

Invosys Business Terms and Conditions

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1 Definitions and Interpretation

1.1 In this agreement:

1.1.1 Unless the context otherwise requires:

“Act” means the Communications Act 2003;

“Agreement” means this document including any schedule hereto including the customer order form and quotation document once signed by both Invosys Business and the Customer, as the same may be varied amended or extended from time to time in accordance with the terms of this Agreement.

“Approved” means an order that has been received by the WLR Web Interface or the Broadband Admin Control Panel (both as described in the relevant Service Literature) or by an alternative order process specified by Invosys Business.

“Artificial Inflation of Traffic” or **“AIT”** means a situation where the flow of Calls to any particular Revenue Share service is as a result of any activity by or on behalf of the party operating that Revenue Share Service disproportionate to the flow of Calls which would be expected from good faith commercial practice and usage of the network;

“Audio Conferencing Service” means the service described in the relevant Service Literature;

“Broadband Admin Control Panel” means the web-based facility through which the Customer places orders for the Broadband Service;

“Broadband Service” means the service described in the relevant Service Literature;

“Broadband Circuit” means a connection between an End User’s Site and the underlying network, which carries data in both directions using a broadband protocol;

“Broadband Customer Equipment” means equipment (including any software) which is used by an End User at a Site to connect to the Broadband Service;

“Broadband RFS Date” means the date on which Invosys Business notifies the Customer that an individual Broadband Circuit is ready for use by the Customer or End User;

“BT” means British Telecommunications plc of 81 Newgate Street, London EC1A 7AJ registered in England No. 1800000;

“BT Network” means BT’s fixed public switched electronic communications network;

“Business Day” means any day (other than a Saturday or a Sunday) on which clearing banks are open in London for a full range of commercial banking transactions;

“Call” means a signal, message or communication which can be silent, visual (including text) or spoken;

“CDRs” means call data records;

“Charges” means:

- (i) in relation to Standard Supplier Services, either Charges calculated in accordance with the Schedules or the agreed fixed fee (if any) specified in the Special Conditions (as the case may be); and
- (ii) in relation to any Services which are not Standard Supplier services, the agreed Charges are incorporated into the Contract following The Customer’s acceptance of a Quotation;

“CLI” means the calling line identity;

“Code” means the Code of Practice published by PhonepayPlus as amended from time to time. References to paragraphs of the Code are references to the Thirteenth Edition of the Code of Practice that took effect on 1 July 2015 or, if superseded, any similar paragraph in the current version of the Code;

“Commencement Date” means the date the Agreement was signed;

“Customer’s System” means the telecommunications and information technology system which the Customer operates or subcontracts so as to offer services;

“Confidential Information” means all information which relates to the business, affairs, products, developments, trade secrets, know-how, personnel, customers and suppliers of each party (including, for the avoidance of doubt, any information in relation to the Invosys Business Services) and which may be reasonably regarded as the confidential information of the disclosing party;

“Contract” means this agreement, the schedules and the documents referred to in it;

“Credit Limit” means the figure specified in Schedule 3 and subject to variation according to the provisions of Schedule 3;

“Customers” means persons contracting with the Customer, or persons which have contracted with such direct customers of the Customer, for services that are dependent upon the provision and/or resale of a Invosys Business Service;

“CPS Service” means the service described in the relevant Service Literature;

“Data Protection Legislation” means the Data Protection Directive 94/46/EC as implemented in each member state, including the Data Protection Act 1998, and the Privacy and Electronic Communicative (EC Directive) Regulations 2003;

“Email” means electronic mail sent to a recipient via the internet;

“End User” means a person who is the ultimate user of services which depend upon the provision and/or resale of a Invosys Business Service and whose activities may include without limitation making Calls which are connected by means of a Invosys Business Service or receiving a Line Rental Service at a Site;

“Invosys Business Service” means a service which is offered by Invosys Business as shown in its Service Literature or which is offered by Invosys Business in the future;

“General Conditions” means the General Conditions of Entitlement set by OFCOM pursuant to its powers under section 45(2)(a) of the Act;

“Indirect Access” means a service which enables an End User to choose to route certain outgoing Calls via electronic communications networks which are not operated by BT by prefixing an access code to initiate them and as further described in the relevant Service Literature.

“IP Telephony Services” means those services described in the relevant Service Literature;

“Line” means a connection to the BT Network;

“Line Rental Service” means the service described in the relevant Service Literature;

“Minimum Period” means 36 calendar months or otherwise specified commencing with the first day of the Commencement Date;

“National Plan” means the National Numbering Scheme – Telephone Numbers administered by Ofcom;

“Network Termination Point” means the point where the End User’s wiring or equipment is connected to the BT Network;

“Nuisance Call(s)” means an unwanted Call that causes annoyance, inconvenience or anxiety to the receiver of the Call, and/or is a hoax Call, and/or is of an offensive, spiteful, abusive, indecent, defamatory, obscene, or menacing nature, and/or Calls which cause the called person to experience silence when the Call is answered in circumstances where the called person has no means of establishing whether there is a person at the other end of the line, and/or Calls which are not compliant with OFCOM’s statement of policy on persistent misuse published in accordance with section 131 of the Act as amended from time to time;

“Numbers” means any telephone number(s) provided by Invosys Business to the Customer under this Agreement;

“Operational Day” means 09:00 to 17:00 Monday to Friday excluding UK Public and Bank Holidays;

“Portal” means the secure Invosys Business website containing pricing and other service information (including Service Literature) which can be used by customers for managing processes including the placing and cancellation of orders and the downloading of invoices;

“Prices” means Invosys Business’s applicable prices for the provision or usage of the Invosys Business Services as may be amended from time to time;

“Revenue Share” means the sums payable (if any) (exclusive of VAT) by Invosys Business to the Customer in respect of any Revenue Share Service;

“Services” means and includes Standard Supplier Services and any other services supplied by Invosys Business to The Customer under a Contract.

