

TERMS AND CONDITIONS

This Agreement applies to the provision to you, the Customer, by us, Spitfire Network Services Limited, a company incorporated in England and Wales with Company Number 2657590 whose registered office is at 239 Regents Park Road, London N3 3LF ("Spitfire") of those services which have been selected by you overleaf (the "Services").

1. PROVISION OF SERVICES

1.1 Spitfire will provide the Services from the date notified to the Customer with the reasonable degree of skill and care of a competent telecommunications network service provider ("Service Provider"). The Services do not include any equipment or services that we may supply to you under separate agreements.

1.2 Spitfire shall be entitled to:

- (A) change the codes and/or the numbers allocated to the Customer or the technical specification of a Service where necessary, for operational reasons, statutory or regulatory requirements, provided that any change to the technical specification does not materially affect the performance of the Service;
- (B) suspend the Services for operational reasons or in case of emergency or in accordance with clause 8; and
- (C) give the Customer instructions which it believes are necessary for reasons of health, safety or the quality of any Service provided by Spitfire to the Customer or any third party.
Before doing so, Spitfire will give the Customer as much notice as possible.

2. DELIVERY AND INSTALLATION OF THE SERVICES AND EQUIPMENT

2.1 To enable Spitfire to exercise its rights and fulfil its obligations under this Agreement including, if appropriate, installation at the Customer's premises of equipment for the provision of the Services ("Equipment"), the Customer shall, at its own expense and, where appropriate, in advance of any installation work:

- (A) permit or procure permission for Spitfire and its duly authorised representatives to have reasonable access to the Customer's premises and telephone system and/or any Equipment provided by Spitfire at all reasonable times and shall provide such reasonable assistance as Spitfire shall request. Spitfire will normally require access during its usual working hours but may, on reasonable request, require the Customer to provide access at other times;
- (B) obtain all necessary consents, including consents for any necessary alterations to buildings;
- (C) provide a suitable environment, accommodation and foundations, including all necessary trunking, conduits and cable trays in accordance with the relevant installation standards;
- (D) take up or remove any fitted or fixed floor coverings, ceiling tiles, suspended ceiling and partition covers as Spitfire or its authorised representatives advise are necessary and carry out afterwards any making good or decorator's work required;
- (E) provide any electricity and connection points required by Spitfire or its authorised representatives; and
- (F) provide a suitable and safe working environment for Spitfire's employees and anyone acting on Spitfire's behalf.

2.2 The Customer is responsible for the Equipment and must not add to, modify or in any way interfere with the Equipment, nor allow anyone else, other than someone authorised by Spitfire, to do so. The Customer will be liable to Spitfire for any loss of or damage to the Equipment, except where such loss or damage is due to fair wear and tear or is caused by Spitfire or anyone acting on its behalf.

3. CONNECTION OF EQUIPMENT TO THE SERVICES

- 3.1 Any equipment connected to or used in conjunction with the Services must be connected and used in accordance with any instructions and any safety or security procedures applicable to the use of that equipment.
- 3.2 Any equipment which is attached (directly or indirectly) to the Services must be technically compatible with the Services and approved for that purpose under any relevant legislation.

4. USE OF THE SERVICES

4.1 For the avoidance of doubt, the Customer acknowledges that:

- (A) it has access to the public switched telecommunications network using exchange lines provided by British Telecommunications plc; and where appropriate, it is responsible for all costs and expenses relating to reprogramming its PBX or other least cost routing devices so that it can access the Services.

4.2 The Customer undertakes to use the Services in accordance with:

- (A) such instructions and conditions as may be notified in writing to the Customer by Spitfire from time to time;
- (B) the relevant provisions of the Telecommunications Act 1984 (the "Act") or any other legislation applicable to Spitfire; any direction of the Director General of Telecommunications or other competent authority and any licence granted there under which applies to the running of a telecommunications system by the Customer; and
- (D) such terms and conditions of any licensed telecommunications operator providing the equipment or telephone line as Spitfire shall notify the Customer from time to time.

4.3 Without limitation to the generality of clause 4.2, the Customer undertakes not to use the Services:

- (A) for the transmission of material which is defamatory, offensive or of an obscene or menacing character; or
- (B) in a manner which constitutes a violation or infringement of the rights of any person, firm or company (including, without limitation, rights of copyright and confidentiality); or as a means of communication for purposes other than that for normal business or domestic use; or fraudulently or in connection with a criminal offence.

