

Terms and Conditions of Service

1. Preliminary

- 1.1. Words beginning with capital letters, unless the context otherwise requires, shall be as defined in the Appendix below. The headings of conditions are for reference purposes only and shall not affect their interpretation.
- 1.2. Proposals given by the Company are for discussion only and no amendment of these conditions shall be effective unless agreed in writing by a duly authorised the Company employee. Any Contract shall come into existence only when the Company accepts the Customer's request for the Service. Each Contract contains the entire understanding of the parties regarding its subject matter and save as provided in these Conditions shall not be amended except with the parties' written agreement.
- 1.3. Where the Company sells equipment, or a maintenance service, the Company's Conditions of Sale, or, as the case may be, Terms and Conditions for Maintenance Service, current from time to time shall apply in addition to these Conditions.

2. Provision of Service

- 2.1. The Company shall supply the Service subject to and in accordance with the Contract from the Service Start Date until the Contract is ended by the Company or the Customer or expires.
- 2.2. The Company reserves the right to inspect or test the Customer's premises and any other facilities (other than Company Equipment) which may be used in connection with the supply of the Service before accepting the same for the provision of the Service. In any such case, the Contract shall not come into effect until the Company notifies its acceptance in writing. The date of acceptance shall be the Service Start Date. The Customer shall pay the Company's reasonable charges for the inspection/testing calculated by reference to the Company's rates current from time to time.

3. Times and Supply of Service

- 3.1. the Company shall take reasonable steps to provide the Service by any dates agreed with the Customer but such dates are estimates only and the Company shall have no liability to the Customer in contract, tort (including negligence and breach of statutory duty) or otherwise howsoever for any delay or failure in the provision of the Service, nor shall any such delay or failure entitle the Customer to terminate the Contract.

4. Customer Obligations

- 4.1. The Customer agrees, as a condition of each Contract, at its expense, to:
 - 4.1.1. suitably prepare the Premises before Service is provided according to any instructions the Company may give in writing and supply an appropriate place and conditions for any the Company Equipment including, where required, a continuous mains electricity supply and connection points (and when the Company's work is complete the Customer will be responsible for putting items back and for any redecoration which may be needed)
 - 4.1.2. procure all permissions which may be needed for the Company and others acting on its behalf to have access to the Customer's Premises and any other property for all purposes in connection with the installation and maintenance of the Service including any the Company Equipment including but not limited to the consent of a landlord or neighbour (and the Company shall have no obligation to advise if such permissions may be needed or to verify that they have been obtained) and for the installation and use of any Customer Equipment; The Customer shall grant wayleaves needed for the provision of the Services by the Company at no cost across property owned by the Customer and shall procure wayleaves at no cost to the Company or its suppliers across property leased or otherwise occupied or controlled by the Customer.
- 4.2. meet all requirements for the safety and security of the personnel of the Company and others acting on its behalf whilst on the Premises;
- 4.3. to take proper care of any the Company Equipment and to pay for the replacement or repair (at the Company's option) of any items which are lost or damaged unless loss or damage is shown by the Customer to have been caused by the Company or anyone acting on the Company's behalf or (in case of any damage) is due to fair wear

and tear. In particular the Customer will not make or permit to be made any attempt to disassemble, deconstruct, break down, hack into or otherwise interfere with any Company Equipment

5. Rights of the Company

- 5.1. The Customer acknowledges that the Company may:-
 - 5.1.1. in an emergency affecting the Company, its suppliers or its or their customers, suspend the Service temporarily;
 - 5.1.2. for operational reasons affecting the Company or its suppliers in the Isle of Man or elsewhere temporarily suspend the Service or vary its technical specification;
 - 5.1.3. temporarily suspend the Service for the purpose of repair, maintenance or improvement of any equipment of the Company or its suppliers.
- 5.2. The Company will give the Customer as much notice as possible before doing any of the above things and will restore Service as soon as possible after temporary suspension.
- 5.3. The Company reserves the right to change the Contract (including the Charges) at any time and will notify the Customer as quickly as possible provided that in the case changes that are to the Customer's significant detriment, the period of such notification shall be not less than seven (7) days before the change is to take effect and the Customer shall have the right to terminate the Contract by giving the Company written notice to that effect before the change is to take effect.
- 5.4. The Company reserves the right to manage bandwidth (which could result in reduced Service speeds) and if the Customer uses or continues to use the Service inappropriately (for example by file sharing or large downloads) to suspend or terminate the Contract without liability to the Customer but the Company will endeavour to give the Customer reasonable notice before suspending or terminating the Contract.