“Service Literature” means the indicative service description and service literature published from time to time by Invosys Business;

- “Site”** means a place at which Invosys Business agrees to provide a Service;
- “Spam”** means an unsolicited marketing message not permitted under the terms of the Data Protection Legislation;
- “Special Conditions”** means any terms or conditions which vary, modify, or supplement the Contract as agreed between The Customer and The Supplier;
- “Special Equipment”** means such equipment required for the use of the Services(including without limitation computers with a broadband connection and office network)
- “Specifications”** means
- (i) In the case of Standard Supplier Services, the description and/or specification for the services set out in the Schedules; and
 - (ii) in the case of any services which are not Standard Supplier Services, the description and/or specification for the services forming part of the Contract;
- “Standard Supplier Services”** means the Services set out in the Schedules and this Agreement;
- “System”** means the electronic communications network and information technology system which Invosys Business operates or provides so as to offer electronic communications services; and
- “Unpaid Charges”** means the sum of:
- (a) Charges accrued but which have not yet been invoiced;
 - (b) Charges which have been invoiced but have not yet been paid; and
 - (c) the value added tax which is applicable to b) above plus that value added tax which would be applicable to a) above when invoiced;
- “VAT”** means value added tax or any analogous tax in any relevant jurisdiction including but not limited to use, sales and local sales of any kind;
- 1.1.2** References to persons will be construed so as to include any body corporate, unincorporated association, individual, firm, government, State or agency of the State, local or municipal authority or government body or any joint venture, association or partnership (whether or not having separate legal personality);
- 1.1.3** Words used in the singular only shall include the plural where appropriate and vice versa;
- 1.1.4** A reference to any statute, statutory provision, regulation, order or code shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted;
- 1.1.5** Any reference to a **“day”** (including within the phrase **“Business Day”**) shall mean a period of 24 hours running from 00:00 to 23:59;
- 1.1.6** References to times are to the time in London, England, unless otherwise specified;

- 1.2** The schedules form part of this Agreement and will have the same force and effect as if expressly set out in the body of this Agreement.
- 1.3** If and to the extent that there is an inconsistency between the terms of any document referred to in this Agreement and this Agreement, the terms of the body of this Agreement shall prevail unless expressly stated otherwise.

2 Commencement and Duration

- 2.1** This Agreement will come into effect on the Commencement Date and will continue in force for a minimum period of three (3) years or as otherwise specified and thereafter shall be renewed automatically for the same period until terminated:
- (i) by the customer giving Invosys Business no less than 90 days notice in writing prior to the end of the minimum period.
 - (ii) in accordance with clause 9.
- 2.2** Certain products are subject to longer notice periods due to third party suppliers in which case the termination notice will be as set out in the Order or relevant schedule.
- 2.3** Any Services used by the Customer during any notice period in accordance with clause 2.1 and clause 2.2 above will be chargeable, and any Third-Party Supplier costs (including termination fees) incurred by the Supplier within this notice period in accordance with clause 9 **Termination Charges** may apply if the Service is terminated outside of the prescribed timescales set forth in clause 2.1 or clause 2.2 above.

3 Provision of Services

- 3.1** Invosys Business shall:
- 3.1.1** Where applicable, establish the connection of the System to the point or points of connection on or before the commencement of the Minimum Period in the manner to be agreed between the parties; and
 - 3.1.2** Use reasonable endeavors to provide each Invosys Business Service to the Customer from the date when an order relating to such service is first Approved (which shall not occur prior to the Commencement Date) and to do so until that Invosys Business Service is terminated in accordance with this Agreement. Each Invosys Business Service will be provided subject to the terms and conditions of this Agreement and the Schedules to this Agreement and the relevant provisions of the Act. Invosys Business will use reasonable endeavors to deliver the Invosys Business Services in line with the Service Literature. Invosys Business shall use reasonable endeavors to maintain each Invosys Business Service for twenty-four (24) hours in every day on every day of the year (subject to any restrictions shown in this Agreement).
 - 3.1.3** Agree to execute repairs and replacements to the equipment covered by a current support or rental contract in order to keep it operational. Maintenance will be carried out in the agreed hours according to the level of service selected. Repairs and inspections necessitated by reasons other than fair wear and tear will be charged at our current rates for parts and labour.

- 3.1.4** Alterations, additions or relocations to the equipment must be made by Invosys Business. Any additions to the system may require an adjustment to the service charge but this may not be implemented until the next invoice date.
- 3.2** Invosys Business shall be entitled to:
 - 3.2.1** Change the technical specification of the Invosys Business Services (provided that such changes do not materially affect the performance of the Invosys Business Services) where necessary for operational reasons, statutory or regulatory requirements;
 - 3.2.2** give the Customer instructions (which the Customer shall comply with) which Invosys Business believes to be necessary for health and safety reasons or for maintaining the quality of the Invosys Business Services;
 - 3.2.3** make alterations to any Invosys Business Service (including without limitation conversions, shifts, reconfigurations and renumbers). Such alterations may result in disruption to the Invosys Business Service although Invosys Business will use reasonable endeavors to minimise any disruption to the Customer, and where practicable, Invosys Business will give the Customer as much notice as possible;
 - 3.2.4** where it is supplying Number Translation Services to the Customer, transfer individual active numbers within ranges of numbers to third party providers on receipt of a valid request from a subscriber to do so, provided that such request is in accordance with OFCOM regulations or the regulations of any other relevant regulatory authority; and
 - 3.2.5** refuse any order for Invosys Business Services at its sole discretion, including where as a result of the order the total value of Charges in any applicable period exceed the Credit Limit.
 - 3.2.6** If Invosys Business has offered reserved numbers or number in a series to the Customer which the Customer has not ordered, paid for or used, Invosys Business is entitled to cancel such reservations without compensation or liability in relation to the customer.
- 3.3** Invosys Business warrants that:
 - 3.3.1** the Invosys Business Services will be performed with reasonable skill and care and in material accordance with the Service Literature;
 - 3.3.2** it shall employ or engage in the provision of the Invosys Business Services persons who are appropriately qualified, skilled and competent in the area into which they are employed; and
 - 3.3.3** it shall comply with the General Conditions and any Special Condition applicable to it under the Act in respect of the Invosys Business Services.
- 3.4** Invosys Business does not warrant that the Invosys Business Services will be fault free or free of interruptions. Invosys Business shall not be liable for any failure to provide the Invosys Business Services whether this arises from a technical or other failure of the System or otherwise.
- 3.5** For the avoidance of doubt, it is hereby agreed and declared that Invosys Business shall at all times be free to enter into contracts relating to the Invosys Business Services with such other third parties as it sees fit.

