

## Terms of Business

Please read these terms and conditions carefully.

If you are unsure of your rights or responsibilities under them or you would like an explanation of any of them, please contact our Customer Services team today Free on 0800 505 3210†.

†Lines open 0900 - 1700, Mon - Fri

Terms of Business for Non-geographic number services (e.g. 0845, 0870, 0330 etc).

### AGREEMENT FOR THE PROVISION OF SERVICES MAIN BODY TERMS

#### 1. DEFINITIONS AND INTERPRETATION

**Agreement:** means these Terms and Conditions (including the Schedules) together with the Order.

**Associated Company:** means any company which is a parent company of the Supplier or a subsidiary of such parent company, where parent company and subsidiary have the meanings set out in Section 736 of the Companies Act 1985.

**Charges:** means any or all of the charges and fees payable by the Customer for the Service pursuant to this Agreement.

**Confidential Information:** means any information, whether communicated orally or in documentary or other form, which relates to the business of the Supplier including, without limitation, any information relating to products, customers, pricing, policies, methods, business plans and strategies, technical processes and financial affairs, in all cases whether expressly stated to be confidential or not.

**Customer:** means the party purchasing the Service, as named in the Order.

**ICSTIS:** means the Independent Committee for the Supervision of Telephone Information Services or any similar body that may be appointed in addition or in substitution.

**IPR:** means all intellectual property rights including, without limitation, copyright, patents, trade marks, registered designs, design rights, mask works, know how and all other similarly protected rights.

**Minimum Period:** means twelve (12) months (or such other period as is set out on the Order) from the date that the Service is first delivered to the Customer.

**Offending Material:** means any material, data, images or information that is:

- (i) in breach of any law, regulation, code of practice or Supplier's acceptable use policy, or
- (ii) abusive, indecent, defamatory, obscene or menacing or otherwise offensive, or
- (iii) in breach of confidence, IPR, privacy or any right of a third party.

**Ofcom:** means the independent regulator and competition authority for the UK communications industry or any similar office that may be appointed in addition or in substitution.

**Order:** means the Service Order Agreement signed by the parties or such other document that the Supplier deems to constitute the Order.

**Schedules:** means the Supplier's standard Schedule(s) to these Terms and Conditions that contain the special terms and conditions relating to a particular Service.

**Service:** means any and all of the services that the Supplier has agreed to supply to the Customer, as set out in the Order.

**Set Up Cost:** means the initial cost to the Supplier of providing the Service to the Customer, including installation costs.

**Site:** means any or all of the Customer's sites at which the Supplier is providing the Service.

**Supplier:** means 4tel Communications Limited (Company number 4512684) whose registered office is at Beacon House, Commercial Road, Penryn. TR10 8AR.

**Supplier's Equipment:** means any equipment owned by the Supplier or its licensors that the Supplier uses to provide the Service.

**System:** means the network that the Supplier uses to provide the Service.

**Total Early Termination Fee:** means the total of the Early Termination Fee(s) due pursuant to (and defined in) the Schedule(s).

**Working Day:** means 09:00 to 17:00 Monday to Friday but excluding public holidays in the United Kingdom recognized by the Supplier.

Any reference in this Agreement to any provision of a statute shall be construed as a reference to that provision as amended, reenacted or extended at the relevant time.

## **2. Duration and Scope of this Agreement**

2.1 This Agreement commences on the date of acceptance of the Order by the Supplier and will continue (subject to Clause 7) until terminated by a) the Supplier on four (4) weeks written notice, to expire on or after the end of the Minimum Period or b) the Customer on written (to include e-mail) or verbal notice at any time.

2.2 Until termination for whatever reason, the Supplier agrees to provide the Service to the Customer in accordance with this Agreement in consideration of the agreement of the Customer to use the Service in accordance with this Agreement and to pay the Charges when they are due.

### **3. The Supplier's General Obligations**

3.1 The provision of the Service is subject to all relevant licences, infrastructure (or interconnect arrangements) and consents being in place. The Supplier shall use reasonable endeavours to meet any agreed dates but shall not be liable for failure to meet them. The Customer shall obtain any consent or facility that is necessary or desirable for the Supplier to provide the Service on the Site.

