Hosted Terms & Conditions

1 DEFINITION

1.1 In the Hosted Terms, in addition to those terms and conditions defined in the General Conditions, the Mobile Terms, the Mobile Equipment Terms and the Broadband Terms the following terms and expression apply:

1.1.1 "Broadband" means an asymmetric or symmetric digital subscriber line (ADSL or SDSL);

1.1.2 "Customer Equipment" means any telecommunications apparatus or system owned, controlled or housed by the Customer, excluding Service Equipment;

1.1.3 "Customer's Premises" means the Customer's premises the address of which is set out in the Commercial Scheduler;

1.1.4 "IP Centrex Service" means the centrally hosted service for the provision of voice communications over IP networks;

1.1.5 "Service Equipment" means equipment (including but not limited to any data collection and call routing devices, routers, switches, handsets and other telecommunications equipment) which company (or a third party on Company's behalf) may from time to time deliver to and / or install at the Customer's Premises for the purpose of providing the Hosted Service, as specified in the Commercial Schedule;

1.1.6 "Software" means the Hosted application software used by Company (or a third party on Company's behalf) to provide the IP Centrex Services; and

1.1.7 "Hosted Service" means the IP Centrex Service, an internet portal account through which the Hosted Service can be controlled online, and any other services which the Customer requested from Company as specified in the Commercial Schedule (including supply, delivery and installation of Service Equipment, training and Broadband connectivity).

2 THE SERVICE

2.1 Company shall respond to any reported faults with the Hosted Service as soon as reasonably practicable during Company's normal working hours and will use all reasonable endeavours to correct any faults within Company's control.

2.2 Company will use all reasonable endeavours to ensure the security of the Hosted Service but the Customer should be aware that there is always a risk of security being breached for reasons beyond the control of Company, where for instance the Hosted Service is provided through a third party network.

2.3 The Company will use reasonable endeavours to maintain, but does not guarantee, constant access to the internet portal account and the Company shall not be liable for any losses caused by any restrictions in such access.

3 SOFTWARE

3.1 Company grants the Customer a non-exclusive, non-transferable license to use the Software for the term of the Agreement solely in connection with the use of the Hosted Service.

3.2 All intellectual property rights in the Software and the Hosted Service and any associated documentation made available to the Customer under the Agreement shall remain the property of Company of its licensors.

4 BROADBAND

4.1 In order to use the Hosted Service, it is the Customer's responsibility to procure at its cost a Broadband connection, either through Company or through a supplier approved by Company.

4.2 Where Broadband is supplied by a third party, then Company does not assume any liability or responsibility for the third party Broadband service.

4.3 The Customer acknowledges that Hosted Service call quality depends on both the specification and availability of the Broadband service to which the Customer is connected and also on the IP or telecommunications network to which the person being called in connected.

4.4 Connectivity: Should a third-party internet/data connection is be used for making and receiving calls on our platform, no guarantees are accepted in any circumstances regarding the ability to connect for any call quality while using the service. Furthermore, the customers agree it is their sole responsibility to provide a suitable connection for the service provided by Company. Company reserved the right to increase and levy additional support maintenance charges for customers not using our connectivity where additional support is required.

5 IMPLEMENTATION

5.1 Company or its appointed agent will deliver and install the service Equipment at the Customer's Premises. Company will use all reasonable endeavours by such date as it may have advised to the Customer. However, any delivery date given is an estimate only and Company accepts no liability for any delay in delivery however caused.

5.2 Risk in the Service Equipment shall pass to the Customer on delivery to the Customer's Premises. The Customer will be liable for any loss or damage to the Service Equipment except where caused by Company or anyone acting on Company's behalf.

5.3 Where the Customer is purchasing the Service Equipment from Company the Service Equipment will at all times remain the property of Company until such time as the Customer has paid Company for the Service Equipment in full.

5.4 Where the Service Equipment is supplied to the Customer by a third party on a hire or hire purchase basis, then the Customer shall enter into, and observe and comply with the terms of, a separate hire or hire purchase agreement with that third party.

