

HBT Annual IT Services Terms and Conditions

This Annual IT Services Terms and Conditions ("**Agreement**") is hereby entered into and agreed upon by you, either an individual or an entity ("**You**" or "**Customer**") and H.B. Telecom (UK) Limited ("**HBT**") for the Services (as Defined below). This Agreement is made and entered into as of the date that You accept it as Defined below (the "**Commencement Date**").

BY ACCEPTING THIS AGREEMENT, EITHER BY INDICATING YOUR ACCEPTANCE, BY EXECUTING THIS AGREEMENT, YOU AGREE TO THIS AGREEMENT. THIS AGREEMENT IS A LEGALLY BINDING CONTRACT BETWEEN YOU AND HBT AND SETS FORTH THE TERMS THAT GOVERN THE SERVICES PROVIDED TO YOU HEREUNDER. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THIS AGREEMENT. ANY CHANGES, ADDITIONS OR DELETIONS BY YOU TO THIS AGREEMENT WILL NOT BE ACCEPTED AND WILL NOT BE A PART OF THIS AGREEMENT.

THE PARTIES HEREBY AGREE AS FOLLOWS:

1. Interpretation

1.1. Definitions

In this Agreement, unless the context otherwise requires, the expressions and terms listed in Schedule 1 (**Definitions**) shall have the meaning stated in that Schedule.

1.2. Construction of certain references

1.2.1 In this Agreement where the context admits:

- 1.2.1.1 references to statutory provisions shall be construed as references to those provisions as amended or re-enacted or as their application is modified by other provisions of which they are re-enactments (whether with or without modification);
- 1.2.1.2 the Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to Agreement includes the Schedules.
- 1.2.1.3 this Agreement shall be binding on, and inure to the benefit of, the parties to this Agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's successors and permitted assigns.

1.3. Precedence

If there is an inconsistency between the Agreement or the Schedules, the following order of precedence shall apply to this Agreement and the documents referred to in it:

- 1.3.1 the Clauses in the main body of the Agreement; and
- 1.3.2 the Schedules.

2. Term of this Agreement

- 2.1 This Agreement shall commence on the Commencement Date and shall continue (subject to earlier termination in accordance with the terms of this Agreement) for the Initial Contract Period.
- 2.2 Unless one of the Parties provides written notice of termination to the other Party on or before ninety (90) days prior to the expiration of the Initial Contract Period, the Agreement shall automatically continue in full force thereafter on a rolling annual basis of twelve (12) months each (each a "Subsequent Renewal Period(s)"), until a Party provides written notice of termination in accordance with clause 14.6 herein.

2.3 HBT shall use its reasonable endeavours to perform the Services on the Start Date.

3. HBT Obligations

3.1 HBT shall provide the Services in accordance with the terms of this Contract. The Services shall commence on the Start Date notified by HBT.

3.2 HBT shall decide whether to perform the Services at the Service Address or off-site.

3.3 The Services are provided solely for use by the Customer in the course of the Customer's business.

3.4 HBT shall use reasonable skill and care when providing the Services.

4. Charges and Payment

4.1 The Customer shall pay HBT the Annual Service Charge as specified in this Contract and as subsequently varied pursuant to this Contract.

4.2 Charges for additional Services, if any, requested or required by the Customer will be determined by agreement of the parties or, in the absence of agreement, will be charged at HBT's standard rates in effect at the time the additional service is provided.

4.3 The Annual Service Charge does not include the cost of any hardware, software equipment, or supplies or any out-of-pocket expenses incurred by HBT unless specifically identified as included in the Order Form.

4.4 All Charges are stated exclusive of value added tax (VAT) or other applicable taxes. The Customer shall be responsible for paying VAT and other applicable taxes which shall be included in HBT invoices at the applicable rate(s). Payment shall be by direct debit and a fee of £20.00 per incident for any cancelled, dishonoured or failed Direct Debits or cheques may be applied. If payment is not made by direct debit, an administrative charge of £5 per month shall be applied.

4.5 HBT shall issue invoices for the Services and the Customer shall pay such invoices in full within thirty (30) days' of the date of the invoice. Any delay by HBT in invoicing any Charges shall not prohibit HBT from raising an invoice at a later date in respect of the same nor shall it relieve the Customer of liability to pay for the same.

4.6 The Customer shall pay the Annual Service Charge for the Initial Contract Period prior to the Start Date and the Customer shall pay the Annual Service Charge for any Subsequent Renewal Period(s) prior to the commencement of the Subsequent Renewal Period(s).