3.2 The Supplier shall exercise the reasonable care and skill of a competent telecommunications operator. The Service cannot be guaranteed to be fault free but the Supplier shall provide the same quality of service to the Customer as it provides from time to time to its customers generally.

3.3 The Customer shall report any fault to the Supplier's Customer Services Department, where it will be dealt with in accordance with the agreed fault repair service. Where no Supplier's Equipment is installed, the Supplier may request that the Customer first have its designated maintainer check the Customer's equipment. If the Supplier agrees to fix a fault that is caused by the Customer or that otherwise falls outside the responsibility of the Supplier or where no fault is found, the Supplier may charge the Customer for any work that the Supplier has undertaken at its applicable man-hour rate.

### **4. The Customer's Obligations**

4.1 The Customer shall not utilise and shall ensure that no other person uses the Service:

4.1.1 For storing, reproducing, transmitting, communicating or receiving any Offending Material; or

4.1.2 Fraudulently or for any criminal purpose or in a manner that is contrary to any regulatory or legal requirement; or

4.1.3 To cause annoyance, inconvenience or needless anxiety to any person; or

4.1.4 Contrary to instructions that the Supplier may give to the Customer.

4.2 The Customer will provide the Supplier with all information that the Supplier needs and allow the Supplier to use that information for credit checking and debt collection (including disclosure to and use by third parties acting for the Supplier) and any other uses and disclosures allowed by the Data Protection Act 1998 and will allow the Supplier to disclose such information to the extent that the Supplier is required to do so by ICSTIS, Ofcom, the law or any relevant authority.

4.3 The Customer shall keep all of the Supplier's Equipment at the Site safe and shall pay for the replacement and/or repair of any of the Supplier's Equipment which is lost, damaged (otherwise than by fair wear and tear) or destroyed. The Customer shall not alter or move any of the Supplier's Equipment, nor do anything that is likely to damage or adversely affect its performance, nor remove or deface any words or signs on it, nor permit anyone else to do so. The Customer shall not sell, let, mortgage, charge, pledge, dispose of or do anything that would prejudice the Supplier's Equipment or the System in any way. The Customer will allow the Supplier to inspect, test, modify, change, add to, replace or remove any Supplier's Equipment, either remotely or via a designated maintainer. At the end of the term of the Agreement, the Customer will allow the Supplier access at all times to collect any of the

Supplier's Equipment in the Customer's possession.

4.4 The Customer shall at its own cost arrange for the required Site specific conditions, as notified by the Supplier. This will include, without limitation, mains electricity supply, connection points and computer terminals. The Customer shall prepare the Sites in accordance with the Supplier's reasonable instructions and reinstate them at the Customer's expense after the Supplier has completed any work necessary for the Supplier to be able to provide the Service.

4.5 The Customer shall ensure that any equipment (excluding Supplier's Equipment) that it uses in connection with the Service meets any legal or regulatory requirements and is approved for connection to the System. If not, the Customer must immediately disconnect it or allow the Supplier to do so at the Customer's expense.

4.6 The use of computing equipment and/or computer software owned and/or controlled by the Supplier (including computer networks and systems accessed via the network) is permitted for bona fide purposes and is subject to authorization. Unauthorized or improper use of these facilities is a breach of this Agreement and may give rise to withdrawal of the facilities and/or proceedings under the Computer Misuse Act 1990.

4.7 The Customer shall indemnify and keep indemnified the Supplier against all or any claims and associated costs, damages or expenses made by any third party as a consequence of any breach by or other act or omission of the Customer under or in relation to this Agreement.

## **5. Payments**

5.1 The Charges are exclusive of Value Added Tax, which shall be payable by the Customer in addition to the Charges at the rate applicable from time to time.

5.2 The Customer shall (without set-off or deduction) pay in pounds sterling all invoices issued by the Supplier under this Agreement or any other agreement you have entered into with 4tel within fourteen (14) days of the date upon them. If the Customer fails to make payment by this date in full, in addition to the Supplier's right to suspend set out in Clause 6.1, the Supplier may charge interest at the rate of 2% per annum above the base rate of the Barclays Bank plc on any amounts outstanding from the due date for payment until payment is made in full.

