

TERMS AND CONDITIONS FOR THE NORTHWAY COMMUNICATIONS SERVICES (UK) LIMITED

BROADBAND NETWORK AND VOIP SERVICE

1. DEFINITIONS

In these terms and conditions unless the context otherwise requires the following words shall have the following meanings:

"Acceptance Date" means the date on which the Connection Devices are installed and accepted for use by the Client in accordance with clauses 3.2, 3.3 or 5.4.

"Acceptance Tests" means the Company's standard procedures to test the functioning of the Connection Devices, and which may be carried out either by the Client in accordance with the recommendations of the Company, or by the Company as appropriate.

"Access Number" means the telephone access number allotted by the Company to the Client for the provision of the Service. The Client is responsible for the provision and maintenance of any connection devices (other than any provided by the Company) and telecommunications lines that may be necessary to access the Service, and for all call charges that may be incurred in calling the Access Number.

"Company" means Northway Communications Services (UK) Limited

"Client" means the individual or business subscribing to the service.

"customer" means the same as client, i.e. individual or business subscribing to the service.

"Connection Devices" means the Company's equipment provided as part of the Implementation Services in order to allow the Terminal Devices and/or Telephone handsets to access the Service.

"Customer Support Hours" means Monday to Friday 0900 – 1800 excluding Bank and Public holidays in England. Support calls will be logged on Saturdays, and addressed the following Monday.

"Fair usage policy" means the company's policy to provide equitable service to all customers and that shall be published under the terms and conditions section of www.northway.net which may be varied from time to time.

"Hosted PBX" means a telephone system that runs on a shared hardware hosted within the Company's network using voice over IP technology.

"Implementation Services" if any means the supply and implementation of the Connection Device, and arranging the supply of a Telecommunications Service between the Client Site and the Service so that the Client may connect these via Terminal Devices to the Connection Service for the purpose of accessing the Service. This is normally conducted by the Client, but may also be undertaken by the Company's staff in the event the Client chooses this option.

"Service" means the overall service connecting Terminal Devices to the Connection Devices over a telecommunications link enabling the Client to connect to the Internet for the purpose of providing connectivity to the Internet and Voice Services where applicable.

"SITE" means the address specified in the attached schedule signed by the Client where implementation will take place.

"3rd Party Service provider" means other companies providing components used as part of the service outside of the "Company"

"Telephone Handsets" means the type and number of telephone devices of the Client, or those to be provided as specified in the attached schedule signed by the Client, or as subsequently agreed in writing between the parties.

"VOIP" means voice over internet protocol.

"Service Provider" means the supplier of equipment, software and /or telecommunications services contracted to the Company and which may from time to time to be used at the discretion of the Company to provide components of the "Service".

2. SERVICE DESCRIPTION AND LIMITATIONS OF USE.

2.1 The service consists of a managed network connection including customer premises equipment and/or voice over IP terminating facilities

2.2 All telecommunication services are supplied utilising the telephone lines, cabling, equipment, network switches, VOIP exchanges and machinery of such third party telecommunication service provider as the Company may from time to time select ("Service Provider").

2.3 Backup services are provided using third party 3G mobile network operators.

2.4 This Service can provide access to 999 emergency or operator services. The customer must complete location forms and strictly observe the geographic location requirements set down by the Service Provider. This is to ensure that the customer's calls are always routed to the correct call centre.

2.5 The service will not be available in the event of power loss at the customer site.

2.6 This Service does not guarantee that any single, or range of access numbers will be available as continuation of any number may be restricted by the type of package you have purchased.

2.7 This Service does not guarantee that functionality such as caller line identification barring or display will be available to you;

2.8 This Service does not guarantee the operation of text relay messaging that may be available on any particular phone handset.

2.9 This Service does not guarantee the porting in or out of VoIP phone numbers. However the Company will make reasonable endeavours to facilitate porting of numbers on request of the Client.

2.10 This Service does not support FAX over VOIP. Inbound fax can be supported via optional fax to email service.

2.11 The supply of in country telephone numbers is subject to local regulatory terms and conditions. The customer agrees to comply to all in country regulations.