- 3.6** Invosys Business may change the conditions or service levels relating to a Invosys Business Service in order to reflect contractual changes imposed upon Invosys Business by its suppliers (including BT) or any decision, request by or change in the regulatory regime by the relevant regulatory authorities and (where reasonably practicable) Invosys Business will give at least thirty (30) days written notice to the Customer before the change takes effect.
- 3.7** Invosys Business shall be entitled to sub-contract any obligations it may have under this Agreement. Invosys Business may at its sole discretion provide any Invosys Business Service either directly or through some combination of subcontractors, subsidiaries and/or subsidiaries of Invosys Business's holding company.
- 3.8** Invosys Business shall, on one (1) week's written notice to the Customer, be entitled to delete CLIs which have not used a Invosys Business Service in the previous six (6) months except where the CLIs were provided under the Line Rental Service.
- 3.9** Invosys Business shall be entitled to record any or all calls to Invosys Business support or service centres in order to monitor the quality of support or service provided or for training purposes.
- 3.10** All new equipment will be covered by a 12 month warranty period and repaired or replaced if found faulty once returned to Invosys Business.
- 3.11** Software is licensed to you not sold and is provided on the terms of the manufacturers license.
- 3.12** On-site support and telephone technical advice on both hardware and software is only provided where you enter into a support contract with Invosys Business.

4 Provision of Information and Cooperation

- 4.1** The Customer and Invosys Business agree to promptly supply the other upon request with all information and assistance which may reasonably be required to enable the other to perform their respective obligations hereunder or which is necessary to satisfy a demand from a law enforcement agency.
- 4.2** The Customer shall be solely responsible for providing any information, access to premises for Invosys Business and its subcontractors, and other co-operation needed by Invosys Business in connection with the provision of the Invosys Business Services.
- 4.3** Where the discharge of Invosys Business's obligations under this Agreement involves the processing of personal data, the Customer appoints Invosys Business as the Customer's data processor to process the personal data on behalf of the Customer for the purposes of this Agreement. Where Invosys Business carries out such processing, it will do so in accordance with the provisions of the Data Protection Legislation.

5 Use of Services

- 5.1** The Customer will use the Invosys Business Services in accordance with the provisions of this Agreement and the Schedules to this Agreement and Invosys Business's relevant service literature (as provided to the Customer by Invosys Business from time to time)

and all other reasonable instructions as may be notified by Invosys Business to the Customer from time to time and in accordance with the relevant provisions of the Act.

- 5.2** The Customer must not use a Invosys Business Service or allow or permit any End User to use the End User Service:
 - 5.2.1** In a way that does not comply with the terms of any legislation or any codes of practice, regulations or any licence or authorisation applicable to the Customer, Customer or End User (as appropriate) or that is in any way unlawful or fraudulent or to the knowledge of the Customer or End User has any unlawful or fraudulent purpose or effect;
 - 5.2.2** In connection with (without prejudice to the generality of clause 5.2.1 above) the carrying out of fraud or a criminal offence against any other public electronic communications operator;
 - 5.2.3** In any way that constitutes Artificial Inflation of Traffic;
 - 5.2.4** In a way that does not comply with any instructions given under clause 3.2.2;
 - 5.2.5** In a way that in Invosys Business's reasonable opinion could materially affect the quality of any electronic communications service or other service provided by Invosys Business or any third party;
 - 5.2.6** To make Nuisance Calls or Spam;
 - 5.2.7** To threaten, harass, stalk, abuse, disrupt or otherwise violate or infringe the rights (including but not limited to copyright, rights of privacy and publicity) of others;
 - 5.2.8** To obtain access, through whatever means, to notified restricted areas of the underlying network;
 - 5.2.9** To send and receive data or call traffic in such a way or in such amount so as to adversely affect the network (or any part of it) which underpins any Invosys Business Service or to adversely affect other customers of Invosys Business or of its suppliers;
 - 5.2.10** To engage in conduct which amounts to improper or persistent misuse of a public electronic communications network or service within the meaning of sections 127 to 128 of the Act; or
 - 5.2.11** In a way which (in the reasonable opinion of Invosys Business) brings the name of Invosys Business into disrepute, or which places Invosys Business in breach of the Act.
- 5.3** The Customer shall comply with the processes, procedures and requirements set out in the relevant Service Literature.
- 5.4** Each party shall use Numbers in accordance with the National Plan. Invosys Business shall have the right to reallocate Numbers allocated to the Customer or End User pursuant to an order for Invosys Business Services if those Numbers are not used for a period of six (6) consecutive weeks.
- 5.5** Where goods have been supplied to the Customer, they will remain the property of Invosys Business until they have been paid for, but they are at the Customers risk from the date of delivery.

5.6 Under any rental Agreement, the equipment does not become the property of the Customer and as such must not be sold or moved without prior consent. The Customer will be responsible for the equipment and must keep it insured for its full replacement value and must return the equipment to Invosys Business at the end of the Agreement in good working order.

6 Obligations of the Customer

6.1 Where applicable, the Customer shall establish the connection of the Customer's System to the point or points of connection on or before the commencement of the Minimum Period in the manner to be agreed between the parties.

6.2 The Customer undertakes that it will ensure all apparatus which is attached (directly or indirectly) to the Invosys Business Services will conform to all applicable laws and to the relevant standard or approval for the time being designated under the Act or the Radio Equipment and Telecommunications Terminal Equipment Regulations 2000 and any requirements or standards set out in the relevant Service Literature and in the case of resellers will require that they include and maintain such an undertaking in their contracts with further resellers and subcontractors.

