

"ACT" means the Telecommunications Act 1984 and amendments to the ACT that may be made from time to time. "Agreement" means the agreement between the Customer and HIGHnet, entered into subject to these Terms and Conditions and also comprising the terms set out overleaf. "Customer" means the person, firm or corporation specified overleaf. "Service" means the provision of voice and data telecommunications services to the trunks with the calling line identities indicated overleaf. HIGHnet means Highland Network limited.

1. The Service

HIGHnet undertakes to exercise all reasonable care in the provision, operation and maintenance of the Service and will use all reasonable efforts to restore the service in the event of failure.

2. Duration

This Agreement shall come into full force and effect from the date of acceptance by HIGHnet and shall continue until:

- 2.1 determined by either party giving to the other not less than one month prior written notice or
- 2.2 terminated forthwith on HIGHnet giving notice of a breach by the customer of any of the Customers obligations under this Agreement which are capable of remedy and are not remedied within 7 days of giving such notice; or
- 2.3 terminated forthwith on HIGHnet giving notice of any material breach by the Customer
- 2.4 All customers adopting the HIGHnet line rental packages will be subject to a minimum contract term of 12 months from the date of line rental activation with HIGHnet

3. Use of the Services

- 3.1 The Customer shall be responsible for the safe custody and safe use of the Service and, without prejudice to the generality of the foregoing, the Customer agrees and undertakes:
 - 3.1.1 to use the Service in accordance with such conditions as may be notified to it in writing by HIGHnet from time to time;
 - 3.1.2 not to cause any attachments other than those approved for connections under the Act to be connected to the Service;
 - 3.1.3 not to contravene the Act or any other relevant regulations or licences;
 - 3.1.4 not to use the Service as a means of communication for a purpose other than that for which the Service is provided and as may be set out from time to time in HIGHnet's service literature (HIGHnet will provide the Customer with the maximum notice practicable should there be any change to HIGHnet's service literature and HIGHnet agrees not to make any such changes as would materially affect the parties obligations)
 - 3.1.5 not to use the Service for transmission of any material or message which is intended to be a hoax call to emergency services or is of a defamatory, offensive, abusive, obscene or menacing character
 - 3.1.6 not to use the Service in a manner which constitutes a violation or infringement of the rights of any other party nor to make or intend or attempt to make fraudulent use of the Service, including but not limited to using the Service to transmit any message or code, locate a person, or otherwise give or obtain information without payment for the Services or use or attempt to use the Service with the intent to avoid the payment, in whole or in part, of any charges by any means or device.
 - 3.1.7 to maintain its telecommunications apparatus at all times during the period of this agreement in good working order and in conformation with the relevant standard or approval for the time being designated under section 22 of the ACT;
 - 3.1.8 to provide HIGHnet with all such information as it reasonably requests relating to Customer's telecommunications apparatus
- 3.2 The Customer shall indemnify HIGHnet against all liabilities, claims, damages, losses and expenses arising directly from any breach of the undertakings contained in the Clause 3.1
- 3.3 Under no circumstances is the customer allowed to use an alternative Telecom supplier to override or bypass HIGHnet services either through the installation of equipment or through the BT local exchange, any such changes or bypassing the HIGHnet network or services may result in suspension/termination of services without notice to the customer or extra charges maybe added, without the written approval of HIGHnet

4. Equipment

- 4.1 Where HIGHnet is supplying Equipment to the Customer as part of the Service, any specified delivery date shall be treated as an estimate only and shall not be a term of this Agreement. HIGHnet accepts no liability for failure to meet the delivery date.
- 4.2 Wherever necessary, HIGHnet or its appointed agent, engineer or maintainer shall install the Equipment at the Site. HIGHnet shall not be liable for any loss, damages or expenses due to any installation or programming, including reprogramming of at least cost routing software, if carried out by persons other than its appointed agent, engineer or maintainer.
- 4.3 The Equipment shall at all times remain the property of HIGHnet. The Customer shall not let, sell, charge, assign, sub-license, allow use by a third party of, or otherwise encumber the Equipment in whole or in part in any manner whatsoever shall not prejudice HIGHnet's rights in such Equipment in any way.
- 4.4 The Customer shall be responsible for the Equipment whilst it is in the Customers custody and shall notify HIGHnet immediately of any faults which occur, any repairs which become necessary or of any loss or damage to the Equipment. The Customer shall indemnify HIGHnet against any loss or damage to the Equipment
- 4.5 Subject to paragraphs 4.7 and 4.8 below, HIGHnet will use its reasonable endeavours to carry out during normal working hours all repairs to the Equipment which become reasonably and properly necessary to maintain the Service without charge to the Customer