2.12 The company does not guarantee the availability of any telephone number purchased and accepts no liability for the delivery of calls to such number. Conditions.

2.13 Pre-pay call credit is non-refundable.

2.14 Call Bundle specific terms and conditions

2.14.1 Bundled calls are subject to northway's acceptable usage policy.

2.14.2 For mobile bundles no more than 20% of calls should be to mobiles on the THREE network. Northway reserves the right to charge our normal rate to this network if this is exceeded. Note that this condition is due to wholesale rates exceeding the retail price for this network and is designed to prevent individual customers solely using the service for calls to THREE.

2.14.3 Only one account can be assigned per bundle, i.e. a PBX trunk or a single SIP user account. This means that a single bundle can not be pooled over several FREE accounts but can be pooled across extensions when used with a PBX

2.14.4 Unused minutes can not be carried over to the following month.

2.14.5 International minutes are restricted to landlines only, and certain destinations are excluded. See list on website as these destinations vary from time to time due to changes with international carriers.

2.14.6 Minimum bundle contract period 1 month.

2.14.7 Billing is monthly in advance for bundle, arrears for excess usage by direct debit.

2.14.8 Accounts are subject to a credit limit

2.14.9 Bundle can only be changed once per quarter, and at the next billing interval.

2.14.10 Non geographic numbers are excluded from all bundles.

2.14.11 Calls within the bundle over 30 second duration are rounded up to the nearest minute, calls 30 seconds and under are rounded to the nearest second. Outside of the bundle calls are charged at the published per second rate. *This ensures that the caller is not penalised for calls that are answered by voicemail or other automated equipment, unlike other operators who round all bundled calls up to the nearest minute*

3. RESPONSIBILITIES OF THE COMPANY

3.1 The Client or the Company will use its reasonable endeavours to ensure that the Implementation Services are concluded without delay as soon as the Connection Devices are available for installation.

3.2 Either the Client or the Company as appropriate will conduct the Acceptance Tests upon completion of the Installation Services. Upon completion of the tests to the Company's reasonable satisfaction, the acceptance of the Connection Devices will be confirmed by the Client's signature either on an Acceptance Certificate or, with the agreement of the Company by electronic mail. The Company shall thereafter provide the Service without undue delay.

3.3 The Company will provide access to its Customer Services Desk during Customer Support Hours for the notification of Service faults, and will commence rectification action within four hours of the fault being recorded.

3.4 In the event of the failure of the Connection Devices, and subject to clause 3.5, the Company shall provide Maintenance Services in order to restore normal operation as soon as is reasonably practicable (a) by providing diagnostic and rectification advice over the telephone; or (b) if the fault cannot be so fixed, then despatching either a replacement Connection Device by post or by despatching a service engineer to remedy the fault or to replace the Connection Device, depending upon whichever service level has been contracted by the Client.

In the case of postal replacement of the Connection Device, for calls received before 1600 hours Monday – Friday, the Company will use its reasonable endeavours to despatch a replacement Connection Device so that it arrives before 1200 hours on the next business day including Saturday.

Where on-site maintenance has been contracted, the Company will use all reasonable endeavours to ensure that a service engineer arrives on the Client's premises the same day when calls are received by 1000 hours Monday – Friday. A service engineer will arrive at the Client's premises on the following business day excluding Saturday for calls received after this time.

The customer may contract for Saturday on-site cover at a premium, in which case Saturday shall be regarded as a normal business day.

3.5 The provision of the Maintenance Services is subject to the Client ensuring that mains power, fuses, line connections, computers, software including communications software, and Telephone Handsets Devices are in good working order, and that all the relevant diagnostic facilities have been used in accordance with the relevant manufacturer's or supplier's specification.