5.5 Unless or until title to the Service Equipment passes to the Customer, the Customer shall not;

5.5.1 add to, modify or in any way interfere with the Service Equipment, not allow anyone other than Company or Someone Authorised by Company to do so;

5.5.2 move the Service Equipment from the Customer's Premises without the prior written consent of Company.

6 NUMBER PORTING

6.1 Where access to the Hosted Service is facilitated through BT number porting, the Customer authorises Company (or someone authorised by Company) to have the number from the BT lines listed in the Commercial Schedule (or as otherwise agreed between Company and the Customer) routed by Company (or someone authorised by Company) instead of BT and to forward appropriate details of the Customer's porting application for the Hosted Service to Company (or someone authorised by Company). The Customer will receive advance notification of the change of service from BT to Company (or someone authorised by Company). Company's (or someone authorised by Company) ability to provide the Hosted Service is subject to BT porting the number.

6.2 In the case of analogue lines being utilised for facsimile machines, the standard service is not compatible, and an alternative e-fax service will be offered for number that are required to be ported to Company. This may result in loss of service for a period of up to 15 days.

6.3 The Customer shall pay to Company an administration fee of £18.28 plus VAT per number ported. Any initial porting fee or cancellation fee will be borne by the customer. Any subsequent porting or resubmitting costs as a result of the losing provider cancelling the port are not the responsibility of Broadgate. Broadgate will invoice the Customer directly. It is then the Customers responsibility to recover these costs from the losing provider.

6.4 Company will only accept porting instructions from the individual named on the account. In the event of a dispute over the Customer's right to port, the original name on the account will be taken as ownership and the customer may be asked for proof of identity before any porting request is accepted.

7 TERMS

7.1 The initial term of this Agreement shall be ("**60/84 Months**"). The minimum term is the term in which the equipment supplied will be used until it's upgraded or replaced. If a promotional or plan benefit (such as an equipment upgrade, free month or discounted pricing of service, free installation, rebate, or other incentive) is provided to you at no charge or at a specified discount based on your keeping Broadgate service for a specific length of time, then, unless otherwise specified in the offer you received, the specified period begins on the Order Date/Service Activation. Upon commencement of Service to the Customer, Company should receive advance payment in full for Services to be rendered during the Initial Term and any setup charges.

7.2 If any changes are made to your licences, or you upgrade or downgrade a licence, this will automatically start a new contract period equivalent to the existing period as if a new term has started from the date of the change.

7.3 This is a business to business agreement and there is no cooling-off period. Payments will be collected, monthly in advance by direct debit. There will be a quarters deposit required at the start of the agreement. You (the Customer) may cancel the Contract or the Service at any time and even before Broadgate.IT (the Company provides the Service. However, you will still be liable for termination charges. These termination charges will be calculated as the contractual obligations due from the date of cancellation until the end of the term of the contract regardless of whether any equipment is installed. All licenses will end on the last day of the final licenses added to the hosted phone system.

7.4 After the Initial Term, unless otherwise agreed to by the both parties, this Agreement shall automatically renew for successive terms of equal length as the Initial Term unless terminated or cancelled by either party, in which case early termination fees will be applicable as mentioned in Termination section below/above.

8 USE OF THE SERVICE

8.1 The Customer will ensure that the Customer Equipment is in proper working order and complies with all applicable standards and approvals for connection to the telecommunications network. The Customer will not do anything that may damage or affect the operation of the telecommunications network.

8.2 If the Hosted Service is to be used to carry alarm signals, then Company will not accept responsibility for lack of Hosted Service or failure to deliver an alarm signal due to a) the network going down; b) suspension of the Customer's account or c) reasons outside Company's reasonable control including but not limited to any technical failure of the network; because the network is being tested, modified or maintained or if access to the network is denied.

8.3 Company will have the right to recover all reasonable costs incurred in investigating or remedying any fault with the Hosted Service where it is caused by the Customer's negligence or default or by the Customer Equipment or where the fault does not lie with Company or any Service Equipment.

8.4 The Customer shall not sub-license, re-sell or offer in any manner, to a third party, the Service or use of or access to the Hosted Service, whether for commercial gain or otherwise.