5.3 The Supplier may change the level of its Charges after giving the Customer four (4) weeks written notice of its intention to do so. This notice may be included in an invoice to the Customer. If the Supplier increases the Charges by more than the Retail Price Index during the Minimum Period, the Customer may terminate the Agreement in accordance with Clause 2 within ten (10) days of receipt of the notice of increase, without the obligation to pay the Total Early Termination Fee.

5.4 The Supplier may also change the level of its Charges, retrospectively as well as prospectively, as a consequence of (a) any Ofcom direction, determination, order or similar decision, or (b) any notice issued by BT correcting an error in the amount or application of a charge or payment under its interconnect agreement with the Supplier. In both cases, the Supplier shall only be entitled to change the level of its Charges where the

Foregoing impacts upon the basis upon which the Charges were calculated.

5.5 Where the Supplier agrees to do work outside a Working Day at the request of the Customer, the Supplier may charge the Customer in accordance with the Supplier's applicable man-hour rate.

## 6. Suspension and Variation of the Service

6.1 The Supplier may, in its sole discretion and upon giving the Customer as much written or oral notice as is reasonably practicable in the circumstances, suspend or vary the Service without compensation for any period during which:

6.1.1 The Supplier is required to do so in order to avoid a breach of the licence issued to the Supplier under the Telecommunications Act 1984 or the Wireless Telegraphy Acts, as amended from time to time;

6.1.2 The Supplier is obliged or requested to comply with an order or instruction of, or a recommendation or request to take such action received from the Government, Ofcom, Radio Communications Agency, ICSTIS, an emergency services organization or a competent administrative authority;

6.1.3 The Supplier reasonably suspects or believes that the Customer is in breach of Clause 4.1 or the Customer is in breach of Clause 5.

6.1.3 The Supplier reasonably suspects or believes that the Customer is in breach of Clause 4.1 or the Customer is in breach of Clause 5.

6.2 The Customer shall reimburse the Supplier for all reasonable costs and expenses incurred as a result of the suspension and any recommencement or variation of the Service where suspension or variation is implemented as a result of any act or omission of the Customer.

6.3 The Supplier may at any time suspend the Service or any part of it, without liability:

6.3.1 To vary the technical specification of the Service in order to comply with any relevant law or regulation or direction from a competent authority; or

6.3.2 To repair, maintain or improve the Service;

The Supplier will, during such suspension, try to ensure that minimum disruption is caused to the Service.

## 7. Termination

7.1 Either Party may immediately terminate this Agreement by written notice if the other Party commits a material breach that is not capable of being remedied.

7.2 Either Party may serve written notice requiring the other Party to remedy within fourteen (14) days of receipt of the notice a material breach of this Agreement that is capable of remedy. In the absence of a remedy in this period, the Party that served notice to remedy may immediately terminate this Agreement by written notice.

7.3 Either Party may immediately terminate this Agreement by written notice if the other Party commits an act of bankruptcy or goes into or is put into liquidation (other than solely for the purposes of a reconstruction or amalgamation) or if a receiver or administrator is appointed over all or part of the other Party's assets or the other Party suffers seizure of any of its property for non payment of monies owing.

7.4 The Supplier shall be permitted to terminate this Agreement immediately by written notice if the Customer fails to pass the Supplier's credit policy.

7.5 The Supplier shall be permitted to terminate this Agreement immediately by written notice at any time for the reasons set out in Clauses 6.1.1 and 6.1.2.

7.6 The rights to terminate this Agreement given by this Clause 7 shall be without prejudice to any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

## **8. LIMITATIONS AND EXCLUSIONS OF LIABILITY**

8.1 This Clause 8 sets out the Supplier's entire liability (including any liability for acts or omissions of the Supplier's employees, agents or subcontractors) to the Customer in tort, contract or otherwise arising in connection with the performance, non-performance or contemplated performance of this Agreement. Except as set out in this Agreement, the Supplier provides no warranties, conditions or guarantees as to the description or quality of the Service, and all warranties, conditions or guarantees implied by or expressly incorporated as a result of custom and practice, statute, common law or otherwise are hereby expressly excluded so far as permitted by law.

8.2 Subject to Clause 8.4, the Supplier's entire liability for nonfraudulent representation, or implied warranty, condition or other term, or under any duty at common law, or in tort or under the express terms of this Agreement shall not exceed £1,000,000 (one million pounds sterling) for any one incident or series of related incidents and £2,000,000 (two million pounds sterling) in aggregate during the term of this Agreement.