4.4 For the avoidance of doubt, the Customer acknowledges that it has sole responsibility for all Charges relating to the use of the Services regardless of whether such use is authorised, unauthorised, fraudulent or otherwise. The Customer must inform Spitfire as soon as reasonably practicable if it suspects that fraudulent or unauthorised use of the Services is occurring, although such notification will not limit the Customer's liability to pay the Charges as set out herein.

4.5 Use of 0800 services is conditional upon all 0800 numbers provided not being used in circumstances where any 0800 number is likely to receive more than 500 inbound calls during any seven day period or more than fifty inbound calls during any one hour period unless the prior written consent of Spitfire has been obtained.

4.6 Spitfire will provide to the Customer, upon request, details of its maintenance operation which should be contacted in the event that there is a fault with the Services.

5. DURATION OF THIS AGREEMENT

This Agreement shall come into force on and with effect from the date shown overleaf and shall continue thereafter subject to the terms hereof unless terminated by either party giving to the other not less than one month's prior written notice.

6. CHARGES AND PAYMENTS

6.1 In consideration of the Services provided by Spitfire, the Customer shall pay all charges for the provision of the Services as notified to the Customer from time to time including any payphone access levies incurred by Spitfire during the provision of 0800 services to the Customer (the "Charges").

6.2 Spitfire shall send invoices for the Charges monthly in arrears.

6.3 The Charges for a given billing period will be calculated by reference to the appropriate band of Spitfire's tariff structure (which is available for inspection upon request at Spitfire's major offices). The appropriate band is determined by a standard algorithm. The parameters of the algorithm may include the Customer's historic, current or estimated future total utilisation of the Services.

6.4 Spitfire may alter the tariff structure referred to at clause 6.3 above by giving the Customer not less than four weeks' notice in writing except that Spitfire may reduce the pricing within the tariff structure at any time.

6.5 The Charges shall be calculated by reference to data recorded or logged by Spitfire and not by reference to any data recorded or logged by the Customer.

6.6 Spitfire may at any time require the Customer to pay a deposit or provide a guarantee as security for payment of future bills.

6.7 All sums due to Spitfire shall be payable by the Customer within fourteen days of the date of the relevant invoice but Spitfire shall have the right to request payment on demand if the Customer fails to make payment of any invoice within fourteen days. The time of payment of all sums due to Spitfire is of the essence.

6.8 Spitfire reserves the right to charge daily interest on outstanding amounts until payment in full is received at a rate equal to 10% per annum above the base lending rate of HSBC plc as current from time to time whether before or after judgment. Interest shall accrue notwithstanding termination for any cause whatsoever and this right to charge interest is without prejudice to Spitfire's right to treat non-payment of sums due from the Customer as a repudiatory breach of this Agreement.

6.9 All Charges are exclusive of Value Added Tax and any other sales tax or duty for which, if applicable, an amount will be added to the Customer's invoice.

6.10 Payment of all sums due to Spitfire and invoiced pursuant to this Agreement by the Customer shall be made without any set-off or deduction whatsoever.

6.11 For the avoidance of doubt, the Customer shall be liable for all and any telecommunication charges payable to any third party arising out of the Customer's use of the Services.

7. TERMINATION

7.1 Without prejudice to any other rights or remedies either party may have either under this Agreement or at law, Spitfire may terminate this Agreement immediately by serving notice in writing on the other party:

- (A) in the event that either party is in default in its performance or observance of any of its obligations under this Agreement, and, in the case of a remediable breach, fails to remedy the breach within 10 days; or
- (B) an interim order is applied for or made, or a voluntary arrangement approved, or if a petition for a bankruptcy order is presented or a bankruptcy order is made against either party, or if a receiver or trustee in bankruptcy is appointed of the other party's estate, or a voluntary arrangement is proposed or approved, or an administration order is made, or a receiver or administrative receiver is appointed over any of the other party's assets or undertakings, or a winding up resolution or petition is passed or presented (otherwise than for the purposes of reconstruction or amalgamation), or if any circumstances arise which entitle the court or a creditor to appoint a receiver, administrative receiver or administrator or to present a winding up petition or make a winding-up order; or
- (C) in the event of a force majeure event (as described in clause 10) that continues for a period exceeding 3 months.