6.2.1 The Customer shall obtain all necessary permissions and consents from third parties necessary for the provision and use of the Invosys Business Services and for the operation of the Customer's Systems and equipment (if any) which are to be connected to the System pursuant to the provision of the Invosys Business Services or which are otherwise required under this Agreement. The Customer hereby warrants (such warranty being deemed to be repeated on each and every day during the term of this Agreement) that all such permissions and consents as are necessary to enable the Customer legally to receive the Invosys Business Services as envisaged by this Agreement have been obtained and will be maintained and kept up to date and it has the unimpaired right to receive the Invosys Business Services.

6.3 The Customer shall not use Invosys Business's name or any registered or unregistered trade marks or service marks of Invosys Business without the prior written consent of Invosys Business. If Invosys Business does give such written consent, the Customer shall submit to Invosys Business for prior written approval copies of all marketing and advertising materials and other documentation (including, where applicable, contractual documentation) involving the Invosys Business name, registered or unregistered trade marks or service marks of Invosys Business which the Customer proposes to use, prior to the use of any such materials.

6.4 The Customer shall not at any time make any statements or representations to third parties with regard to Invosys Business or in any way hold itself out as acting for or on behalf of Invosys Business. The Customer shall ensure that contracts made between the Customer and its Customers and End Users are not represented as being Invosys Business or Invosys Business branded contracts but rather are clearly stated to be contracts between the Customer and the Customer or End User, except where the Customer has obtained Invosys Business's prior written approval to the use of Invosys Business's name, trade marks or service marks in accordance with the provisions of clause 6.3 above.

- 6.5** The Customer shall notify Invosys Business promptly of all of the Customer's enquiries or problems regarding technical and operational issues with the System.
- 6.6** In the event that the Customer is notified by an End User, or becomes aware by any other means, or has reasonable suspicions that a fraud or serious illegal misuse may have taken place, or will take place, the Customer shall be under an obligation to take immediate steps to suspend service to the number concerned by utilising the automated web interface provided by Invosys Business. Invosys Business shall ensure that no further traffic is permitted on the relevant lines until service is re-instated through the web interface by the Customer or by Invosys Business at the request of the Customer. Invosys Business shall not be responsible for any Charges or liabilities incurred by the Customer prior to such suspension.
- 6.7** The Customer shall maintain a full, accurate and up-to-date electronic database containing Customer and End User details and information.
- 6.8** The Customer shall comply with all applicable laws (including, without limitation, data protection laws and laws relating to the provision of voice-over IP ("VOIP") services) and all codes of conduct, decisions, directions or recommendations issued by OFCOM and/or PhonepayPlus and/or any other competent regulatory body and shall require compliance by its Customer and End Users with the foregoing.
- 6.9** The Customer shall use reasonable skill and care in the performance of its obligations under this Agreement and shall keep complete and accurate records in relation to the performance of such obligations.
- 6.10** The Customer shall comply fully with the provisions of all the schedules within this Agreement.
- 6.11** The Customer undertakes that it will not allocate any Number to a Customer or End User or to a potential Customer or End User who appear at the date of the request for allocation on any the lists that may at any time in the future be compiled and published by Ofcom of companies and individuals that have caused serious or repeated harm to consumers ("Number Refusal List") or of companies and individuals that are under assessment ("Under Assessment List") (together the "Consumer Protection Lists" and each a "Consumer Protection List"). Invosys Business on its part will not allocate any Numbers to any party on the Consumer Protection Lists.
- 6.12** The Customer shall reserve the right to terminate any agreement with a Customer or End User and withdraw the Numbers allocated to that Customer or End User should the Customer or End User appear on a Consumer Protection List. Where a Customer or End User appears on at least one of the Consumer Protection Lists, the Customer must exercise the right to withdraw the Numbers allocated to the Customer or End User.
- 6.13** Emergency Services Call Handling Service is provided to the Customer subject to the conditions set out below. If such conditions are not met by the Customer, Invosys Business shall be under no obligation to provide or to continue to provide the Emergency Call Handling Service. Where the Customer sources telephone numbers from suppliers other than Invosys Business, Invosys Business will provide its Emergency Services Call Handling Service only in respect of End Users which have been assigned a Invosys Business geographic number.

- 6.13.1** The Customer shall provide Invosys Business with details of its End-Users (telephone number, End User name and installation address (including the post code) for each network termination point) to enable Invosys Business to transmit these to BT for inclusion in the national emergency services operators' database and shall keep such details updated by providing Invosys Business with amendments and deletions thereto. For End Users with nomadic applications that use more than one network termination point, the installation address is the address where the application is normally used until such time as dynamic methods to update the address can be put into practice.
- 6.13.2** In the case of a voice over internet protocol ("VoIP") originated Emergency Services Call Invosys Business will make reasonable endeavors to provide an onwards connect service to the relevant emergency organisation via BT. Invosys Business will liaise and co-operate with the Customer if so requested by BT in order to attempt to identify the End User's location and telephone number if not automatically provided. The Customer shall handle, process and reply to all enquiries of this nature and to any complaints about Emergency Service Calls.
- 6.13.3** Emergency Services Calls shall only be delivered by Invosys Business where there is a CLI for such Emergency Services Call in the correct national (UK) format.
- 6.13.4** The Customer shall be responsible for informing all its Customers and End Users including potential Customers and End Users of the limitations of VoIP originated Emergency Service Calls.

7 Charges and Payments

7.1 Charges

- 7.1.1** The Customer shall pay to Invosys Business all Charges and other sums due under this Agreement in accordance with clause 7.2.1 without set off, deduction or counterclaim.
- 7.1.2** At any time during the term of this Agreement, Invosys Business may, upon giving the Customer no less than thirty (30) days notice in writing, vary its charges.
- 7.1.3** The Customer shall be invoiced by a consolidated invoice once a month unless clearly agreed otherwise by both parties. This includes all transactions in a calendar month on one invoice dated the beginning of the following month. Payment of the invoice is due within fourteen (14) days.
- 7.1.4** Preferred method of payment for invoices is by Direct Debit.
- 7.1.5** All amounts payable hereunder are quoted exclusive of value added tax or any other applicable taxes which may from time to time be levied and such value added tax and any other such applicable taxes shall be itemised separately on all invoices and bills and be payable by the Customer in addition to, and at the same time as, any Charges.
- 7.1.6** The call charges in these invoices will be calculated from data recorded by licensed network operators and not from data recorded by the Customer
- 7.1.7** In the event the Customer wishes to dispute an invoice, or any part of an invoice issued by Invosys, it must do so within ninety (90) days of the date of the invoice after which time it shall be precluded from raising any such dispute. Payment for all sums not in dispute shall be made on the due date.