3.6 The provision of the Service and in particular the telecommunications link is subject to the Client not making any changes to the address of the Branch or premises to which service is provided. In the event a change is required, the Service may be required to be ceased and re-provided at an extra charge that is currently £100 but which may be different at the time depending upon the circumstances. The Company reserves the right to make a reasonable further charge in order to gain the consent of various telecommunications providers to such change. In the event of the Client changing any of the it's details on the BT account on which the broadband line is provided and which result in the interruption of the "Service", the client accepts that such an event would not in any way be the responsibility of the Company.

- 3.7 The Company reserves the right to raise additional charges at its standard rates from time to time in the event that (a) if it is apparent that the Client has not complied with the provisions of clause 3.5, or (b) if the Connection Devices are moved from the Client's premises, or (c) if the Connection Devices are maintained by any person, firm or company employed by the Client without the Company's express written permission or instruction of the Company, or (d) if any overhauls of the Connection Devices are required due to misuse, neglect or failure to use the Connection Devices in accordance with any instructions issued by the Company. If any of these conditions require the Company to overhaul or replace the Connection Devices, the Company shall do so for a fee that will be additional to that charged or deemed to be charged for Maintenance Services.
- 3.8 Any amendments or modifications to the Implementation Services and/or Telephone Handset Devices and/or any provision of this Agreement shall be subject to the prior written consent of the Company which reserves the right to increase the charges payable under this Agreement.
- 3.9 The Company's obligations under this Agreement in connection with the provision of the Service or the Maintenance Services shall extend only to the Connection Device, the telecommunications link and the provision voice telephony. All other services shall be beyond the scope of this Agreement or otherwise beyond the Company's control, and the Company reserves the right to charge the Client for the provision of such incremental services at the Company's then prevailing rates.
- 3.10 The Company shall give the Client reasonable notice of any planned intention to suspend the Service as may be required for necessary maintenance. In such an event, and on any occasion when the Company is forced to suspend the Service for exceptional operational reasons, the Company shall use its reasonable endeavours to minimise the duration and effect of any such interruption of the Service.
- 3.11 The Company shall make reasonable endeavours to ensure that 3rd party service providers deliver services to the standards defined in this agreement. The company offers not guarantee on the performance of these 3rd parties.
- #### 4. SECURITY AND CONTENT
- 4.1 In consideration of the Company agreeing to provide the Service to the Client, the Client covenants and undertakes to the Company to use the Services in accordance with such reasonable operating instructions as may be notified in writing or verbally by the Company to the Client from time to time and in accordance with any telecommunications or other licenses which govern the running of a telecommunications by the Client.
- 4.2 Without limitation to the generality of clause 4.1, the Client undertakes to the Company not to use the Service or to permit the Service to be used for (a) the communication or transmission of any material which is defamatory, abusive or offensive or of an obscene, nuisance, hoax, threatening or menacing character; or (b) in a manner that constitutes a violation or infringement of the right of any person, firm or company (including but not limited to the rights of copyright or confidentiality) or (C) the sending of bulk unsolicited emails or spam.
- 4.3 The Client undertakes with the Company that it shall not, and it shall not permit any third party to violate the system or network including but not limited to the following: (a) the unauthorised access or use of data system or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without the express authorisation of the owner of the system or network; (b) the unauthorised monitoring of data or traffic on any network or system without the express authorisation of the owner of the system or network; (c) the interference with any service to any user, host or network including, without limitation, mailbombing, flooding, deliberate attempts to overload the system, syn attacks, denial of service attacks; (d) the forging of any TCP-IP packet header or any part of the header information in an email or a newsgroup posting.
- 4.4 The company shall be entitled to rate limit connections if they consistently exceed the average usage for other users of the same product type
- 4.5 The Company shall be entitled to investigate incidents involving any violations including but not limited to those referred in clauses 4.2, 4.3 and 4.4 and may involve and will cooperate with law enforcement if a criminal violation is suspected.
- 4.6 The Company shall be entitled to restrict, or block certain network protocols where it is considered to be detrimental to the delivery of other protocols or the normal continuation of services to other clients of the Company.
- 4.7 The Company shall restrict access to hosted PBX services to IP addresses within the Company's own network and if requested by the client in writing to fixed public IP addresses outside of the Company's network. If the Client requests access to the PBX from outside of the Company's network from a dynamic IP address the Client accepts responsibility for any fraudulent access to the PBX and any charges arising for calls made.
- #### 5. RESPONSIBILITIES OF THE CLIENT
- 5.1 Whilst the service does not have a throughput limit the client will adhere to the companies fair usage policy as published.
- 5.2 The Client will provide access to the Branch and such assistance as may be necessary to enable the Company to carry out Implementation Services and the Maintenance Services in the event the Client has chosen to have these Services provided by the Company. In the event of expiration or sooner termination of this Agreement for any reason the Client will return the Connection Devices in good working order by post for delivery the following day or, if the Client has opted for the Company to install the Connection Devices permit the Company and/or obtain any consents necessary to permit the Company to enter the Branch to remove the Connection Devices.