8.5 Where a Customer terminating telephone number (an A number) is being presented;

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8.5.1 the Customer shall ensure that such A Number is of a national significance format, is allocated to the Customer and that the Customer possesses all necessary permission in respect of the lines in question or that the Customer has written consent from the allocated owner for its use as an A Number and that such content has not been withdrawn;

8.5.2 The Customer shall ensure that at all relevant times such A Number is in use and shall notify the Company if at any time such A Number is not connected to a terminal or is not capable of receiving calls;

8.5.3 The Company has the right to suspend/withdraw use of the service if it is subsequently found that the Customer is in breach of this paragraph 7 and the Customer hereby indemnifies the Company against any and all losses or claims arising howsoever as a result of any such breach.

8.6 The Customer acknowledges that the Hosted Service supports 9999/112 public emergency calls but that connections to national emergency call handling agents may not be possible in the event of a service outage caused by loss of Customer's connectivity to the internet for whatever reason. In such circumstances Customer's should use their PSTN line to make the emergency call. Furthermore, it may on occasions not be possible for emergency services personnel to identify the Customer's location and telephone number so this information should be stated promptly and clearly by the Customers when making such a call.

8.7 The Customer acknowledges that the Hosted Service constitutes a private service for use for certain previously identified specific applications which, as regards public emergency call service, confers only limited service at agreed defined locations. It is not a full public service.

9 CHARGES AND PAYMENT

9.1 The Customer shall pay to Company the Charges in respect of the Hosted Service as specified in the Commercial Schedule all time based Charges in relation to the Hosted Service shall be deemed to commence one day after the despatch, by the Company or on the Company's behalf, of the Service Equipment to the Customer.

9.2 In addition, the Customer shall pay to Company all charges relating to calls made through the Hosted Service as are set out in Company's Price List as in force from time to time.

9.3 The Company may increase the charges in request of the Hosted Service and/or the charges relating to calls made through the Hosted Service upon seven day's written notice to the Customer in the event that any changes in applicable laws or regulations result in additional costs being incurred by the Company or Incurred by any of the Company's suppliers and passed on to the Company.

10 LATE PAYMENT CHARGE AND DISHONORED CHECK OR DD INSTRUCTION FEE

10.1 If the entire amount of payment due is not received by the payment due date, 3% of the overdue amount or £50.00, will be charged as late payment fee, whichever is greater. In event of bounced or cancelled direct debit, 1% of the overdue amount or £25.00, will be charged, whichever is greater.

11 DISCLAIMERS

11.1 Save for the warranties and conditions expressly set out in the Agreement, Company gives no warranty or condition regarding the Hosted Service and specifically Company;

11.1.1 expressly disclaim all conditions and warranties of any kind, whether express or implied, including but not limited to the implied conditions and warranties of satisfactory quality, fitness for a particular purpose, reasonable care and skill and non-infringement; and

11.1.2 gives no condition or warranty that the Hosted Service will meet the Customer's requirements, will be uninterrupted or timely, will be secure or error free or the defects in the Hosted Service will be corrected.

12 LIABILITY

12.1 This clause sets out Company's total liability to the Customer if the Hosted Service is not available for a continuous period of 24 hours or more in any one day and that unavailability is attributable entirely due to the fault of Company. In such an event Company's total liability will be limited to the sum of 5% of the charges relating to Hosted Services incurred in the average month for the previous quarter. Such liability will be paid as a credit against the next invoice.

12.2 Company's aggregate liability to the Customer under or in connection with the Agreement (whether in contract, tort or otherwise including any liability in negligence) in respect of all causes of action arising in a calendar year will not exceed 60% of the total Charges paid or payable by the Customer for the Hosted Service in such calendar year.

12.3 Company's obligations and responsibilities under this Hosted Service Schedule are solely to the Customer and not to any third party and that Customer will keep harmless and will indemnify Company, its officers, employees and agents against any liabilities or costs arising from any and all claims by any third party in connection with the use of the Hosted Service or any defect in or failure of the Hosted Service.

12.4 In the event of any failure in the Hosted Service, Company will not be liable to the Customer for any charges incurred by the Customer should the Customer direct its traffic to another service provider.

12.5 The Company shall not be liable for any losses whatsoever, including unavailability of Hosted Services, arising from use of Customer Equipment or any equipment other than the Service Equipment.