6. Customer Equipment

- 6.1. Any Customer Equipment must :-
 - 6.1.1. Be technically compatible with the Service and not harmful to any equipment of the Company, its suppliers or its or their customers;
 - 6.1.2. Be and remain connected in accordance with the Company's requirements current from time to time;
 - 6.1.3. Be and remain adequately protected against viruses and other breaches of security.
- 6.2. If the Company considers that the Customer is not complying with these requirements, the Customer will, if requested by the Company to do so, in addition to any other of the Company's rights, immediately disconnect its Customer Equipment failing which the Company may do so and the Customer shall pay to the Company its applicable charges then current. The carrying out of any tests to determine if the Customer Equipment and its use are compliant shall be at the expense of the Customer who shall pay the Company's charges current from time to time.

7. Acceptable Use

- 7.1. The Service must not be used:
 - 7.1.1. in any way that is unlawful or in contravention of any licence, code of practice, instructions or guidelines issued by a regulatory authority, third person's rights or the Company's Acceptable Use Policy applicable to the Service current from time to time; or
 - 7.1.2. to send, communicate, knowingly receive, upload, download or use any material or make any calls that are offensive, abusive, indecent, defamatory, obscene, menacing, cause annoyance, inconvenience, needless anxiety or are intended to deceive; or
 - 7.1.3. in any way the Company considers is or is likely to be detrimental to the provision of the Service to the Customer or service to any of the Company's other customers.
- 7.2. The Customer will comply with the Company's reasonable instructions regarding health, security, safety or the quality of the Service.

8. Security

- 8.1. The Customer is responsible for the proper use of User Security Details, if any, and must take all necessary steps to ensure they are kept confidential, secure and not made available to unauthorized persons.
- 8.2. If the Customer believes that any User Security Details are or are likely to be used in an unauthorised way, the Customer must inform the Company immediately. The Customer must not change or attempt to change a user-name without the Company's prior agreement.
- 8.3. The Company does not guarantee the security of the Service against unauthorised or unlawful access or use. If the Company believes there is or is likely to be a breach of security or misuse of the Service the Company may:
 - 8.3.1. change and/or suspend the User Security Details (and notify the Customer that it has done this); or

8.3.2. require the Customer to change the User Security Details.

9. Internet Access

9.1. Where the Service allows access to the internet the Customer understands and agrees that the use of the internet is at the Customer's own risk.

10. Content

10.1. Where the Company provides the Customer with Content, the Customer's use of the Content is at the Customer's own risk. The Customer understands and agrees that:-

10.1.1. the Content may change from time to time;

10.1.2. the Content can only be used for its own purposes and is protected by copyright, trademark, and other Intellectual Property Rights. The Customer must not copy, store, adapt, modify, transmit, distribute externally, play or show in public, broadcast or publish any part of the Content;

10.1.3. the Company does not guarantee the accuracy or completeness of the Content;

10.1.4. some of the Content will have its own terms and conditions. These may be displayed online or elsewhere. If the Customer accesses this Content the Customer must keep to these terms and conditions; and

10.1.5. access to any Content provided on a subscription basis as part of the Service will cease when this Contract ends.

11. Operational Changes

11.1. Occasionally, for operational reasons, the Company may:-

11.1.1. change the codes or numbers given to the Customer, or the way the Company provides the Service, provided that any change to the way the Company provides the Service does not significantly affect the performance or functionality of the Service; or

11.1.2. interrupt or suspend Service. If this happens the Company will restore the Service as quickly as possible.

12. Numbers

12.1. The Customer does not own any number or have any right to sell the number related to the Service.

12.2. Where the number has the area-code 01624, this number is only to be used to access the various VoIP Services on the customer's account, including but not limited to services utilizing SIP forwarding, IAX forwarding, Fax-to-Email or call forwarding.

12.3. You acknowledge that the inbound service is provided to you subject to the terms and conditions of third party service providers who in turn make these numbers available to Wi-Manx for allocation against your VoIP account.

12.4. In the event that any of the network operators referred to in 12.3 and/or the third party service provider amend, suspend or terminate their provision of phone numbers or any other aspect of their services upon which Wi-Manx and/or the third party service provider depend for the provision of the services to you, Wi-Manx undertakes to use its reasonable endeavours to ensure the continuance of the services in the least disruptive manner.