- 7.1.8** Invosys Business may in a separate invoice make backdated claims for amounts outstanding from a previous billing period which were not previously invoiced for technical or other reasons. Any backdated claims must be made within six months of the date that the Services were rendered and the payment terms in relation to any such invoice shall be as set out in clause 7.1.3.
- 7.1.8** Invosys Business reserves the right to charge the Customer for any payphone access levy incurred by Invosys Business during the provision of the Number Translation Service to the Customer.
- 7.1.9** Where no prior agreement to the contrary exists, Invosys Business reserves the right to invoice the Customer for excessive costs of conveyance caused by deliberate aggregation by the Customer of Calls to a particular dial string within a destination, the engagement by the Customer in arbitrage, deliberate manipulation by the Customer of call profiles or other similar acts of a non-commercial nature initiated by the Customer.
- 7.1.10** If a Line or the provision of a Line Rental Service to any Site or the provision of any other service which is subject to a minimum term commitment is cancelled by the Customer within the relevant minimum term then the balance of the rental which would have been paid for the remaining period of the minimum term becomes payable immediately. Where Invosys Business terminates this Agreement pursuant to clause 9.1, 9.2.1 or 9.2.3 such termination shall for the purpose of this clause be treated as cancellation by the Customer of all such services.

7.2 Unpaid Charges

- 7.2.1** Charges shall accrue from the time any part of a service is used or received except in the case of services subject to a periodic rental in which case Charges accrue from the date the service is made available for use. Invosys Business will allow the Customer to accumulate Unpaid Charges up to a maximum of the Credit Limit. In the event that at any time Unpaid Charges exceed the Credit Limit Invosys Business shall be entitled, at its option, to:
- (a) suspend provision of the Invosys Business Services on written notice with immediate effect; and/or
 - (b) request an immediate payment on account by the Customer; and/or
 - (c) issue an interim invoice.
- Any interim invoice issued under this clause shall be payable by the Customer within seven (7) days of the date of issue.
- 7.2.2** Should the Customer fail to pay an interim invoice when due or make a payment on account within seven (7) days of being requested to do so, Invosys Business will be entitled to suspend the Invosys Business Services without notice until such time as payment is made in full.
- 7.2.3** Where a service has been suspended as a result of non payment or breach of Agreement, Invosys Business reserves the right to charge for reconnection.

7.2.4 Should the Agreement be terminated, the Customer shall allow Invosys Business to collect all their equipment and will pay to Invosys Business the sums that would have fallen due over the balance of the minimum chargeable duration of any contract less a discount of 5% per annum to reflect the fact that Invosys Business have received payments early. This is a true reflection of the loss Invosys Business have suffered.

7.2.5 Where the Customer has asked Invosys Business to arrange a Lease Finance from an external finance company, then the agreement will be with the Finance Company and subject to their Terms and Conditions stated in the Agreement the Customer signs with them

7.3 Deposit

7.3.1 Invosys Business reserves the right at its option to require a deposit, credit limit or guarantee or such other security as may be acceptable to Invosys Business for an amount to be determined by Invosys Business (the "**Deposit**"):

(a) prior to the provision of any Invosys Business Service; and/or

(b) in the event that the Customer is in material breach of this Agreement; and/or

(c) in the event that there is in the opinion of Invosys Business a significant change which Invosys Business considers may have a material adverse effect on the financial circumstances of the Customer; and/or

(d) prior to recommencement of the Invosys Business Services by Invosys Business following suspension or termination in accordance with this Agreement.

7.3.2 Details of the Deposit, where applicable, are set out in Schedule 3 or will be notified separately by Invosys Business.

7.3.3 Invosys Business shall be entitled to apply all or any of the amount of the Deposit against:

(a) Any Unpaid Charges (including interim invoices and unbilled amounts) in the event the Customer fails to pay any invoiced Charges in accordance with the provisions of this clause 7; and/or

(b) Any other liability incurred by the Customer to Invosys Business whether under this Agreement or otherwise.

7.4 Interest on late payments

In the event of non-payment of any invoice, other than the non-payment of such portion of an invoice which is the subject of a bona fide dispute, Invosys Business reserves the right to charge daily interest on any outstanding amounts until payment is received in full at a rate equal to three percent (3%) per annum above the base lending rate of HSBC Bank plc as current from time to time whether before or after judgment until the date actual payment is received together with all costs reasonably incurred by Invosys Business in securing such payment and/or obtaining such judgment, as the case may be or incurred by Invosys Business by reason of any payment default by the Customer (including any reasonable administrative costs directly attributable to such default).