12.6 The Company's liability for any malfunction of the Service Equipment which is in the Company's reasonable opinion attributable to a fault in the configuration work, shall be limited to the obligation to remedy the fault as soon as reasonably practicable.

12.7 The Company's liability for any malfunction of the Hosted Service which is in the Company's reasonable opinion attributable to the Service Equipment, shall be limited to the obligation to;

12.7.1 use reasonable endeavours to pass on the benefit of any manufacturer's warranty with respect to the Service Equipment;

12.7.2 use reasonable endeavours, if so requested to obtain for the Customer, replacement Service Equipment, provided that it will be entitled to recover from the Customer all costs it incurs in doing so, regardless as to the reason for the malfunction; and

12.7.3 if replacement equipment is purchased by the Customer, the Company shall procure that it is correctly configured without charges.

13 SUSPENSION OF HOSTED SERVICE

13.1 Company may at its sole discretion suspend with immediate effect the provision of the Hosted Service until further notice without liability or compensation to the Customer on notifying the Customer either orally (confirming the same in writing) or in writing in the event that;

13.1.1 the Customer is in breach of any terms of this Hosted Service Schedule;

13.1.2 the Customer prevents or delays any prearranged maintenance from being carried out;

13.1.3 the Customer is suspected, in Company's reasonable opinion, of involvement with fraud or attempted fraud in connection with the use of the Hosted Service;

13.1.4 Company is obliged to do so in order to comply with an order, instruction or request of any government, emergency service organisation or other competent authority.

13.1.5 If Company suspends the Hosted Service under this Hosted Service Schedule, then Customer will reimburse any costs and expenses reasonably incurred as a result of such suspension and/or the services being reinstated.

14 TERMINATION

14.1 If we terminate or disconnect the service due to bankruptcy or liquidation, the contract would be termed at **60 Months** duration. We reserve the right to suspend or discontinue the Service generally, or to terminate your Service, at any time in our sole and absolute discretion. If we discontinue the Service generally, or terminate your Service without a stated reason, or if you discontinue the Service whilst in term or if your Service is terminated on account of your breach of any provision of this Agreement, you will be responsible for charges accrued through the date of termination, including a pro-rated portion of the final month's charges and will also be responsible for the full month's charges to the end of the current term, including, without limitation, unbilled charges, plus the termination fee, if applicable, all of which will immediately become due and payable. If you request for termination or attempt to disconnect service before the end of current service term (**84 Months**), You will be responsible for all the charges for the current term that are applicable, including unbilled charges, plus an Early Termination charge.

14.2 This Agreement may be terminated: (i) by Company, without cause, by giving the Customer 30 days' prior written notice; (ii) by Customer, by giving the Company 90 days' prior written notice; (iii) by Company in the event of non-payment by the Customer; and (iv) by Company at any time, without notice, if, in Company's sole judgment, the Customer is in violation of any terms or conditions of Company's Usage Policy.

14.3 On termination of the Hosted Service Schedule (however occurring):

14.3.1 the License granted under clause 3.1 will terminate with immediate effect;

14.3.2 the Customer will allow Company or any third party authorised by Company prompt access to the Customer's Premises to remove any Service Equipment;

14.3.3 any consequential reprogramming of the Customer Equipment will be the Customer's responsibility and at the Customer's cost.

14.3.4 A £39.16 one off charge for each ceased broadband circuit will be applied. This charge is applied when a broadband circuit is ceased and not transferred to another ISP using a MAC key.

15 NOTICE

15.1 All notices must be sent either in writing or by email, except as otherwise expressly provided herein that a notice must be in writing. All notices to Company shall be delivered to its address stated below or its email address as provided. All notices to the Customer shall be delivered to its mailing address or its email address as provided on the Order. The parties may change their respective address by notice delivered to the other party. All notices delivered in writing must be sent either by overnight courier or certified mail, return receipt requested.

16 LEGAL FEES

16.1 The customer (you) will be responsible for all reasonable pretrial legal costs endured by the company (us) for any action we or you may take in connection with the enforcing / breaches of this agreement and the services provided by us.