

TERMS AND CONDITIONS

1. Definitions

1.1 In this Agreement the following terms and phrases shall have the following meanings:

"Agreement" shall mean this agreement.

"Charges" shall mean the call charges payable by the Customer to Option in respect of the Services as revised from time to time in accordance with Clause 3.1.

"Force Majeure Event" shall mean any cause beyond a Party's reasonable control affecting the performance of its obligations hereunder including but not limited to fire, flood, explosion, accident, war, strike, embargo, governmental requirement, civil or military authority, Act of God, inability to secure materials or services, industrial disputes and acts or omissions of other providers of telecommunications services.

"Services" shall mean the provision of least cost routing telecommunications services by Option to the Customer in respect of the telephone numbers notified by the Customer to Option.

1.2 References in this Agreement to any statute or statutory provision include, unless the context otherwise requires, references to that statute or provision as from time to time amended, extended or re-enacted.

2. Carrier Pre-Selection

The Customer hereby authorises Option to sign Carrier Pre-Selection forms on their behalf from time to time. These forms will be used by Option to instruct British Telecom to route the telephone calls of the Customer through alternative carriers. The Customer may terminate this authority at any time by notice to Option.

3. Payment

3.1 Option shall be entitled to amend the Charges on twenty-one (21) days notice.

3.2 The Charges may be invoiced by Option monthly in arrears.

3.3 All invoices shall be paid within twenty-one (21) days of the date thereof.

3.4 Interest will accrue on overdue invoices from the due date until payment (whether before or after judgment) at the annual rate of two (2) percent above the base lending rate from time to time of Barclays Bank Plc. Interest shall continue to accrue notwithstanding termination of this Agreement for whatever reason.

3.5 All Charges are stated exclusive of value added tax and any similar sales tax or duty which, if applicable, shall be payable by the Customer and invoiced by Option at the then prevailing rate.

4. Warranties

4.1 In performing its obligations under this Agreement, Option shall at all times exercise the reasonable skill and care of a competent telecommunications reseller.

4.2 Except as expressly set forth in this Agreement all warranties, representations or agreements, with respect to the provision of the Services or otherwise, whether oral or in writing and whether express or implied, either by operation of law, statutory or otherwise, are hereby expressly excluded to the maximum extent permitted by law. For the avoidance of doubt this exclusion shall equally apply to any warranties or representations given by or on behalf of Option prior to the date of this Agreement.

5. Liability

5.1 Subject to Clause 5.3 but otherwise notwithstanding anything else in this Agreement, each Party's liability to the other in contract, tort (including negligence or breach of statutory duty) or otherwise arising in connection with this Agreement, save in respect of any liability arising pursuant to the payment obligations set out in Clause 3, shall be limited to a sum equal to one month's billing for the Services by Option to the Customer based on the average billing for the Services during the 3 month period preceding the circumstances which gave rise to the claim.

5.2 Subject to Clause 5.3 but otherwise notwithstanding anything else in this Agreement, neither Party shall in any event be liable to the other for indirect or consequential losses or otherwise for harm to business, loss of revenues, loss of anticipated savings or lost profits.

5.3 Nothing in this Agreement shall serve to limit either Party's liability in respect of death or personal injury caused by or arising from that Party's negligence.

5.4 Should any limitation or provision contained in this Clause 5 be held invalid under any applicable statute or rule of law it shall to that extent be deemed omitted.

6. Term and Termination

6.1 This Agreement shall take effect from the date it is accepted by Option and shall continue unless terminated by either Party in accordance with this Clause 6.

6.2 Either Party may terminate this Agreement forthwith by notice.

6.3 Upon termination of this Agreement all Services shall, without prejudice to the Parties' accrued rights and obligations with respect thereto, terminate forthwith.

6.4 Notwithstanding the provisions of Clause 4, upon termination of this Agreement all accrued Charges not yet invoiced shall become due forthwith and shall be paid by the Customer immediately on receipt of an invoice or invoices therefor.

6.5 Termination of this Agreement shall not relieve the Customer of its obligation to pay any Charges due, owing or incurred hereunder or the continuance in force of Clauses 3, 5, 6, and 7.

7. Customer Obligations

The Customer warrants and undertakes that it shall in its use of the Services comply with any relevant legislative and regulatory provisions and shall not use the Services for any illegal or immoral purpose and shall indemnify Option in respect of any liability incurred as a result of a breach by the Customer of this Clause 7.

8. Switchboard Programming

8.1 In order for the Services to be provided the switchboard equipment of the Customer may require programming.

8.2 If there is an existing maintainer of the switchboard equipment the Customer will assist Option in any negotiations with such maintainer.

8.3 After ascertaining the cost of any such programming Option may in its absolute discretion terminate this Agreement forthwith by notice.

9. Severability

If any provision of this Agreement, including in particular any limitation, is held by a court or any governmental agency or authority to be invalid, void, or unenforceable, the remainder of this Agreement shall nevertheless remain legal, valid, and enforceable.

10. Variation

This Agreement may be modified only by the written agreement of the Parties.

11. Force Majeure

Notwithstanding anything herein to the contrary, neither Party shall be liable for any delay or failure in performance of any part of this Agreement, (other than for payment obligations set out in Clause 3), to the extent such delay or failure is attributable to a Force Majeure Event. Any such delay or failure shall suspend this Agreement until the Force Majeure Event ceases.

12. Assignment

Neither Party may assign this Agreement without the written consent of the other Party (which consent shall not be unreasonably withheld or unduly delayed), except that Option may assign any and all of its rights and obligations hereunder pursuant to any sale or transfer of substantially all the assets or business of Option, or pursuant to any financing, merger, or reorganisation of Option.

13. No Waiver

Failure by either party to exercise or enforce any right or benefit conferred by this Agreement, including Option's right to deliver invoices in accordance with Clause 3, shall not be deemed to be a waiver of any such right or benefit nor operate so as to bar the exercise or enforcement thereof or of any other right or benefit on any later occasion.

14. Notices

Any notice required or authorised to be given under this Agreement shall be delivered by prepaid registered post or by facsimile transmission (immediately confirmed by post) to the address stated for that Party above and shall be deemed to have been served forty-eight (48) hours after such posting or such transmission.

15. Entire Agreement

This Agreement expresses the entire understanding of the Parties and replaces any and all former agreements, understandings, solicitations, offers, and representations relating to Option's performance in connection with this Agreement and contains all the terms, conditions, understanding, representations and promises to the Parties hereto.