8.3 Notwithstanding anything to the contrary in this Agreement, but subject to Clause 8.4, the Supplier shall not be liable to the Customer under the express terms of this Agreement or by reason of any non-fraudulent representation, or implied warranty, condition or other term, or any duty at common law, or any tort, for any loss of profits or revenue, loss of income or business, loss of goodwill or reputation, loss of anticipated savings, loss of data, loss of use, or damages, loss or expenses payable by the Customer to any third party or any indirect or consequential or special loss or damage whatsoever and howsoever caused.

8.4 The Supplier shall not exclude or restrict liability for death or personal injury resulting from its own negligence or for fraudulent misrepresentation.

8.5 Each of the Supplier and the Customer acknowledges that it considers the provisions of this Clause 8 to be reasonable, taking account of the other terms of this Agreement (including the Charges) and its ability to insure against losses which may arise from any breach by the other Party of its obligations under this Agreement.

8.6 The provisions of this Clause 8 shall survive termination or expiry of the Agreement.

## **9 CONFIDENTIALITY AND DATA PROTECTION**

9.1 The Customer agrees to keep all Confidential Information confidential, to disclose it only to its employees that need to know it and to use it exclusively for the purposes contemplated by this Agreement. This Clause shall not apply to information that the Customer can prove:

9.1.1 Is in the public domain otherwise than by the Customer's breach;

9.1.2 It already had in its possession prior to obtaining the information directly or indirectly from the Supplier; or

9.1.3 A third party subsequently disclosed to the Customer free of restrictions on disclosure and use.

This Clause shall survive for three (3) years from when the Customer acquired that Confidential Information from the Supplier.

9.2 The Customer may disclose Confidential Information if required to do so by law, regulation or rules of a securities exchange or other regulatory authority, but only to the extent of the relevant requirement. The Customer shall promptly inform the Supplier of the requirement and will co-operate with the Supplier in the disclosure.

9.3 The use of any information, including Calling Line Identification, may be subject to (and therefore the Customer shall comply with) the Data Protection Act 1998, EU Data Protection Directives and The Telecommunications (Data Protection and Privacy) Regulations 1999. The Supplier reserves the right to withhold Calling Line Identification if it believes that the Customer has failed to comply with this Clause or the Supplier receives a complaint from any relevant authority.

## **10 OWNERSHIP**

All IPR relating to the subject matter of this Agreement shall vest in, and ownership of the Supplier's Equipment and the System (including any works performed by the Supplier to connect the Site to the System) shall remain with the Supplier or its licensors, as appropriate. The Customer acknowledges that it shall have no licence, right, title or interest in or to any IPR of the Supplier or its licensors or the Supplier's Equipment or the System, except as expressly set out in this Agreement. This Clause shall survive termination or expiry of the Agreement.

## **11 CIRCUMSTANCES BEYOND REASONABLE CONTROL**

11.1 Neither Party shall be liable for any delay in performing its obligations under this Agreement caused by circumstances beyond its reasonable control. These are circumstances such as, but not limited to, Acts of God, insurrection or civil disorder or military operations, national or local emergency, acts or omissions of government or other competent authority or regulatory authority, fire, flood, lightning or other weather of exceptional severity, subsidence, explosion or industrial disputes. This Clause does not apply to the Customer's obligation to pay.

11.2 If either Party is affected by circumstances beyond its reasonable control, it shall notify the other Party and shall use reasonable endeavours to overcome the effects. If those effects

continue for more than three (3) months, the Parties shall enter into a discussion to agree, in good faith, the best way forward.

## **12 NOTICES**

12.1 Notices must be written and delivered by hand or first class prepaid post. The address for service on the Supplier (subject to any change notified by the Supplier) is: 4tel Communications Beacon House, Commercial Road, Penryn. TR10 8AR.

The address for service on the Customer is as set out in the most recent invoice.

12.2 A notice will be deemed served as follows:

12.2.1 On hand delivery, except where this is outside a Working Day, in which case the next Working Day;

12.2.2 Two Working Days after posting (proof that the envelope containing the notice was properly addressed, prepaid and posted and that it has not been returned to the sender shall be proof of posting).