4.7 Where Charges are not paid by the Customer in accordance with this clause 4, HBT may require the Customer to pay all sums due under this Contract on demand, and reserves the right to charge Interest on all amounts overdue from the Customer on a daily basis (before as well as after any judgement) until the date of payment, at NatWest Bank base rate plus four percent (4%). Alternatively, if any sum owed by the Customer to HBT under the Contract or any other contract with HBT is not paid by the due date, HBT may deduct this sum from any payment or credit due to the Customer under the Contract or any other contract with HBT.

4.8 HBT may vary all or any of the Charges at any time on giving not less than thirty (30) days' notice to the Customer in the event of equipment purchases, substantial changes in the demand for IT Services initiated by Customer, material increases in costs to HBT, or if the Customer's demand for the Services during any twelve-month period during the Term of his Contract.

- 4.9 If you believe all or any part of an invoice is in error, you must notify HBT Communications within 6-months (180) days of your receipt of the invoice. If you fail to do so, HBT Communications will not be required to make any adjustment to the invoice, and you shall be deemed to have waived any right to contest the invoice.
- 4.10 HBT may vary all or any of the Charges at any time on giving not less than thirty (30) days' notice to the Customer. This notice may be included in an invoice to the Customer. Such increase shall not be more than the Retail Price Index (RPI) applicable at that time plus 4%.

5. Access to Premises and Information

- 5.1 The Customer shall ensure that HBT, its contractors and/or any third party providing the Services are provided with such access to the computer equipment, software and network links owned by, licensed to and/or used by the Customer as may be reasonably necessary for the performance of the Services.
- 5.2 The Customer shall ensure, prior to the date on which HBT, its contractors and/or any third party providing the Services commence the provision of any Services at the Service Address that:
- 5.2.1 such premises provide adequate working space and facilities as HBT, its contractors and/or any third party providing the Services may reasonably require to carry out such services;
- 5.2.2 it has obtained all necessary consents to enable HBT, its contractors and/or any third party providing the Services to enter onto and remain upon the premises to carry out such services; and
- 5.2.3 the Customer shall effect and maintain throughout the provision of such services insurance cover for the benefit of HBT, its contractors and/or any third party providing the Services and their respective employees, agents and contractors against any and all reasonably foreseeable risks in providing the Services at such Service Address on terms reasonably acceptable to HBT and/or its contractors.

6. Disclaimer of Warranty

- 6.1 The Services furnished under this Agreement are provided "as is" and, unless otherwise expressly stated in this Agreement, without representations or warranties of any kind, either express or implied. To the fullest extent permitted by law, HBT disclaims all warranties, express, implied or statutory, including, but not limited to, implied warranties of title, non-infringement, merchantability, and fitness for a particular purpose.
- 6.2 HBT does not warrant that use of software or products furnished by HBT will be uninterrupted, error-free, or secure, that defects will be corrected, or that products or the server(s) to which access provided are free of viruses or other harmful components.

7. Termination

- 7.1 If at any time during the Term of the Agreement:
- 7.1.1 a Party commits a material breach of this Agreement and in case of a breach which is capable of remedy, fails to remedy the breach within thirty (30) days of written notice, or

7.1.2 a Party becomes insolvent,

then the other Party shall have the right to terminate this Agreement forthwith.

- 7.2 HBT shall also have the right to terminate this Agreement immediately upon written notice if Customer fails to timely pay any and all amounts due and Customer fails to cure such non-payment within ten (10) days after receiving written notice of such non-payment from HBT.
- 7.3 Upon termination of this Contract each party shall return to the other party any Confidential Information of the other which it has in its possession.
- 7.4 Clause 4 (Charges and Payment), Clause 6 (Disclaimer of Warranties), Clause 9 (Intellectual Property), Clause 10 (Information and Confidentiality), Clause 12 (Limitation of Liability) and Clause 13 (Force Majeure) and other terms and conditions forming part of the Contract which are agreed by the Parties to survive termination or which by their nature are clearly intended by the Parties to survive termination, shall survive and continue in full force and effect.

8. Suspension of Services

- 8.1 HBT reserves the right to suspend the Services if Customer fails to make payment within the time permitted for doing so in the Contract.
- 8.2 If HBT exercises its right to suspend the Services this shall not restrict their right to terminate this Contract.
- 8.3 The Customer shall indemnify, keep indemnified and hold harmless HBT from and against any claim or demand of whatsoever nature and howsoever arising against HBT as a result of suspension pursuant to this clause.