- 5.3 The risk of damage to, or theft or loss of the Connection Devices and/or other equipment loaned to the Client pursuant to clause 5.9 will be the responsibility of the Client from delivery of the same to the Branch and the Client shall take out policies of insurance covering such risks for the full reinstatement value thereof in the joint names of the Company and the Client. Notwithstanding the foregoing, the ownership of the Connection Devices will remain vested in the Company.
- 5.4 If the Acceptance Tests cannot be carried out within three business days of delivery of the Connection Devices due to causes which are under the control of the Client then the Connection Devices will be deemed to be in good working order and the Acceptance Tests deemed to have been completed satisfactorily.
- 5.5 If, following installation of the Connection Devices, the Client shall make any use of the Service, the Client shall be deemed to have satisfactorily completed the Acceptance Tests.
- 5.6 To obtain the Maintenance Services, the Client will follow the procedures specified in clause 3.5. The Client will only move or maintain or permit a third party to move or maintain the Connections Devices with the prior written consent of the Company.
- 5.7 The Client acknowledges that the Service is an open access service and will indemnify the Company from and against any claims made against the Company in any way relating to the nature, accuracy or use of the data existing on the Service that is accessed via the Terminal Devices.
- 5.8 The Client will not use the Connection Devices nor the cabling supplied by the Company to connect any third party network save with the prior written consent of the Company which reserves the right to charge therefor.
- 5.9 The Client will ensure that a suitable environment in accordance with the Company's recommendations exists at the branch and will be responsible for the provision of adequate mains power and, in either respect, will comply with such recommendations.
- 5.10 The Client acknowledges that any equipment of any sort provided by the Company in connection with the Implementation Services is loaned to the Client unless such equipment has been sold to the Client under the set-up charges and the Client has no rights in connection therewith other than to use such equipment for the period of this Agreement. The Client shall take all reasonable measures to keep any such equipment loaned in good repair and condition and shall return such equipment to the Company upon demand in the same condition (fair wear and tear excepted) as it was when delivered to the Client's premises.
- 5.11 The Client shall ensure that the BT copper line provided by the Company (if any) shall only be used for the purpose of carrying ADSL or services provided by the Company. If the client uses the line for making telephone calls outside of the services provided by the company, the Company shall charge the customer/client for charges incurred by the company plus 10% administration.
- 5.12 The Client acknowledges that the Company can only provide the Service where Client provided Telephone Handsets meet the specification as prepared by the Company from time to time, and the Client therefore confirms that the Telephone Handset Devices to be used in accessing the Service shall meet
- 5.13 The Client shall ensure that any music or sound recordings used on any phone system provided by the Company (hosted or onsite) shall be licensed appropriately with PRS and/or PPL. In the event that the client is found not to have correct licensing, the client accepts all liability and shall indemnify the Company against any actions resulting from license infringement.
- #### 6. WARRANTY
- 6.1 The Company warrants that the Connection Devices will be free from defects in materials, workmanship and installation for a period of three months from the Acceptance Date. The Company shall repair or replace the Connection Devices in the event of any breach of this warranty, which shall be the Client's sole remedy for any such breach.
- 6.2 Subject to the Warranty set out in clause 6.1, the Company gives no further warranty or representation as to the condition, quality, performance, merchantability, durability or fitness for purpose of the Service or the Connection Devices. The express warranty set out above is given to the exclusion of all other warranties and conditions express or implied statutory or otherwise regarding any part of the Company's obligations hereunder.
- 6.3 Where the electronic billing option has been requested, the Company will use reasonable endeavours to provide the information. The Company shall not be liable to the client, if the information is not available for whatever reason.
- 6.4 Where call routing utilises Voice over Internet Protocol (VoIP), the Client acknowledges that call quality and availability can be subject to factors outside of the Company's control e.g. bandwidth contention or quality of service (QoS). The Company shall not be liable to the client in respect to any quality or availability issues with such a service.
- 6.5 Where 3G backup option is provided, due to limitations in the technology, environmental conditions and third party provider's coverage the company does not guarantee that this service will be available.
- #### 7. TERMS OF PAYMENT
- 7.1 The Client will pay the installation charges specified on the schedule by cheque and the order for Installation Services will be accepted within a maximum of seven business days subject to the cheque being cleared.
- 7.2 Unless the Company shall have agreed in writing to the contrary, each service charge will be payable by direct debit or standing order. The Company will invoice to the Client the service charge in advance, and payment of one month of the annual service charge will be taken by direct debit or standing order every month.
- 7.3 Unless the Company shall have agreed in writing to the contrary call charges will be payable by direct debit monthly in arrears. This will be subject to a credit limit as agreed in the schedule. If the customer changes or cancels the direct debit without informing the company and causing a failed direct debit transaction, the company will charge a £10 administration fee to re-instate the direct debit.
- 7.4 The Company may agree with certain Consortia that it may bill the service charge directly to these Consortia for onward billing to the Client. This will be indicated on the attached schedule but for the avoidance of doubt the Client confirms that it will be liable for all service charges to the relevant Consortium if applicable.
- 7.5 Charges as specified exclude VAT.
- 7.6 In the event of failure on the part of the Client to make the payment as specified (either directly to the Company or to the relevant Consortia) the