## **13 GENERAL**

13.1 Headings in this Agreement shall not affect interpretation.

13.2 A delay in enforcing rights under this Agreement shall not be a waiver, as any waiver must be expressly granted in writing.

13.3 The unenforceability or invalidity of any part of this Agreement shall not affect the enforceability or validity of the remainder of it.

13.4 The termination or expiry of this Agreement shall be without prejudice to the rights of either Party, which have accrued prior to termination or expiry. Clauses that are expressed to survive or which are by implication intended to survive termination or expiry of this Agreement shall so survive.

13.5 This Agreement contains the entire agreement and supersedes

all other agreements and understandings between the Parties with respect to its subject matter. Any terms proposed by the Customer that are not written in these Terms and Conditions shall be invalid. Subject to Clause 8.4, each Party acknowledges that, in entering into this Agreement, it does not do so on the basis of, and does not rely on, any representation, warranty or other provision except as expressly written in this Agreement.

13.6 Nothing in this Agreement shall create, or be deemed to create, a partnership or the relationship of principal and agent or employer and employee between the Parties.

13.7 This Agreement is not intended to be for the benefit of and shall not be exercisable by, any third party under the Contracts (Rights of Third Parties) Act 1999 or otherwise and neither Party can declare itself trustee of the rights under it for the benefit of any third party.

13.8 The Supplier may transfer or assign its rights and obligations to any Associated Company and may sub-contract any of its obligations. Otherwise, neither Party may transfer, assign, sublicense or subcontract any rights, licences or obligations under this Agreement without the prior written consent of the other Party, which will not be unreasonably withheld or delayed.

13.9 English law shall govern the validity, construction and performance of this Agreement and the Parties submit to the

exclusive jurisdiction of the English Courts.

13.10 These main body Terms and Conditions shall apply in respect of each Service in addition to the special terms relating to such Service in the relevant Schedule. Where there is any conflict, the provisions of the Schedule will prevail.

## **SCHEDULE OF SPECIAL TERMS FOR NUMBER TRANSLATION SERVICES**

### **1. Definitions**

All terms defined in the main body of this Agreement shall have the same meaning in this Schedule and in addition the defined terms set out below shall apply in this Schedule only:

**Artificial Inflation of Traffic:** means a situation where the flow of calls to any particular revenue share service is disproportionate to the flow of traffic of calls that would be expected from any good faith commercial practice and usage of the network.

**Call:** means the successful establishment of a connection between a Caller and the Customer's equipment over the System (and, if appropriate, a Carrier's system) enabling the conveyance of signals and messages between the Caller and the Customer's equipment.

**Caller:** means a caller who is to be charged for Calls to the Customer, at the appropriate rate for the relevant non-geographic number range as set out by the Carrier whose service the Caller uses.

**Carrier:** means any network operator(s) transiting the Call.

**Code of Practice:** means the ICSTIS Codes of Practice for Premium Rate Services being the editions that are currently in force and any amendment or substitution made from time to time. This definition will also include any other code of practice introduced, required or approved by OFCOM or other competent authority that applies to or otherwise affects the NTS.

**Customer's Service:** means any service offered by the Customer to a Caller over an NTS Number, or the contents or any part of such service and, where appropriate, including any advertising and/or promotional material used by the Customer.

**Frontsheet:** means any front sheet to this Agreement. The Customer may be defined on either the Order or the Frontsheet.

**Line Provider:** means the provider of a fixed line telephone service.

**NTS:** means the Supplier's number translation service whereby, on receipt of any Call addressed to an NTS Number, the Supplier shall translate the NTS Number into a geographic telephone number allocated to the Customer by its Line Provider and then route that telephone call to the Line Provider's telecommunications system.

**NTS Charges:** means the charges due from the Customer to the Supplier calculated by reference to the pence per minute charge (minutes of use of NTS Numbers), the connection charge, the rental charge and the payphone access charge, all as set out in the Order or the Frontsheet and payable pursuant to Clause 5.

**NTS Number:** means a number allocated to the Customer by the Supplier for NTS and which a Caller will use to access the Customer's Service.