9. Intellectual Property

- 9.1 Any (a) work of authorship fixed in any tangible medium of expression that is the subject matter of a copyright or potential application for registration therefore (including, but not limited to, object code and source code), (b) unpatented inventions, including but not limited to, physical parts or components, processes, techniques, programs or methods, (c) non-trademarked or non-service-marked distinctive symbols, pictures or words, (d) trade secrets, or (e) any other copyrightable, patentable and/or trademarkable intellectual property rights, whatsoever, associated with any ideas, symbols, marks, phrases, writings, drawings, inventions, machines, designs, concepts, techniques, methods, know-how, processes or works of authorship developed or created by: (i) HBT and/or HBT's personnel; and/or (ii) through collaborative efforts of HBT (including HBT's personnel) and Customer and/or any director, officer, shareholder, member, manager, employee, agent, independent contractor or representative of Customer ("**Customer Personnel**") during the Term of this Agreement (collectively, the "**Intellectual Property**") shall belong to HBT; provided that the Customer shall retain a perpetual, non-exclusive, royalty-free license to use the Intellectual Property in its day to day business operations so long as Client does not disclose, sell or assign, in any capacity, its rights in said Work Product, to any third party (including HBT personnel and Customer Personnel) without the express, written consent of HBT, which consent may be withheld.
- 9.2 Upon request of HBT, Customer shall, if necessary, take such actions, and shall cause Customer Personnel to take such actions, including execution and delivery of any and all instruments of conveyance, necessary to grant title in and to the Intellectual Property to and in the name of HBT.
- 9.3 Authorisation to use any software provided by HBT to the Customer provides a personal, non-exclusive, limited, non-transferable and temporary license. All rights are reserved. The Customer may not republish, transmit, or distribute the software, or make any unauthorised use of HBT materials.

Modification of such materials or the use of such materials for any purpose not authorised by HBT is prohibited.

10. Information and Confidentiality

- 10.1 Neither party shall disclose to any third party without the prior written consent of the other party any Confidential Information which is received from the other party as a result of this Contract. Each party agrees that any Confidential Information received by it from the other party shall only be used for the purposes of the performance of its obligations and/or the exercise of its rights.
- 10.2 These restrictions shall not apply to any information which is or becomes generally available to the public other than as a result of a breach of an obligation under this clause, is acquired from a third party who owes no obligation of confidence in respect of the information, has been independently developed by the recipient, or is required by any Court of competent jurisdiction or by a governmental or regulatory authority or where there is a legal right, duty or requirement to disclose such Confidential Information.

11. Call Monitoring

- 11.1 The Customer agrees that HBT may monitor and record calls made to or by HBT or to the Customer (and/or any of their employees or personnel), for training purposes, to improve the quality of its customer services and to assist with complaint handling. The Customer undertakes to make its employees and personnel aware of the rights reserved by HBT under this condition.

12. Limitation of Liability

- 12.1 HBT shall not be liable whether in contract, tort (including negligence), breach of statutory duty or otherwise for loss of profits, anticipated profits, production, business, business opportunity, goodwill, revenue, or anticipated savings (whether direct or indirect), loss of, corruption of, or damage to data or software (whether direct or indirect), any special indirect or consequential loss or damage or any loss suffered by any third party or any liability to any third party.
- 12.2 The total liability of HBT (other than liability governed by clause 12.3) arising out of or in connection with this Contract (whether arising in contract, in tort, including negligence, as a result of breach of statutory duty or otherwise howsoever) is limited to a sum equivalent to the total of Annual Service Charges paid to HBT in the previous twelve (12) months, for any one cause of action or series of causes of action arising out of the same event, act or omission (the "**Per Claim Cap**") and, in the aggregate, to a sum equivalent to 200% of the Per Claim Cap for any and all causes of action arising in any twelve (12) month period.
- 12.3 HBT's liability (whether arising in contract, in tort (including negligence), or as a result of breach of statutory duty or otherwise howsoever) for damage to tangible property shall be limited to £5000.00 in respect of each incident or series of connected incidents. For the purposes of this clause, neither data nor software constitutes "tangible property".
- 12.4 Nothing in this Contract shall exclude or restrict the liability of either party for death or personal injury arising as a result of its negligence, for its fraud; or for any other liability which cannot be excluded or limited by law.
- 12.5 The express terms of this Contract are in lieu of all warranties, conditions, terms, undertakings and obligations whether oral or in writing and whether express or implied by statute, common law, custom, trade usage, course of dealings or otherwise, all of which are hereby excluded to the fullest extent permitted by law.
- 12.6 HBT are not liable to the Customer for the acts or omissions of any other party, including other providers of telecommunications, computers or other equipment or services including internet services.

12.7 No delay in enforcing any of the provisions of this Contract shall affect or restrict the rights of HBT arising under this Contract.

12.8 HBT shall not be in breach of this Contract or under any liability for any failure to perform or for delay in performing any obligation under this Contract (in whole or in part) to the extent that the performance of such obligation is prevented, frustrated, hindered or delayed as a result of any breach of this Contract by the Customer or any voluntary act or omission of the Customer.