7.5 Fraud, AIT and revenue payment obligations

- 7.5.1** For the avoidance of doubt, all Charges and sums due to Invosys Business under this Agreement shall be paid in full by the Customer by the due date, notwithstanding that the Customer may not have received payment from its Customers or End Users and any dispute between the Customer and its Customers or End Users regarding billing is the sole responsibility of the Customer. Any fraud, Artificial Inflation of Traffic or other improper use of the Invosys Business Services committed by any Customer or End User or by any third party shall not relieve the Customer of its payment obligations to Invosys Business under this Agreement.
- 7.5.2** Subject to the following sub-clauses of this clause 7 Invosys Business shall pay any Revenue Share due to the Customer in accordance with calculations based solely upon information collated by Invosys Business. Invosys Business will deal with reasonable enquiries relating to the calculation of the amount of the Revenue Share payable but not relating to the basis or system for Invosys Business's collection of such information.
- 7.5.3** Invosys Business shall be entitled to withhold any sums payable to the Customer and any rebate otherwise due to the Customer in connection with a Revenue Share Service (including 0871 services) if:
- (a) it is obliged to do so by an order of any court, tribunal or regulatory body (including OFCOM or PhonepayPlus);
 - (b) in Invosys Business's reasonable opinion fraud or Artificial Inflation of Traffic has taken place. In forming an opinion as to whether AIT has taken place, Invosys Business shall have regard to, but shall not be bound by, the factors set out as indicators of AIT in Annex E of the BT Standard Interconnect Contract as amended from time to time;
 - (c) the corresponding repayment or rebate from BT or any other originating operator or any other transit operator to Invosys Business has been withheld;
 - (d) BT or any other originating operator or any other transit operator seeks to or threatens to withhold from Invosys Business payment of revenue or other payments deriving from or attributable to the same Revenue Share Service;
 - (e) Invosys Business has reason to believe a Invosys Business Service is being used in a manner which breaches or may breach the provisions of clauses 5.1, 5.2 or 5.3;
 - (f) the Customer is in breach of any of the material terms of this Agreement (including but not limited to clause 6.8);
 - (g) the provisions of all or any part of the Invosys Business Services are suspended in accordance with clause 8 of this Agreement;
 - (h) the Customer does not pay any sum due and owing to Invosys Business; or
 - (i) Unpaid Charges exceed the Credit Limit. By way of example and without limiting any of the foregoing provisions of this Clause 7.6.3, Invosys Business shall be entitled to withhold any sums payable to the Customer and any rebate otherwise due to the Customer in connection with a Revenue Share Service in the circumstances in which BT

is seeking to exercise rights under Annex E of the BT Standard Interconnect Agreement as amended from time to time;

- 7.5.4** No sums shall be due to the Customer and no rebate shall be due to the Customer in connection with a Revenue Share Service if:
- (a) fraud or Artificial Inflation of Traffic has taken place; or
 - (b) the corresponding repayment or rebate from BT, or any other originating operator or any other transit operator, to Invosys Business has not been paid.
- 7.5.5** Invosys Business shall be entitled immediately upon written notice to recover the revenue payments and rebates made by it to the Customer:
- (a) If Invosys Business reasonably believes that it would have been entitled to withhold such payments under Clause 7.6.3 at the time of the payment of such revenue payments and rebates; and/or
 - (b) If a claim is made against Invosys Business by BT or any other originating operator or any other transit operator, under an interconnection agreement or otherwise for recovery of sums previously paid, provided that in respect of any such claim Invosys Business shall only be entitled to recover the revenue payments and rebates made by it to the Customer which derived from the same Revenue Share Service as gave rise to the revenue which BT or the other network provider is reclaiming from Invosys Business.

8 Suspension of Services

- 8.1** Invosys Business may (without prejudice to its other rights) suspend the provision of the Invosys Business Services and the performance of its obligations under this Agreement in whole or in part with immediate effect (and the Customer will remain liable for all Charges accrued during such period of suspension) if:
- 8.1.1** Invosys Business is obliged to do so in order to comply with an order, instruction or request of Government, an emergency services organisation, a court of law, tribunal or other competent administrative or regulatory body, including OFCOM and PhonepayPlus;
 - 8.1.2** Invosys Business needs to carry out work relating to the upgrading or maintenance of the System (provided that Invosys Business has given the Customer the maximum period of notice reasonably practicable in the circumstances);
 - 8.1.3** The Customer does not pay any sum due and owing to Invosys Business;
 - 8.1.4** Invosys Business has reason to believe a Invosys Business Service is being used in a manner which breaches or may breach the provisions of clauses 5.1, 5.2 or 5.3;
 - 8.1.5** The Customer is in breach of any of the material terms of this Agreement;
 - 8.1.6** For operational reasons or in case of emergency; or
 - 8.1.7** Where Unpaid Charges exceed the Credit Limit.

- 8.2** If InvoSys Business exercises its right to suspend service or part thereof pursuant to this clause 8 it shall whenever reasonably practicable give prior notice of such suspension and its expected duration and InvoSys Business will not be liable for any loss, damage or inconvenience suffered by the Customer.
- 8.3** Without prejudice to any other rights or remedies of InvoSys Business, InvoSys Business may on 24 hours' notice delete or deactivate individual CLIs and/or connections to the InvoSys Business network if the Customer fails to pay all or any Charges or sums due and payable within the period provided for in this Agreement.
- 8.4** In the event of suspension of the InvoSys Business Services under the provisions of clauses 8.1.3, 8.1.4, 8.1.5 or 8.3 above all sums invoiced by InvoSys Business and not the subject of a bona fide dispute shall become immediately payable.

9 Termination

- 9.1** Without prejudice to any other rights or remedies of InvoSys Business, InvoSys Business may terminate this Agreement with immediate effect if the Customer fails to pay all or any Charges by the due date and, following notice of such breach, fails to remedy the breach within a period of two (2) Business Days of receipt of written notice to do so from InvoSys Business.
- 9.2** Either party may terminate this Agreement in accordance with the below clause:
- 9.2.1** By giving no less than ninety (90) days written notice of intent to cancel, prior to the end of the Minimum Period,
- 9.2.2** If the contract is not terminated at least ninety (90) days prior to the end of the Minimum Period, this Agreement shall auto renew for the Minimum Period of 36 months unless otherwise stated on the order confirmation or in this Agreement.
- 9.2.3** If the contract is terminated within the Minimum Period the Customer will be liable for any outstanding charges until the end of the Agreement Term including any applicable notice period.
- 9.2.4** Charges will be calculated as follows; monthly rental charges as applicable; an average of the anticipated call spend (where applicable) based on the last 3 months call traffic charged for the next one hundred and eighty (180) days.
- 9.3** Following termination of this Agreement and without prejudice to any rights or remedies available to InvoSys Business, the Customer shall pay to InvoSys Business on demand all arrears of Charges due up to the date of termination under this Agreement or as a result of termination of this Agreement. This clause shall continue to be binding on the Customer notwithstanding termination of this Agreement.
- 9.4** Any termination of this Agreement shall be without prejudice to the accrued rights of the parties on the date of such termination, and to the continuation in force of all provisions of this Agreement which expressly or implicitly survive such termination.
- 9.5** The parties recognise the importance of ensuring continued service to Customers and End Users. Accordingly, if InvoSys Business serves notice to terminate this Agreement

pursuant to clause 9.1 or 9.2, the parties will co-operate in good faith with this end in mind. In particular, the Customer shall comply with any reasonable request to provide Invosys Business with relevant information about Customers and/or End Users with a view to achieving such continued service.