**Out payments:** means the sums (if any) payable by the Supplier to the Customer pursuant to Clause 6 of this Schedule.

## **2. Minimum Minutes**

2.1 The Supplier shall review the Charges paid or due and the minutes of Calls generated at various intervals during the Agreement, usually every three (3) months. If the Customer fails to meet these requirements the Supplier reserves the right to do one or more of the following:

2.1.1 Withdraw the NTS Number and terminate the NTS in respect of that NTS Number;

2.1.2 Where there is not already a rental charge, charge a calendar monthly rental in the future, in line with the Supplier's standard rates, or

2.1.3 increase the Charges in the future in line with the Supplier's standard rates for a lower level of traffic; or

2.1.4 Amend the rate of any Out payments for the future in line with the Supplier's standard rates for a lower level of traffic.

## **3. The NTS Numbers**

3.1 The Supplier agrees to provide the Customer with the NTS Number(s) for use in accordance with the terms and conditions of this Agreement. However, the NTS Numbers will remain the property of the Supplier at all times.

3.2 The Supplier shall use reasonable endeavours to allocate to the Customer the available NTS Number(s) requested in writing by the Customer within an agreed timeframe. Subject to availability, the Supplier may be able to supply additional NTS Numbers with the same prefix as previously allocated NTS Numbers.

3.3 The Supplier will not supply NTS Numbers (and the Customer may not use NTS Numbers) for termination outside the UK or on a mobile phone. Use of an NTS Number by the Customer for such termination shall constitute a fraud for the purposes of Clause 6.3 and shall be a material breach of this Agreement, which is not capable of remedy.

3.4 The Supplier reserves the right to amend or change any NTS Numbers or DDI if so advised by Ofcom or any other competent legal authority.

3.5 The Supplier shall not be liable in any way if any Caller is able to call the Customer's Service directly via the Customer's terminating number and not the relevant NTS Number, except where such terminating number has become known to the Caller as a result of the Supplier's negligent act or omission.

## **4. The Customer's General Duties & Obligations**

4.1 The Customer shall, prior to the commencement of the NTS, notify the Supplier in writing as to the general content of the Customer's Service and shall provide any other information reasonably requested by the Supplier.

4.2 The Customer shall ensure that the Customer's Service and its content is of a high quality and is advertised, promoted, operated and presented in a manner so as not to bring or be likely to bring the Supplier's or an Associated Company's name into disrepute. The Supplier's opinion in this regard shall be final and binding. The Customer shall clearly state the standard charge for access to the Customer's Service on all promotions.

4.3 The Customer shall be solely responsible for the quality and content of the Customer's Service and shall ensure that it complies with all applicable laws and regulations (including the Code of

Practice). In addition, the Customer shall ensure that all rights, licences and consents required for the provision of the Customer's Service are obtained and complied with. The Customer will provide evidence of its compliance with this Clause 4.3 on request.

4.4 In the event that ICSTIS and/or OFCOM and/or any other relevant authority form the view or the Supplier otherwise has reasonable grounds to believe that the Customer is in actual or potential breach of the Code of Practice or any applicable law, the Customer shall comply with any instructions or recommendations issued by ICSTIS and/or OFCOM and/or other relevant authority and/or the Supplier.

4.5 The Customer shall give the Supplier as much written notice as possible (being not less than four weeks) prior to television and other media advertising of the NTS Number(s) that may result in increase in capacity usage. The Supplier shall use its reasonable endeavours to route the forecast telephone calls in full.

4.6 The Customer agrees that it will not provide or include any material, information or message in the Customer's Service that would, either in itself or through transmission, constitute a criminal offence or otherwise be unlawful or menacing or a nuisance or a hoax. The Customer will comply with any policy relating to the use of the NTS Numbers or NTS as the Supplier issues from time to time.

4.7 The Customer shall neither make nor have anyone on its behalf make, calls to the NTS Number(s) other than at reasonable intervals to test that the Customer's Service is working correctly.

4.8 There shall be no inference on the part of the Customer that it has received approval in any form from the Supplier as to the content of the Customer's Service.

4.9 The Customer shall pay all charges relating to porting NTS Numbers from any other carrier, or subsequent porting of any NTS Numbers from the Supplier to any other Carrier.