13. Force Majeure

13.1 Neither party shall be obliged to carry out any obligation under this Contract (other than the Customer's obligation to pay the Charges) where performance of such obligation is prevented due to any cause beyond a party's reasonable control including but not limited to, any act of God, severe weather, failure or shortage of power supplies, flood, drought, lightning or fire, labour shortage or labour dispute, the act or omission from the Government, highways authorities, other telecommunications operators or administrations or other competent authority, the obstruction by a third party of line of sight between microwave installations, war, military operations, or riot, or difficulty, delay or failure in manufacture, production or supply by third parties of the Services resulting from the same or a similar type of force majeure event and breakdown of any equipment.

13.2 If any event described in clause 13.1 lasts more than fourteen (14) days from the date of its commencement and that event prevents either party from performing all or a material part of its obligations during that period either party may terminate this Contract by giving thirty (30) days written notice to the other party.

13.3 A party relying on this clause 13 shall use reasonable endeavours to mitigate the effects of a force majeure event.

14. General

14.1 The Contract shall not create or constitute a partnership, joint venture or agency relationship between the Parties.

14.2 If any provision (or part of a provision) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

14.3 No failure to exercise, or delay in exercising a right, power or remedy provided by the Contract or by law shall constitute a waiver of that right, power or remedy, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof, or the exercise of any other right, power or privilege.

14.4 This Contract does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

14.5 Customer shall not assign, charge or otherwise deal with all or any of its rights and obligations in the Contract in whole or in part without the prior written consent of HBT.

14.6 All notices, requests and other communications called for by this Contract will be deemed to have been given immediately if made by electronic mail (confirmed by concurrent written notice sent first class post, postage prepaid) to the addresses set out herein.

14.7 The Agreement shall be governed by and construed in all respects in accordance with the laws of England and Wales without regard to any conflict of law provisions, except that the United Nations Convention on the International Sale of Goods shall not apply and both Parties hereby submit to the

exclusive jurisdiction of the courts of England and Wales.

- 14.8 Customer agrees that during the term of this Agreement and for a period of one year following the termination of this Agreement, Customer will not recruit or hire any employee, agent, representative or subcontractor of HBT ("HBT Personnel"), nor will Customer directly or indirectly contact or communicate with the HBT Personnel for the purpose of soliciting or inducing such HBT Personnel (a) to accept employment with, or perform work for any person, firm, or entity other than HBT; or (b) to provide services to Customer or any other person, firm or entity except as an employee or representative of HBT. Customer agrees that, in the event of a breach or threatened breach of this provision, in addition to any remedies at law, HBT, without posting any bond, shall be entitled to obtain equitable relief in the form of specific performance, a temporary restraining order, a temporary or permanent injunction or any other equitable remedy which may then be available.

SCHEDULE 1: Definitions

In these terms and conditions (unless the context otherwise requires):

Annual Service Charge mean the annual charge payable by the Customer to HBT for and/or in connection with the provision of the Services;

Commencement Date means the date upon which this Contract is executed by both parties;

Confidential Information means all information whether verbal, written, stored or otherwise obtained including, but not limited to, data, facts and statistics about the business affairs, products, product development, trade secrets, know-how, personnel, customers or suppliers of the disclosing party whether or not they are or were designated or marked as confidential together with all information derived by the receiving party from the foregoing which is by its nature confidential or proprietary;

Customer means the person (not being an individual consumer), proprietorship, partnership, corporation, government or other subscription or publicly funded enterprise, company or other body corporate named in the Order Form;

Initial Contract Period means the period commencing on the Commencement Date and running for thirty-six (36) months;

Intellectual Property Rights means any intellectual property rights of whatever nature subsisting at any time in any part of the world including, without limitation, copyrights, design rights, patents, registered designs, trademarks, service marks, rights in trade secrets, know how and other confidential information, rights in respect of databases, the rights to apply for any of the foregoing and applications for any of the foregoing;

HBT Price List means the list of charges [set out in the Order Form] OR [in force from time to time and available on the HBT Website, together with the method of calculation of the charges];

Services means services in support of Customer's computer, electronic and information technology systems to be provided by HBT and/or any of its contractor(s) to the Customer pursuant to this Contract as such services may be amended from time to time in accordance with this Contract (and "Service" shall mean any one of the Services);

Service Address means the address of the Customer where the Services shall be performed;

Software means machine-readable instructions and data (and copies thereof) including middleware and firmware and related updates and upgrades, licensed materials, user documentation, user manuals, and operating procedures used or required to be used in the provision of or for the Customer to access the Services;

Start Date means the target date for the commencement of the provision of the Services to the Customer as specified or agreed to by HBT;

Subsequent Renewal Period(s) means a period of twelve (12) months, commencing immediately upon expiry of the previous Initial Contract Period;

Term means the Initial Contract Period and any Subsequent Renewal Period(s), as applicable.