Company reserves the right to (a) suspend the performance of any of its obligations hereunder, and/or (b) charge interest at the rate of 2% per annum over Barclays Bank base rate ruling at the time compounded monthly from the date payment is due to the date payment including interest is received.

- 7.7 The Company reserves the right to vary any or all of its charges (including the service charge) at any time on giving three months notice in writing to the Client.
- 7.8 The Company shall be entitled to pass on to the Client any increases in telecommunications charges notified to the Company by the Company's suppliers' of telecommunications services from time to time.
- 7.9 The Company shall be entitled to charge a cancellation fee and/or decommissioning charges in relation to any termination of the Service by the Client in the terms set out in clause 7.3.
- 7.10 The Company reserves the right to charge the Client a call-out charge of not more than £550 (but which may be less depending upon the time spent) in respect of any call out which results in an engineer being sent to the Client's premises where the fault is not due to the Company.

8. DURATION, TERMINATION AND TERMINATION CHARGES

- 8.1 This Agreement comes into effect upon signature on behalf of the Company and will continue subject to clause 8.2 for the Minimum Agreement Period specified in the schedule and thereafter unless and until terminated by either party giving the other not less than three months written notice expiring not earlier than the last day of the said Minimum Period or on any anniversary of that date.
- 8.2 If the Client (a) fails to comply with any of the terms and conditions of this Agreement and fails to remedy such non compliance within a period of twenty eight days from receipt of written notice from the Company specifying the alleged breach and requesting the same to be remedied; or (b) fails to pay its debts (either to the Company or to the relevant Consortium as the case may be) as they fall due or is declared bankrupt or (being a limited company) has an Administrative Receiver or a Receiver appointed over the whole or any part of its undertaking property or assets or a petition is presented or an order is made or a resolution is passed for its winding up or for the appointment of an Administrator thereof; the Company shall be entitled (without prejudice to its other rights and remedies hereunder) forthwith to suspend further performance of this Agreement until the default has been made good or to terminate this Agreement by notice in writing to the Client. Notwithstanding such termination the Client shall pay the Company for all service provided up to and including the date of termination and the Client shall allow or procure for the Company access to its premises to recover the Connection Devices or other equipment belonging to the company.
- 8.3 Notwithstanding any other provisions of this Agreement, if the Client terminates this Agreement before the end of the Minimum Agreement Period the Company shall be entitled in addition to any payment made or due up to the termination date, to make the following additional charges: (a) 50% of the annual fee payable for the Service if terminated prior to the first anniversary of the Acceptance Date; or (b) 25% of the annual fee payable for the Service if terminated prior to the second anniversary of the Acceptance Date.