4.6 The Customer undertakes not by itself, its agents or its servants or otherwise to carry out any repairs, alterations, modifications or maintenance or make any additions or attachments to or otherwise alter the Equipment without the prior written consent of HIGHnet

4.7 HIGHnet shall not be responsible for faults arising or repairs necessary where such faults arising or necessity of repairs result from:

- 4.7.1 breach of paragraph 4.6 above;
 - 4.7.2 the Customers negligence or default;
 - 4.7.3 failure by the Customer to use the Service in accordance with this Agreement or any reasonable or necessary instruction by HIGHnet;
 - 4.7.4 any act, omission or fault associated with a telecommunications system other than that of HIGHnet; or
 - 4.7.5 any other cause beyond the reasonable control of HIGHnet
- 4.8 If HIGHnet carries out repairs or maintenance work arising under paragraph 4.7 above or if HIGHnet is required to perform work outside normal working hours, HIGHnet shall be entitled to levy a reasonable charge for such work

4.9 The Customer undertakes to allow HIGHnet access at all reasonable times to the Site for the purposes of implementation and performance of this agreement and to provide HIGHnet, free of charge, with all information and assistance reasonably required by HIGHnet to perform its obligations under this Agreement

4.10 The Customer shall be responsible for obtaining and where appropriate, paying for all necessary licences, consents and approvals required by third parties for the installation and use of the equipment.

4.11 The Customer undertakes that any telecommunications equipment supplied or used by the Customer in conjunction with the Equipment is in good working order and complies with all applicable legislation and standards.

5. Access to Premises & Provision of Information

- 5.1 To enable HIGHnet to exercise its obligations under this Agreement:
 - 5.1.1 The Customer shall permit or procure permission for HIGHnet and any other person(s) authorised by HIGHnet to have reasonable access to its premises and the Service's connection points and shall provide such reasonable assistance as HIGHnet requests
 - 5.1.2 HIGHnet will normally carry out work, by appointment and during normal working hours, but may request the Customer to provide access at other times but such requests shall not oblige the Customer to provide such access.
 - 5.1.3 At the Customers request HIGHnet may agree to work outside normal working hours and the Customer shall pay HIGHnet's reasonable charges for complying with such request.
- 5.1.4 If the Customer requests maintenance or repair work which is found to be necessary, the customer may be charged for the work and the costs incurred. HIGHnet will give notice that work is considered unnecessary prior to completion and raising charges.
- 5.1.5 Customer permits HIGHnet to use information about the calls made by the Customer including but not limited to origin, destination, duration, route and time so that HIGHnet can perform its obligations under this Agreement and maintain or upgrade the Service and/or produce statistics to assist HIGHnet or HIGHnet's operators in their network planning.

6. Suspension of Service

- 6.1 HIGHnet may at its sole discretion at any time with immediate effect elect to suspend forthwith provision of the Service until further notice without compensation if:
 - 6.1.1 The Customer is in breach of a material term of this Agreement including for the purposes of this Agreement, its failure to pay Monies due to HIGHnet on the due date.
 - 6.1.2 HIGHnet is obliged to comply with an order, instruction or request of the Government, an emergency services organisation or other competent administrative authorities
 - 6.1.3 for reasons of modification or preventative or emergency maintenance
 - 6.2 The Customer shall reimburse HIGHnet for all reasonable costs and expenses incurred by the implementation of such suspension and/or the recommencement of the provision of the Service as appropriate, but only where the suspension is implemented as a consequence of breach, fault or omission of the Customer

7. Liability

- 7.1 Nothing in this Agreement shall exclude or restrict HIGHnet's liability for the death or personal injury resulting from the negligence of HIGHnet or of its employees while acting in the course of their employment
- 7.2 In the event that the Service fails to operate and the Customer diverts traffic to another carrier, HIGHnet will not be responsible for that carrier's charges
- 7.3 Neither party shall be liable to the other in contract, tort or otherwise for any loss of business, contracts, anticipated savings or profits or for any other indirect or consequential loss whatsoever
- 7.4 Neither party shall be liable to the other for any loss or damage which may be suffered by the other party due to any cause beyond the first party's reasonable control including without limitation any Act of God, inclement weather, failure or shortage of power supplies, flood, drought, lightning or fire, strike, lock-out, trade dispute or labour disturbance, any act or omission of Government, highways authorities, other public telecommunication operators or other competent authorities.