12.5. In the event that Wi-Manx cannot maintain the services as a result of any one or more of the eventualities referred to in 12.4 above, you hereby agree that Wi-Manx will not be liable to you or any other third party for any loss, costs or damages suffered by you or any other third party or for any claims instituted against you arising from, or in any way relating to, the termination of the services in these circumstances.

13. Indemnity

13.1. The Customer will indemnify the Company against any claims or legal proceedings that are brought or threatened against the Company by a third party because the Service is or has been used in breach of these Conditions. The Company will notify the Customer of any such claims or proceedings and keep the Customer informed as to the progress of such claims or proceedings.

14. Monitoring and recording calls

14.1. The Company may monitor and record calls relating to customer services and telemarketing. The Company does this for training purposes and to improve the quality of its customer services.

15. Faults

- 15.1. It is technically impracticable to provide a fault free Service and the Company does not undertake to do so. However, in respect of any faults reported by the Customer in accordance with the Contract, the Company will take proper steps to correct the fault in line with the level of repair service applicable to the Service specified in the Service Schedule.
- 15.2. the Company shall have the right to make an additional charge at its rates current from time to time for faults reported by the Customer;
 - 15.2.1. if the Company finds that there is no fault or that the fault has been caused by the Customer; or
 - 15.2.2. if the Company attends the Customer's Premises and access is denied or impeded or the Customer has failed to obtain any necessary permission to enable the Company to carry out any necessary work.

16. Charges

- 16.1. The Company's Charges are exclusive of VAT and shall be paid without any discount, set-off or other deduction whatsoever in the case of installation or rental Charges specified in the Service Schedule or otherwise referred to in the Company's acceptance of the Customer's request for the Service on the date of the Contract and thereafter in advance on or before the dates and at the intervals specified in the Service Schedule or acceptance or (if not so specified) within 30 days of the Company's invoices.
- 16.2. The times of payment are of the essence of the Contract and without prejudice to any other of its rights the Company shall be entitled to charge interest on any overdue amounts from the date on which payment is due to that on which it is made whether before or after any judgement at a rate of 2% over the base rate from time to time quoted by the Company's bankers on a daily basis, compounded monthly.
- 16.3. The Company may, at any time, require the Customer to pay a deposit or provide a guarantee as security for payment of future bills.

17. Suspension and Termination

- 17.1. The Company shall have the right by giving the Customer reasonable notice at any time or times to suspend its performance of or (whether or not such performance has previously been suspended) terminate the Contract if:-
 - 17.1.1. the Customer fails to make any payment as and when due under the Contract or any other agreement with the Company;
 - 17.1.2. the Company has reason to believe the Services are being used in a manner prohibited by clauses 6-8 inclusive;
 - 17.1.3. the Customer is in breach of any other of its obligations under the Contract or any other agreement with the Company and such breach is irremediable or if remediable is not remedied within a reasonable time of a being given notice identifying the breach and requiring it to be remedied; or,
 - 17.1.4. the Customer has a resolution passed or a petition presented to any court for its winding-up, compulsorily or voluntarily, has a receiver, manager, administrative receiver or administrator appointed for any of its assets, enters into any composition or arrangement with its creditors, formal or informal, or suffers any similar action in consequence of the Company.
- 17.2. The Company may, in certain circumstances, need to suspend or terminate the Service(s) at any time, without prior notice and without affecting your accrued rights or claims when we have reason to believe the Services have been used in a manner prohibited by clauses 6-8 inclusive
- 17.3. The Customer shall have the right by giving the Company written notice at any time or times to terminate the Contract in case of the occurrence of any of the circumstances referred to in clauses 17.1.3 or 17.1.4 affecting the Company.
- 17.4. When giving notice of suspension, the Company will notify the Customer of what steps the Customer needs to take for the Services to be resumed. The Customer must continue to pay all Charges payable under the Contract while the Contract remains in force.
- 17.5. On termination of the Contract by the Company for any reason within any Minimum Period, in addition to any other sums payable up to the end of the Contract, the Customer must pay the Company all rental and other Charges of whatever kind which would have been payable under the Contract for the remainder of the Minimum Period in the amounts specified in the Contract or at the rates in force at the date of such termination.
- 17.6. Neither Party's rights shall be affected by any indulgence or forbearance extended to the other party and no such indulgence or forbearance shall operate as a waiver in respect of the same or any subsequent breach.

