specifically authorised to do so by the Client in writing, the Consultant shall not:

### have any authority to incur any expenditure in the name of or for the account of the Client; or

### hold himself out as having authority to bind the Client.

## The Consultant shall comply with all reasonable standards of safety and comply with the Client's health and safety procedures from time to time in force at the premises where the Services are provided and report to the Client any unsafe working conditions or practices.

## The Consultant undertakes to the Client that during the Engagement he shall take all reasonable steps to offer (or cause to be offered) to the Client any Business Opportunities as soon as practicable after the same shall have come to his knowledge and in any event before the same shall have been offered by the Consultant (or caused by the Consultant to be offered) to any other party.

## The Consultant may use a third party to perform any administrative, clerical or secretarial functions which are reasonably incidental to the provision of the Services provided that:

### the Client will not be liable to bear the cost of such functions; and

### at the Client's request the third party shall be required to enter into direct undertakings with the Client, including with regard to confidentiality.

## The Consultant shall comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010. Breach of this clause shall be deemed a material breach of this agreement.

# Commission

## The Consultant shall be entitled to receive a commission fee of XXXX of any contract with a Customer in respect of which the Consultant provided the Services. Commission is based on customers paying by direct debit. If a customer does not pay by direct debit, or later cancels a direct debit commission is not payable on that customer.

## Any commission due will only become payable and be paid once the Client has received cleared funds from the Customer in full settlement of any invoices.

## Commission should be claimed as follows: During the Engagement, the Consultant shall submit to the Client a monthly invoice which gives details of the Services provided, the amount of commission payable for that month. The invoice shall include breakdown of the commission fee claimed by reference to relevant customer invoices.

## Following receipt of the Consultant’s invoice, any fees due to the Consultant will be payable by bank transfer on or around the 25th of each month in arrears.

## Upon the termination of this Engagement, the Consultant will continue to receive any ongoing commission due until the expiry of the Customer’s contract in respect of which the Consultant personally provided the Services. The Consultant will have no further entitlement to any ongoing commission in the event that:

### this agreement is terminated in accordance with clause 10; or

### a Customer renews or enters into a subsequent contract with the Client, unless the Consultant is directly responsible for negotiating and securing the renewal or subsequent contract on behalf of the Client or

### a Customer cancels a contract with the Client.

## If the Client incurs any costs or losses as a result of any Customer complaint or contract cancellation in respect of which the Consultant has already received commission fees, the Consultant will be liable to reimburse the Client for all and any such losses. For the avoidance of doubt, the Client can recoup any such losses by way of set-off against any commission fees due under this Agreement.

# Expenses

## The Consultant shall bear his own expenses incurred in the course of the Engagement.

# Other activities

Nothing in this agreement shall prevent the Consultant from being engaged, concerned or having any financial interest in any Capacity in any other business, trade, profession or occupation during the Engagement provided that:

### such activity does not cause a breach of any of the Consultant's obligations under this agreement; and

### the Consultant shall not engage in any such activity if it relates to a business which is similar to or in any way competitive with the Business of the Client without the prior written consent of the Client. If the consultant engages with a competitor prior to and without written consent of the Client this shall be seen as gross misconduct.

# Confidential information

## The Consultant acknowledges that in the course of the Engagement he will have access to Confidential Information. The Consultant has therefore agreed to accept the restrictions in this clause 7.

## The Consultant shall not (except in the proper course of his duties), either during the Engagement or at any time after the Termination Date, use or disclose to any third party (and shall use his best endeavours to prevent the publication or disclosure of) any Confidential Information. This restriction does not apply to:

### any use or disclosure authorised by the Client or required by law; or

### any information which is already in, or comes into, the public domain otherwise than through the Consultant's unauthorised disclosure.

## At any stage during the Engagement, the Consultant will promptly on request return all and any Client Property in his possession to the Client.

# Data protection

## The Consultant consents to the Client holding and processing data relating to him for legal, personnel, administrative and management purposes and in particular to the processing of any "sensitive personal data" (as defined in the Data Protection Act 1998) relating to the Consultant.

## The Consultant consents to the Client making such information available to those who provide products or services to the Client such as advisers, regulatory authorities, governmental or quasi governmental organisations and potential purchasers of the Client or any part of its business.

# Liability

## The Consultant shall have personal liability for and shall indemnify the Client for any loss, liability, costs (including reasonable legal costs), damages or expenses arising from any breach by the Consultant of the terms of this agreement including any negligent or reckless act, omission or default in the provision of the Services and shall accordingly maintain in force during the Engagement full and comprehensive insurance arrangements.