4.10 The Customer shall indemnify and hold harmless the Supplier against all liability, costs, losses and expenses arising out of or in any way connected with any breach of the provisions of this Clause 4. The Customer shall also indemnify and keep indemnified the Supplier against all liabilities, actions, proceedings, claims and demands arising directly or indirectly in connection with the use of the NTS by the Customer, or the conduct of the Customer's business, save where caused by a breach of this Agreement by the Supplier.

## **5. NTS Charges**

5.1 The Supplier shall be entitled to send an invoice to the Customer for the NTS Charges relating to calls at the end of the month in which the relevant calls were made and, for NTS Charges relating to rental or connection charges, monthly in advance and following connection respectively.

5.2 The Customer shall pay all NTS Charges as calculated using the details recorded or logged by the Supplier and not details recorded by the Customer.

5.3 The Supplier reserves the right to collect any NTS Charges by offset against the Out payments.

## **6. Out payments (if applicable)**

6.1 In consideration of the Customer's compliance with this Agreement, the Supplier shall pay the Customer the Out payments calculated in accordance with the Order or the Frontsheet or otherwise notified by the Supplier to the Customer, subject to the other provisions of this Agreement. The Out payments are based on the rate of inpayments to the Supplier from the Carrier and the interconnect payments, network transit and porting conveyance charges as at the date of this Agreement. If any of these items increase or decrease at any time, the Supplier shall be entitled to increase or decrease the Out payments proportionately. The Supplier shall inform the Customer of any amendments to Out payment figures.

6.2 Out payments will cease to be payable with immediate effect upon termination of this Agreement by the Supplier for any reason. Any accrued Out payments will be paid to the Customer, less any costs and losses incurred by the Supplier as a result of termination prior to expiry of the expressly permitted period of notice.

6.3 The Supplier reserves the right to withhold any Out payments if the Customer's Service is suspected or alleged to be contrary to any Code of Practice, fraudulent (including Artificial Inflation of Traffic), illegal, or contrary to criminal or civil law, subject to the outcome of a subsequent investigation, which may be instigated by the Supplier or any other Carrier or competent legal authority. The Customer acknowledges that the Carrier may inform the Supplier of a suspected contravention without being able to immediately identify whether the Customer's Service is involved, in this case the Supplier shall still be entitled to suspend the Out payment until the position is clarified. If subsequent to a payment being made to the Customer, a Carrier withholds payment from the Supplier relating to the Calls because of alleged contravention of the Code of Practice, fraud, illegality or breach of the criminal or civil law (other than by the Supplier) the Supplier shall be entitled to give notice to the Customer and withhold an equivalent amount from any further Out payments to the Customer until payment is received by the Supplier from the Carrier.

6.4 Any losses suffered by the Supplier in respect of fraudulent or alleged fraudulent use (including Artificial Inflation of Traffic) of NTS Numbers supplied to the Customer will be deducted from future Out payments by the Supplier to the Customer, or as a debt from the Customer. For the avoidance of doubt, the fraudulent or illegal use of NTS Numbers (including Artificial Inflation of Traffic), use contrary to civil or criminal law and use in contravention of the Code of Practice will all constitute material breaches, which are not capable of remedy.

## **7. International Toll Free Services (ITFS)**

The Customer acknowledges that any ITFS is provided by a third party supplier (TPS) to the Supplier, and accordingly following provisions shall apply:

7.1 The Customer undertakes to use the ITFS in accordance with such terms as the TPS notifies the Supplier and which the Supplier notifies the Customer in writing from time to time and in accordance with the relevant provisions of the Telecommunications Act 1984, the TPS' licence, any direction of Ofcom and any licence granted which governs the running of a

telecommunications system by the Customer.

7.2 The Supplier shall have no liability whatsoever for the acts, faults or omissions of the telecommunications administration of origin (being the far end telephone administration which conveys the originating call under the ITFS) or the TPS howsoever caused, even if such acts, faults or omissions are caused by the negligence of the telecommunications administration of origin or the TPS.

7.3 The TPS may require the inclusion in this Agreement of those provisions of the contract between the Supplier and the TPS governing the use and supply of the ITFS which the TPS in its sole discretion shall determine to be reasonable from time to time. Any such requirement shall be communicated to the Customer in writing following which such provisions shall be deemed incorporated into this Agreement by agreement.