9.6 Upon termination of the agreement all rights of the Customer to use the Service ceases.

10 Indemnities

10.1 The Customer will indemnify, defend and hold harmless Invosys Business from and against any liabilities, actions, losses, damages, judgments, costs, claims or expenses incurred by Invosys Business or legal proceedings which are brought or threatened against Invosys Business by a third party (including, without limitation, a Customer or an End User), in the event of:

10.1.1 A Invosys Business Service being or having been used in breach of clause 5.2 except where such breach results from fraud on the part of Invosys Business;

10.1.2 A Broadband Service being or having been used in breach of Schedule 1, paragraph 4.1.8 except where such breach results from fraud on the part of Invosys Business;

10.1.3 The Customer being or having been in breach of any of the provisions of: Schedule 2, paragraphs 1.3, 1.5 and 3.4; clause 5.3; clause 6.1; clause 6.8; clause 11.1.2;

10.1.4 Any fraud or Artificial Inflation of Traffic; or

10.1.5 The End User not having given permission for Invosys Business or its subcontractor to carry out any work at the End User Site in connection with this Agreement.

10.2 As a condition of the indemnity in clause 10.1 above, Invosys Business must:

10.2.1 As soon as reasonably practicable, notify the Customer in writing of any such claims or legal proceedings;

10.2.2 Make no admission relating to such claims or legal proceedings without the agreement of the Customer, which shall not be unreasonably withheld or delayed; and

10.2.3 Actively consult with the Customer regarding the conduct of any action and have due regard to the Customer's representations, and not agree any settlement of such claims or legal proceedings nor make any payment on account of them without the agreement of the Customer, which shall not be unreasonably withheld or delayed.

10.3 Subject to clause 12 each party (the first party) will fully indemnify and hold harmless the other party from any claim or liability whatsoever from a third party arising directly or indirectly out of or in connection with the first party not having obtained or maintained any of the requisite licences, authorisations, approvals and consents as warranted by the first party in clauses 11.2 or 11.3.

11 Warranties

11.1 Each party warrants to the other party (such warranties being deemed to be repeated on each and every day during the term of this Agreement) that:

- 11.1.1** It has the unimpaired right and authority to enter into and perform this Agreement which shall constitute a binding obligation on it; and
- 11.1.2** It will comply with its respective obligations under applicable Data Protection Legislation and will obtain and maintain all relevant registrations, notifications and consents, including (in relation to the Customer) such registrations, notifications and consents as the Customer should obtain and maintain to enable Invosys Business and its suppliers and subcontractors to process the personal data of End Users for the purposes of the performance by Invosys Business of its obligations under this Agreement. This clause 11.1.2 shall survive termination or expiry of this Agreement.
- 11.2** Invosys Business warrants (such warranty being deemed to be repeated on each and every day during the term of this Agreement) that all such licences, authorisations, approvals and consents as are necessary to enable Invosys Business to legally provide the Invosys Business Services as envisaged by this Agreement have been obtained and will be maintained and kept up to date and it has the unimpaired right to supply the Invosys Business Services.
- 11.3** The Customer warrants (such warranty being deemed to be repeated on each and every day during the term of this Agreement) that all such licences, authorisations, approvals and consents as are necessary to enable the Customer to legally receive the Invosys Business Services as envisaged by this Agreement have been obtained and will be maintained and kept up to date and it has the unimpaired right to receive the Invosys Business Services.

12 Liability

- 12.1** Nothing in this Agreement shall exclude or restrict Invosys Business's liability for death or personal injury resulting from the negligence of Invosys Business or its employees while acting in the course of their employment or for fraud.
- 12.2** Subject to clause 12.3, Invosys Business shall be liable for damage to the physical property of the Customer or the property of any of its Customers or End Users caused by any negligent act or omission of Invosys Business or its employees while acting in the course of their employment PROVIDED THAT such liability of Invosys Business shall be limited to £1000.
- 12.3** Subject to Clause 12.1, Invosys Business shall not be liable to the Customer or any Customer or End User in contract, tort or otherwise, including any liability for negligence or for any loss of revenue, business, time, opportunity, data, anticipated savings or profits or for any indirect or consequential loss howsoever arising.
- 12.4** Except as expressly set out in this Agreement, all conditions, warranties, terms, undertakings and obligations implied by statute, common law, custom, trade usage or otherwise are hereby wholly excluded.
- 12.5** Subject to the express terms of this Agreement, Invosys Business shall not be liable to the Customer for any claims, proceedings or actions brought or made against the Customer by persons pursuant to a contractual relationship with the Customer. The provisions of this clause 12.5 shall apply notwithstanding that such claims, proceedings or actions arise through the act or omission of Invosys Business.

- 12.6** Other than in respect of clause 12.1 the maximum aggregate liability of Invosys Business in contract, tort, negligence or otherwise arising out of, or in connection with, this Agreement shall be limited in respect of any one event or series of two or more connected events to an amount equal to £5,000.
- 12.7** Invosys Business shall be relieved from liability for a failure to perform any obligation due to any circumstances which impedes, delays or aggravates any obligation to be fulfilled under this agreement, such as changes in laws and regulations or in the interpretation thereof, acts of authorities, war, acts of war, labour disputes, blockades, major accidents, pandemic or other occurrence beyond the reasonable control of Invosys Business.
- 12.8** The provisions of this clause 12 shall continue to apply notwithstanding termination of this Agreement.