18. Liability

- 18.1. Each party accepts unlimited liability in respect of death or personal injury resulting from its negligence or for fraud on the part of its employees whilst acting in the course of their employment.

- 18.2. The Company does not warrant or represent that the Services will be free from fault or error. In case of any such fault or error, the Company's liability, in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever shall be limited to taking proper steps to correct the same in accordance with clause 15.
- 18.3. Subject to clauses 18.1 and 18.2, the Company shall have no liability in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever under or in connection with the Contract for any consequential loss suffered directly or indirectly by the Customer, including but not limited to wasted time or expenditure, loss of profit, revenue, business or expected savings or goodwill or any loss of or corruption of any data.
- 18.4. Where before or after the commencement of the Contract the Company has supplied or supplies any technical information, opinion, recommendation or advice ("Information") the Customer must check its suitability for its particular requirements and, unless otherwise agreed in writing, the Company accepts no liability in contract, tort (including negligence) or otherwise howsoever for any loss, damage or expense arising from any use by the Customer of any Information or reliance upon it.
- 18.5. The foregoing provisions of this clause 18 state the entire liability of the Company under or in connection with this contract to the exclusion of any conditions, warranties or other terms implied by law or statute.

19. Intellectual Property

- 19.1. Except as expressly set out in the Contract, the Customer and the Company do not acquire any rights or licences to the other's Intellectual Property Rights.
- 19.2. If Software is provided to enable the Customer to receive and use the Service, the Company grants or if the Company is not the owner of the software shall take reasonable steps to procure to be granted to the Customer for the duration of the Contract a licence in respect of the Software for its own use. Unless otherwise agreed in writing, any licence granted by the Company under this clause 19.2 will end when the Contract is terminated.
- 19.3. If the Service provides the Customer with Software licensed by third parties who require the Customer to accept their terms of use, the Customer must keep to those terms.
- 19.4. Except as permitted by applicable law or as expressly permitted under the Contract the Customer must not, without the Company's prior written consent, copy, de-compile or modify any software, copy manuals or documentation or permit anyone else to do so.
- 19.5. The Company will indemnify or if the the Company is not the owner of the software will take reasonable steps to procure to be indemnified the Customer against all claims and proceedings arising from infringement of any third person's Intellectual Property Rights by the provision of the Service to the Customer. This indemnity does not apply to claims or proceedings arising from:
- 19.5.1. the use of the Service in conjunction with any equipment, software or any other service not supplied by the Company without the Company's prior written consent; or
 - 19.5.2. designs or specifications supplied by the Customer; or
 - 19.5.3. the use of the Service other than in accordance with the terms of the Contract; or
 - 19.5.4. breach by the Customer of the provisions of the Contract.
- 19.6. As a condition of the indemnity in clause 19.5 the Customer must:-
- 19.6.1. notify the Company promptly in writing of any allegation of infringement;
 - 19.6.2. make no admission relating to the infringement;
 - 19.6.3. allow the Company to conduct all negotiations and proceedings in respect of any such claims and give the Company all reasonable assistance in doing so the Company will pay the Customer's reasonable expenses for such assistance); and
 - 19.6.4. allow the Company to modify the Service but not so as to materially affect its overall performance.
- 19.7. If the Service becomes, or the Company believes it is likely to become, the subject of a claim of infringement of any Intellectual Property Rights the Company, at its option and expense, may secure for the Customer a right of continued use or modify or replace the Service so that it is no longer infringing, provided that the modification or replacement does not materially affect the performance of the Service. If the indemnity in clause 19.5 applies and none of the remedies in this clause is available to the Company on reasonable terms, the Company may notify the Customer and terminate the Service without liability to the Customer.

20. Confidentiality

- 20.1. Except to the extent any disclosure is required by law the Company and the Customer will keep in confidence any information, whether written or oral, of a confidential nature of the Company obtained under or in connection with the Contract. The Customer and the Company will not, without the consent of the other, disclose such information to any person other than:
- 20.1.1. their Group Company employees or professional advisers who need the information in order for the Customer or the Company to fulfil its obligations under the Contract; or
 - 20.1.2. in the case of the Customer, its Users to the extent that they are required to use or access the Service; or
 - 20.1.3. in the case of the Company, the employees or professional advisers of its suppliers who need the information in order for the Company to fulfil its obligations under the Contract.