7.2 Without prejudice to its other rights under this Agreement or at law, Spitfire may terminate this Agreement or may cancel the Services immediately by serving written notice on the Customer if:

- (A) the Customer fails to make any payment when it becomes due to Spitfire; or
- (B) any licence or agreement pursuant to which Spitfire provides the Services expires or is revoked; or
- (C) a licence under which the Customer has the right to run its telecommunications system is revoked or amended (and not replaced by an equivalent licence or right) so that Spitfire is not permitted by law to provide the Services to the Customer; or
- (D) Spitfire believes that the Services are being used in a way that is forbidden by clause 4.3.

7.3 If this Agreement is terminated pursuant to this clause 7, all Services shall, without prejudice to the parties' accrued rights and obligations with respect thereto, terminate forthwith and all arrears of Charges and any other sums due to Spitfire under this Agreement shall become immediately due and payable in full on demand and the Customer must immediately stop using the Services to the extent that they have been cancelled or the Agreement has been terminated.

7.4 Termination of the Services (in whole or in part) shall not affect any pre-existing liability of the Customer under this Agreement or affect any right of Spitfire to recover damages in respect of any breach by the Customer of the terms of this Agreement.

7.5 The provisions of this clause 7 continue to apply despite the termination or expiry of this Agreement.

8. SUSPENSION OF THE SERVICES

8.1 Spitfire may at its sole discretion and without prejudice to any rights it may have to terminate this Agreement upon giving notice to the Customer either orally (confirming such notification in writing) or in writing, elect to suspend forthwith provision of the Services until further notice in the event that:

- (A) Spitfire is entitled to terminate this Agreement pursuant to clause 7.2; or
- (B) Spitfire is entitled to suspend provision of any other telecommunications service

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- under the terms of any other agreement between Spitfire and the Customer; or
- (C) Spitfire is obliged to comply with an order, instruction or request of Government, an emergency services organisation or other competent administrative or regulatory authority which affects its ability to provide the Service; or
- (D) maintenance or emergency works (as defined in Schedule 2 of the Act) must be carried out on the Equipment or for operational reasons; or
- (E) the Customer is in breach of clause 4.5.
- 8.2 In the event a suspension is implemented as a consequence of the breach, fault or omission of the Customer, the Customer shall reimburse Spitfire for all reasonable costs and expenses incurred in the implementation of such suspension and/or the recommencement of the provision of the Services as appropriate.
- 8.3 Spitfire shall not be liable for any loss, damage or inconvenience suffered by the Customer as a result of any suspension pursuant to clause 8.1.

9. LIMITATION OF LIABILITY

- 9.1 Neither party is liable to the other party except as expressly set out in this Agreement and has no other obligation or liability whatsoever in contract, tort or otherwise to the other party.
- 9.2 Spitfire shall not be liable under or in connection with this Agreement whether in contract, tort or otherwise (including liability in negligence) for any indirect or consequential loss, including but not limited to, corruption or destruction of data, any loss of business, revenue or profit, anticipated savings or for any financial loss whatsoever.
- 9.3 Nothing in this Agreement shall exclude or restrict Spitfire's liability for death or personal injury resulting from the negligence of Spitfire or its employees.
- 9.4 Insofar as any part of the Services depends on or is supplied by other telecommunications operators, Spitfire is not responsible for their reliability or quality unless Spitfire is at fault.
- 9.5 Spitfire will not be liable to the Customer for any failure to comply with its obligations under this Agreement to the extent that this liability arises as a result of the failure of the Customer to fulfil its obligations under this Agreement.
- 9.6 The Customer must ensure that it complies at all times with all laws and obligations, including any licence under the Act which is applicable to the Customer. Spitfire will have no liability under this Agreement for failure to comply with its obligations in any case where the Customer does not comply with any such relevant laws or obligations.
- 9.7 Spitfire's liability in contract, tort or otherwise arising out of or in connection with the performance of Spitfire's obligations under this Agreement shall be limited to £10,000 for any one incident or series of incidents and £500,000 in aggregate.
- 9.8 The Customer shall indemnify and keep indemnified Spitfire against any claims, losses, damages, costs and other liabilities which Spitfire may incur or may be established or brought against it by reason of any claim against Spitfire by any third party arising out of or in connection with this Agreement or the use of the Services.
- 9.9 The Customer indemnifies and will keep Spitfire fully and effectively indemnified against all and any losses, claims, damages, costs, charges, expenses and other liabilities which Spitfire may sustain or incur or which may be brought or established against it by any person and which in any case arise out of or in relation to or by reason of:
- (A) any breach by the Customer of its obligations under this Agreement; and/or
- (B) the negligence, recklessness or unlawful misconduct of the Customer in the performance of its obligations under this Agreement.
- 9.10 In order to minimise the risk of any losses in the event that Spitfire is unable to provide the Services due to a technical problem in relation to the telecommunications network by which the Services are provided, the Customer must be aware of and follow the procedure for diverting calls-over an alternative network as will be notified to the Customer in writing from time to time.
- 9.11 In the event that Spitfire fails to provide the Services and the Customer diverts traffic to another Service Provider, Spitfire shall not be responsible for any costs or expenses arising as a result of such diversion of traffic including, without limitation, such Service Providers charges.
- 9.12 The provisions of this clause 9 shall continue to apply notwithstanding termination of this Agreement.