13 Notices

- 13.1** Any demand, notice or other communication given or made under or in connection with this Agreement by one party to the other will be in writing and will be delivered by the method referred to in clause 13.2.
- 13.2** Any such demand, notice or other communication will be sent to the recipient at the address given in this Agreement, or to such other address as notified in writing from time to time, and will be deemed to have been duly given or made as follows:
- 13.2.1** If sent by prepaid first class post, on the second Business Day after the date of posting;
- 13.2.2** If delivered by hand upon delivery, unless such delivery occurs on a day which is not a Business Day or after 4.00pm on a Business Day, in which case it will be deemed to have been given or made at 9.00am on the next Business Day;
- 13.2.3** If sent by facsimile, on completion of transmission provided that where transmission occurs after 4.00pm on a Business Day or on a day which is not a Business Day, it will be deemed to have been given or made at 9.00am on the next Business Day; or
- 13.2.4** If sent by electronic mail at the time shown on such mail provided that where this is after 4.00pm on a Business Day or on a day which is not a Business Day it will be deemed to have been given or made at 9.00am on the next Business Day.

14 General

- 14.1** This Agreement represents the entire understanding between the parties and supersedes any and all other written recorded and oral communications between them.
- 14.2** Both parties acknowledge that:
- 14.2.1** Neither of them has been induced to enter into this Agreement by any representations, warranty or other assurance not expressly incorporated into it; and

- 14.2.2** In connection with this Agreement the only rights and remedies of each party in relation to any representation, warranty or other assurance are for breach of contract and that all other rights and remedies are excluded, except in the case of fraud.
- 14.3** This Agreement shall not be varied other than in writing, signed by the duly authorised representatives of Invosys Business and the Customer except where Invosys Business has the right under this Agreement to make variations subject to written notice and/or where Invosys Business is required to make such variation in order to comply with an order, instruction or request of Government, an emergency services organisation, a court of law, tribunal or other competent administrative or regulatory body, including OFCOM and PhonepayPlus;.
- 14.4** Neither party shall assign or otherwise deal with all or any of its rights and obligations under this Agreement without the other party's prior written consent, save that Invosys Business may assign or otherwise deal with all or any of its rights and obligations under this Agreement to any third party.
- 14.5** The Customer and Invosys Business each agree not to use or refer to the name of the other party in any article, announcement or published literature without the express written consent of the other party.
- 14.6** During the term of the Agreement and for a period of twelve (12) months following the expiry or termination of the Agreement, neither party shall (without the prior written consent of the other, such consent not to be unreasonably withheld) directly or indirectly solicit, attempt to solicit, or employ or engage the services of any individual employee or contractor of the other party or who was an employee or contractor of the other party materially involved in the delivery or receipt of the Invosys Business Services at any time during the period of six (6) months prior to that prohibited act. Any general recruitment advertisement made by or on behalf of a party shall not be deemed to be solicitation for the purposes of this Clause 14.6.
- 14.7** Other than in respect of the Customer's obligations to pay the Charges, neither party shall be liable to the other for any breach of this Agreement or for failure or delay to perform any obligation where such breach or failure or delay was the result of any act of God, insurrection or civil disorder, war or military operations, inclement weather, failure or shortage of power supplies, flood, drought, lightning or fire, national or local emergency, acts or omissions of government, highway authority or other government or regulatory body, compliance with any statutory obligation, industrial disputes of any kind, the acts or omissions of network operators or any other cause beyond that party's reasonable control.
- 14.8** Nothing in this Agreement shall create a partnership or joint venture between the parties or constitute any party being the partner, agent or legal representative of the other.
- 14.9** 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 operate so as to bar the exercise or enforcement thereof or of any other right on any later occasion.
- 14.10** Each party shall use the Confidential Information disclosed to it (by whoever disclosed) only for the proper performance of its duties under the Agreement and shall not without the disclosing party's written consent disclose or permit the disclosure of the Confidential Information disclosed to it except in confidence to those of its employees,

officers and professional advisers who need to have access to it for the proper performance of its duties under the Agreement.

- 14.10.1** The provisions of Clause 14.10.1 shall not apply to Confidential Information that:
- (a) the receiving party can prove was known to the receiving party or in its possession before that information was disclosed to it; or
 - (b) is in or enters the public domain through no wrongful default of the receiving party or any person on its behalf;
 - (c) the receiving party receives from a third party without similar obligations of confidence in circumstances where the third party did not obtain that information as a result of a breach of an obligation of confidence;
 - (d) is required to be disclosed by any applicable law or by order of any Court of competent jurisdiction or any government body, agency or regulatory body.
- 14.10.2** Within three (3) days of receipt of a request to do so made at any time and in any event if the Agreement is terminated, the receiving party shall promptly return or destroy at the request of the disclosing party all Confidential Information of the disclosing party.
- 14.10.3** This clause 14.10 shall survive the termination or expiry of this Agreement.
- 14.11** Any intellectual property rights shall remain the property of the party creating or acquiring the same and nothing in this Agreement shall be deemed to confer any assignment or licence of any intellectual property rights whatsoever of one party to the other.
- 14.12** In the event that any provision of this Agreement is held to be void, illegal or unenforceable the relevant provision shall be deemed not to be or never to have been or formed a part of this Agreement and the remaining provisions of this Agreement shall continue in full force and effect.
- 14.13** A person who is not party to this Agreement has no right under the Contract (Rights of Third Parties) Act 1999 or otherwise to enforce any term of this Agreement.
- 14.14** This Agreement shall be governed, construed and take effect in all respects in accordance with English law. The parties irrevocably submit to the exclusive jurisdiction of the English courts for the purpose of hearing and determining any dispute arising out of or in connection with this Agreement save that the Customer shall not object to Invosys Business seeking enforcement of any resultant judgment in any court in any territory having jurisdiction over the Customer or its assets.
- 14.15** Subject to clause 7.1.2, the Supplier reserves the right at its sole discretion to change the terms and conditions of this Agreement by giving the Customer not less than one (1) months' notice, by publishing a notice on the Customer's invoice. The Customer may notify the Supplier of any objection to any change in the terms and conditions of this Agreement within the one (1) month notice period, where such notice is not provided by the Customer to the Supplier and the Customer continues to use the Service, this will be deemed acceptance of such changes.

In agreeing to any services from INVOSYS BUSINESS Ltd you are agreeing to the above terms and conditions.