20.2. Information will not be treated as confidential if:-

- 20.2.1. it is or after the date of disclosure otherwise than in breach of this Agreement by the disclose comes in the public domain; or
- 20.2.2. is lawfully in the possession of the Customer or the Company before disclosure has taken place; or
- 20.2.3. in the case of information disclosed by the Customer to the Company, that information is later obtained by the Company from a third person who is free to disclose it; or it is replicated independently by someone without access or knowledge of the Information.

21. Force Majeure

21.1. Neither party shall be liable for any failure or delay in the performance of the Contract (but not in connection with the payment of the Company's Charges) arising from any cause beyond its reasonable control existing at the date of the Contract or occurring thereafter including but not limited to fire, explosion, breakdown or failure of equipment or facilities, lack or failure of supply of labour, materials or power, strike, lock-out or labour dispute (whether or not involving the personnel of the Party concerned), illness, epidemic, flood, drought, war, civil commotion or requirement of any authority or governmental agency (including in the case of the Company any termination or suspension of service by any person on behalf of the Company on which the provision of the Service depends, whether in the Isle of Man or elsewhere) and the time for performance shall be extended by the period of any such failure or delay.

22. Severability

22.1. Any provision of this Contract which is adjudged by a competent tribunal to be unlawful, void or unenforceable shall not affect the validity of the remaining provisions.

23. Law and Jurisdiction

23.1. The law applicable to this agreement is the law of the Isle of Man and the parties consent to the non-exclusive jurisdiction of the Manx courts in all matters connected with the Contract.

24. Third Parties

24.1. No right is granted to any third party to enforce any rights arising under the Contract.

25. Data Protection

25.1. The Customer and The Company will comply with their respective obligations under the Data Protection Act 2002 and any data protection, privacy or similar laws that apply to any personal data processed in connection with the Contract. The Customer and The Company will provide such help and co-operation as is reasonably necessary or requested by the other to enable compliance with this clause.

26. Assignment

26.1. The Company may at its discretion assign or transfer the benefit of or subcontract the performance of any of its obligations under the Contract to any person, but the Customer shall not assign or transfer the benefit of or subcontract any of its obligations without the Company's prior written consent which shall not be unreasonably withheld.

27. Notices

27.1. Any notice to be given to either party shall be in writing and if sent by fax or first class letter post to the receiving party at its registered office or business address last notified to the other party shall be deemed to have been given on the date of the fax or email (if sent during normal office hours and provided a copy is sent the same day by first class letter post) or 2 days after the date of posting.

Appendix

"Acceptable Use Policy" or "AUP" means the Company's policy for the proper use of the Service by the Customer current from time to time.

“Charges” shall include the installation, rental charges and other charges specified in or otherwise payable pursuant to the Contract.

“Company Equipment” means any equipment (including software) placed by the Company or any person acting on its behalf at the Premises to provide the Service.

“Content” means applications, data, information, video, graphics, sound, music, photographs, software or any other material.

“Contract” shall consist of the Customer’s request for the Service, the Company acceptance of that request, these Conditions, the Service Schedule any other documents expressly incorporated by any of these documents or by agreement between the Customer and the Company, including but not limited to the AUP and the Company’s Conditions of Sale current from time to time, and in case of any inconsistency between the Customer’s request for the Service and any other of the foregoing documents the latter shall prevail.

“Customer” means the customer with whom the Company contracts to provide the Service.

“Customer Equipment” means equipment not forming part of any Company Equipment which the Customer uses or proposes to use with the Service.

“Intellectual Property Rights” means any patent, petty patent, registered design, copyright, design right, database right, rights in designs, invention, semiconductor, topography right, know-how, or any similar right exercisable in any part of the world and including any applications for the registration of any patents or designs.

“Minimum Period” means the period specified as the Minimum Period in any Service Schedule or otherwise referred to in the Company’s acceptance of the Customer’s request for the Service..

“Premises” means the premises stated at which the Company agrees to provide the Service.

“Service” means the service specified in the Service Schedule.

“Service Schedule” means the description of the Service as indicated in any Service Schedule or otherwise referred to in the Company’s acceptance of the Customer’s request for the Service.

“Service Start Date” means the date the date on which the Service is first made available to the Customer.

“User” means anyone who is permitted by the Customer to use or access the Service.

“User Security Details” means any IDs, user names, personal identification numbers and passwords