10. FORCE MAJEURE

- 10.1 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 the payment obligations set out in clause 6) to the extent that such delay or failure is attributable to a force majeure event including, without limitation, any act of God, inclement weather, failure or shortage of power supplies, flood, drought, lightning or fire, strike, lock-out, trade dispute or labour dispute, the act or omission of Government, highways authorities, other telecommunications operators or administrations or other competent authority, war or military operation
- 10.2 This clause 10 shall continue to apply notwithstanding termination of the Agreement.

11. ASSIGNMENT

The Customer shall not assign or delegate or otherwise deal with any of its rights and obligations under this Agreement without Spitfire's prior written consent given by a duly authorised representative, such consent not to be unreasonably withheld. Spitfire shall have the right to assign or otherwise delegate all or any of its rights and obligations to any other person upon serving notice on the Customer.

12. INFORMATION AND CONFIDENTIALITY

- 12.1 Subject to clause 12.3, the Customer will promptly provide to Spitfire (free of charge) any information which Spitfire may require to enable it to proceed with the performance of its obligations under this Agreement including any information which Spitfire may reasonably request for the purposes of credit verification and debt collection. The Customer permits Spitfire to use such information and to provide it to third parties acting on behalf of Spitfire for such purposes.
- 12.2 Subject to clause 12.3, neither the Customer nor Spitfire will use, copy, adapt, alter or part with possession of any information of the other which is disclosed or otherwise comes into its possession under or in relation to this Agreement and which is of a confidential nature. This obligation will not apply to information which the recipient can prove was in its possession at the date it was received or obtained or which the recipient obtains from some other person with good legal title to it or which is in or comes into the public domain otherwise than through the default or negligence of the recipient or which is independently developed by or for the recipient or which is disclosed in compliance with a law or an order of the court or a competent regulatory authority.
- 12.3 Both parties shall fully comply with data protection laws in force from time to time insofar as

they relate to the Agreement and shall procure that their employees shall observe such laws.

- 12.4 This clause 12 shall remain in effect for two years after the termination of this Agreement.

13. NOTICES

- 13.1 Any notice required or authorised to be given under this Agreement shall be delivered by pre-paid post or by hand to the addressees at the following addresses:
- (A) to Spitfire at the address as shown on the last invoice rendered to the Customer or such other address as Spitfire may nominate for this purpose;
- (B) to the Customer at the address notified to Spitfire as the address to which notices or invoices may be sent or the Customer's usual or last known address or its registered office.
- 13.2 Any notice shall be deemed to have been made to the other party if delivered by hand, when delivered, if posted by pre-paid post, on the second working day following posting.

14. NO WAIVER

Failure by either party to exercise or enforce any right conferred by this Agreement shall not be deemed to be a waiver of any such right nor to operate so as to bar the exercise or enforcement of any such or other right on any later occasion.

15. SEVERABILITY

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

16. CHANGE TO THE AGREEMENT

Notwithstanding any other provision of this Agreement, Spitfire may change the terms of this Agreement at any time by notice in writing to the Customer. The change will take effect on the date set out in the notice. Spitfire will publish details of any change in its registered office at least 2 weeks before the change is to take effect.

17. GOVERNING LAW

- 17.1 This Agreement shall be governed by and construed in accordance with English law and English shall be the appropriate language and translation of this Agreement.
- 17.2 The parties hereto hereby irrevocably submit to the exclusive jurisdiction of English courts for the purpose of hearing and determining any dispute arising out of this Agreement and for the purpose of enforcement of any judgment against their respective assets.

18. ENTIRE AGREEMENT

This Agreement (together with any document referred to herein) constitutes the entire agreement between the parties hereto in connection with the subject matter of this Agreement. Neither party has relied upon any representation save for any representation expressly Set out in this Agreement (or any document referred to herein).