9. LIABILITY

- 9.1 The Company shall not be liable for any claim for economic loss, loss of data, loss of production, loss of anticipated savings, loss of profits, loss of opportunity, loss of bargain or other indirect or consequential loss, injury or damage which may occur in connection with this Agreement.
- 9.2 The maximum liability of the Company for any claims of direct injury, loss or damage whether in contract or in tort arising out of or in connection with any damage to the tangible property of the Client shall be limited to £500,000.
- 9.3 Save in relation to death or personal injury caused by the Company's negligence or in relation to the matters specified in clause 9.2 the total liability of the Company for any claims or claims made by the Client against the Company whether in contract or in tort (including negligence on the part of the Company, its servants or its agents) arising out of or in any way connected with this Agreement shall be limited to the amount to be paid by the Client hereunder over the twelve month period immediately prior to the claim arising or the amount to be paid by the Client during the then current annual charging period (whichever shall be the lower).

10. GENERAL

- 10.1 Where the Company provides software from Comtec (Europe) Limited, the client will contract under Comtec's terms and conditions for this service.
- 10.2 The Client confirms and undertakes that it will not, and will not permit any third party to access the Service by any means other than through the interface provided by the Company.
- 10.3 The Service may provide, or third parties may provide links to World Wide Web sites or resources. The Client acknowledges that the Company has no control over such sites or resources, and is not responsible or liable for any content products or other materials on or available from such sites or resources.
- 10.4 The terms and conditions in this Agreement shall prevail notwithstanding any variation as may appear on any purchase order or other document submitted by the Client.
- 10.5 Any notice or consent required to be given hereunder shall be made in writing and shall be deemed to have been received forty-eight hours from the time of posting.
- 10.6 The rights and remedies of either of the parties shall not be diminished, waived or extinguished by the granting of any indulgence forbearance or extension of time by the other nor by any failure of or delay by the other in asserting or exercising any such rights or remedies.
- 10.7 The Client shall not be entitled to assign, lease, transfer or part with its rights responsibilities or obligations or any part thereof under this Agreement without the prior written consent of the Company.
- 10.8 The Client acknowledges that this Agreement constitutes the entire Agreement between the Company and the Client and that so far as permitted by law no representation or statement not expressly set out in this Agreement or

incorporated by reference herein shall be binding upon the Company whether as a warranty or otherwise.

- 10.9 Neither party will be liable for failure to perform any obligations under this Agreement if that failure results from force majeure or any circumstances beyond its reasonable control.
- 10.10 Headings are for convenience of reference only and shall have no effect in construing this Agreement.
- 10.11 This Agreement shall be governed by and construed in all respect according to the laws of England. If any part is held illegal unenforceable or in conflict with the law the validity of the remainder of this Agreement shall not be affected thereby.
- 10.12 All intellectual and industrial property rights of whatever nature in the Service shall remain vested in the Company and the Client shall have no rights in relation thereto except those specified in these Terms and Conditions.
- 10.13 The Company and the Client each agree to keep confidential information of the other party received by it under or in connection with this Agreement and shall not disclose the same to any third party without the prior written consent of the other party hereto. This clause shall not apply to (a) information which is in or comes into the public domain other than by breach of this Agreement, (b) information obtained from a third party who is free to disclose the same, and (c) information already in the possession of the receiving party before such disclosure..