8. Charges and Payments

- 8.1 The Customer shall be invoiced monthly by HIGHnet and agrees to pay charges within 14 days of receipt of invoice.
- 8.2 charges will be at HIGHnet's current price list as annexed to this agreement
- 8.3 HIGHnet intend that there will be no price increases in usage charges during the term of this Agreement. Should price increases become necessary the Customer will have twenty eight days from written notification of said increases to terminate in writing the Agreement without penalty
- 8.4 Usage charges payable shall be calculated by reference to data recorded or logged by HIGHnet and not by reference to any data logged or recorded by the Customer
- 8.5 HIGHnet reserves the right to charge daily interest on amounts outstanding 14 days after invoice until payment has been received in full, at a rate equal to 4% per annum above the Bank of Scotland base Lending rate as current from time to time, whether before or after judgment. Interest shall continue to accrue notwithstanding termination of this Agreement
- 8.6 All sums referred to in this Agreement are exclusive of Value Added tax and any taxes of a similar nature which may from time to time be introduced

9. Termination

- 9.1 Notwithstanding anything to the contrary expressed or implied in this agreement, either party (without prejudice to its own rights) may terminate this agreement forthwith in the event that a liquidator (other than for the purpose of amalgamation or reconstruction), trustee in bankruptcy, administrator, receiver and manager is appointed in respect of the whole or part of the assets and/or undertaking of the Customer or the Customer enters into an arrangement or composition with its creditors, or if the Customer becomes unable to pay its debts within the meaning of s123 of the Insolvency Act 1986, or other circumstances arise which entitle a court or creditor to appoint a receiver or administrator or to make a winding up order.
 - 9.2 Notwithstanding anything to the contrary expressed or implied in this agreement, HIGHnet (without prejudice to its own rights) may terminate this agreement forthwith in the event that any licence under which the Customer has the right to run its telecommunications system and connect it to the Service is revoked, amended or otherwise ceases to be valid
 - 9.3 If the Customer wishes to cancel the Agreement in whole or in part prior to connection, HIGHnet will agree to such cancellation upon the basis that the Customer shall reimburse to HIGHnet any circuit cancellation charges levied on HIGHnet by BT or any other suppliers including any remaining contractual months of rental billings which will be charged in full to expiry date.
 - 9.4 In the event that the Customer terminated this agreement and fails to give one month's written notice, as per clause 2.1, we reserve the right to raise a charge to recover the lost revenue up to a maximum sum equal to your average monthly billing
 - 9.4.1 any dialler Equipment supplied by HIGHnet remains the property of HIGHnet and must be made available for collection in the event of termination. Failure to make the Equipment available may result in reasonable charges for that Equipment
 - 9.5 (a) Subject to clause 2.1 you may only serve notice to terminate this Agreement if you on serving such notice provide us with evidence that another service provider is able to provide a comparable Service at level Tier 1 (or any equivalent replacement thereof) at a lower price than we are providing it under this Agreement (b) Upon receipt of your notice to terminate we shall have 30 days in which to serve a counter notice matching the price of the other service provider and if we do serve such counter notice this Agreement shall continue and the Charges shall be the new Charges specified in our counter notice with effect from the day upon which your notice to terminate expires (c) If we fail to serve a counter notice this Agreement shall terminate upon the expiry of the period of 30 days from the date when your notice to terminate expires
- ## 10. Assignment
- HIGHnet may, but the Customer shall not (without the prior written consent of HIGHnet) assign, transfer or delegate or otherwise deal with all or any of its rights and obligations under this Agreement
- ## 11. General
- 11.1 This Agreement represents the entire understanding between parties in relation to the subject matter hereof and supersedes all other agreements and representations made by either party, whether oral or written and this Agreement may only be modified if such modification is in writing and signed by a duly authorised representative of each party thereto
 - 11.2 Failure by either party to exercise or enforce any right conferred to this Agreement shall not be deemed to be a waiver of any such right and not operate so as to bar the exercise of enforcement thereof or of any other right on any later occasion.
 - 11.3 By signing the form overleaf, the Customer thereby agrees to the total exclusion of all its terms and conditions of business from this Agreement.
 - 11.4 Any notice, invoice or other document which may be given by HIGHnet under this Agreement shall be deemed to have been duly given if left at or sent by post to an address to which notices invoices or other documents may be sent, or the Customers usual or last known place of abode or business, or if the Customer is a limited company, its registered office. HIGHnet's address for the Service of any notice by the Customer under this Agreement shall be such address as is shown on the last invoice rendered to the Customer or such address as HIGHnet may prescribe for that purpose.
 - 11.5 This Agreement shall be governed by and construed and interpreted in accordance with Scottish law, and the parties hereby submit to the jurisdiction of the Scottish courts.
 - 11.6 Any Director or representative of a limited company who signs on behalf of the Customer will be deemed an authorised signatory and thereby guarantee the customers acceptance of its obligations under this Agreement