# Termination

## Notwithstanding the provisions of clause 2.1, the Client may terminate the Engagement with immediate effect with no liability to make any further payment to the Consultant (other than in respect of amounts accrued before the Termination Date) if at any time the Consultant:

### commits any gross misconduct affecting the Business of the Client;

### commits any serious or repeated breach or non-observance of any of the provisions of this agreement or refuses or neglects to comply with any reasonable and lawful directions of the Client;

### is convicted of any criminal offence (other than an offence under any road traffic legislation in the United Kingdom or elsewhere for which a fine or non-custodial penalty is imposed);

### is in the reasonable opinion of the Board negligent or incompetent in the performance of the Services;

### is declared bankrupt or makes any arrangement with or for the benefit of his creditors or has a county court administration order made against him under the County Court Act 1984;

### is incapacitated (including by reason of illness or accident) from providing the Services for an aggregate period of 183 days in any 52 week consecutive period; or

### commits any fraud or dishonesty or acts in any manner which in the opinion of the Clientbrings or is likely to bring the Consultant or the Client into disrepute or is materially adverse to the interests of the Client.

### contacts one or more of the client’s customers with a view to providing equipment or services to them either directly or indirectly that could be provided by the client.

## The rights of the Client under clause 10.1 are without prejudice to any other rights that it might have at law to terminate the Engagement or to accept any breach of this agreement on the part of the Consultant as having brought the agreement to an end. Any delay by the Client in exercising its rights to terminate shall not constitute a waiver of these rights.

# Obligations on termination

On the Termination Date the Consultant shall:

### immediately deliver to the Client all Client Property in his possession or under his control;

### irretrievably delete any information relating to the Business of the Client stored on any magnetic or optical disk or memory and all matter derived from such sources which is in his possession or under his control outside the premises of the Client; and

### provide a signed statement that he has complied fully with his obligations under this clause 11.

# Status

## The relationship of the Consultant to the Client will be that of independent contractor and nothing in this agreement shall render him an employee, worker, agent or partner of the Client and the Consultant shall not hold himself out as such.

## This agreement constitutes a contract for the provision of services and not a contract of employment and accordingly the Consultant shall be fully responsible for and shall indemnify the Client for and in respect of:

### any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Services, where the recovery is not prohibited by law. The Consultant shall further indemnify the Client against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Client in connection with or in consequence of any such liability, deduction, contribution, assessment or claim;

### any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Consultant or any Substitute against the Client arising out of or in connection with the provision of the Services.

## The Client may at its option satisfy such indemnity (in whole or in part) by way of deduction from any payments due to the Consultant.

# Notices

## Any notice given under this agreement shall be in writing and signed by or on behalf of the party giving it and shall be served by delivering it personally, or sending it by pre-paid recorded delivery or registered post to the relevant party at (in the case of the Client) its registered office for the time being and (in the case of the Consultant) his last known address. Any such notice shall be deemed to have been received:

### if delivered personally, at the time of delivery;

### in the case of pre-paid recorded delivery or registered post, 48 hours from the date of posting.

## In proving such service it shall be sufficient to prove that the envelope containing the notice was addressed to the address of the relevant party and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery or registered post.

# Entire agreement and previous contracts

Each party on behalf of itself acknowledges and agrees with the other party that:

### this agreement constitutes the entire agreement and understanding between the Consultant and the Client and supersedes any previous arrangement, understanding or agreement between them relating to the Engagement (which shall be deemed to have been terminated by mutual consent);

### in entering into this agreement neither party has relied on any Pre-Contractual Statement; and

### each party agrees that the only rights and remedies available to it or arising out of or in connection with any Pre-Contractual Statement shall be for breach of contract. Nothing in this agreement shall, however, limit or exclude any liability for fraud.

# Variation

No variation of this agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties.

# Counterparts

This agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, and all the counterparts together shall constitute one and the same instrument.

# Third party rights

## A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

## The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any person that is not a party to this agreement.

# Governing law and jurisdiction

## This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

## The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

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| --- | --- |
| Executed as a deed by  **MIDLAND TELECOM NETWORKS LIMITED** acting by **DAVID DONNELLY**, Head of Operations and **MARK HORROBIN**, a director. | .......................................  David Donnelly  Head of Operations  .......................................  Mark Horrobin  Director |
|  |  |
|  |  |
| Signed as a deed by  in the presence of:  .......................................  SIGNATURE OF WITNESS  NAME:  ADDRESS:  OCCUPATION OF WITNESS: | .......................................   Consultant |