

Terms and Conditions

1. DEFINITIONS

The following terms used in these terms and conditions shall have the meanings given to them below: 'Additional Charges' means any other charges not included in the Call Charges, which the Customer agrees, is liable to pay under this Contract such other charges being deemed part of the Price List for purposes of amendment 'Call Charges' means the sums payable by the Customer for telephone calls made (or, as the case may be, for telephone calls received) by the Customer in using the Service and all other charges of a periodical nature made in pursuance to this Contract and to which the Customer has agreed 'Call Credits' means any rebate payable to the Customer by ARK Consultants for telephone calls received (or, as the case may be, for telephone calls made) by the Customer in using the Service 'this Contract' means the contract for the supply of the Services which the Customer enters into with ARK Consultants and which includes these terms and conditions 'Credit Limit' means the credit limit agreed in writing between ARK Consultants and the Customer in this Contract 'Customer' means the person or body corporate contracting ARK Consultants to supply the Service(s) under this Contract 'Effective Date' means the date calculated in accordance with the provisions of clause 3 ARK Consultants means ARK Consultants 'Minimum Notice' means the minimum notice of termination so prescribed in clause [13] for the relevant Service 'Minimum Period' means the minimum period for the supply of the relevant Service, if any 'Numbers' means telephone numbers allocated to the Customer as part of a Service by ARK Consultants 'Prices' means the prices for the relevant Service as amended by ARK Consultants from time to time; 30 days' prior written notice shall be given to the Customer of any amendments in Charges 'Service' or 'Services' means the supply, connection and provision of the Services as indicated in this Contract

2. PROVISION OF THE SERVICE

2.1 ARK Consultants shall provide the Customer with the Services and the Customer shall pay the Call Charges and Additional Charges and ARK Consultants shall pay the Call Credits as appropriate

1 ARK Consultants does not warrant that the Services or any of them are or shall be provided continuously or that the Services are or will be free of any faults.

2 EFFECTIVE DATE AND TERM

1 This Contract shall have full force and effect from the date on which ARK Consultants accepts a signed contract from the Customer whether in hard copy form or on line and subject to condition 9 shall continue to be in full force and effect for a Minimum Period of twelve months and shall continue thereafter, unless and until terminated by either party giving to the other not less than the Minimum Notice in writing

2 CUSTOMERS ADDITIONAL OBLIGATIONS

4.1 The Customer undertakes to comply with all reasonable instructions given by ARK Consultants relating to the Services and not to use the Services for any purpose which is improper, unlawful or offensive or in any manner which constitutes a violation or infringement of any act or regulation or of any duty or obligation of ARK Consultants, statutory or otherwise, to any third party and further the Customer agrees to indemnify and keep indemnified ARK Consultants from all costs losses liabilities and expenses arising out of any breach of the this undertaking

4.2 The Customer undertakes to notify ARK Consultants immediately the Customer discovers or becomes aware of the possibility of any fault in any of the Services

4.3 The Customer warrants that this contract is entered into in the course of the Customer's business and not as a private individual

1 The Customer undertakes to give over to ARK Consultants free of charge and in full cooperation any information reasonably required by ARK Consultants in order to fulfil its obligations under this Contract.

2 PAYMENTS

5.1 The Customer undertakes to enter into a monthly payment agreement with ARK Consultants for the payment of the Call Charges and any Additional Charges.

5.2 Unless otherwise agreed, the Customer shall be invoiced monthly in arrears in accordance with the billing cycle notified to it by ARK Consultants for all Call Charges under this Contract plus value added tax. Time of payment of all sums due to ARK Consultants under this Contract shall be of the essence. If payment in full is not received by ARK Consultants by the due date, ARK Consultants shall be entitled at its sole discretion:

1 To suspend the Service forthwith until payment in full has been received including any interest payable under condition below; and

5.2.2 Notwithstanding condition 6.2.1 to charge daily interest on the amount due at the rate of 3% per month or part thereof on any unpaid overdue balance until such amount is paid in full

5.3 In the event that the Customer's invoice/statement shows a credit in any one month payment of that credit will be made by cheque and sent to the Customer's usual business address no earlier than 4 weeks after the date of invoice/statement and no later than 3 months after the date of invoice/statement. Upon receipt of a credit statement the Customer is to send an invoice for the sum stated to ARK Consultants for payment.

5.4 If the Customer's Call Charges exceed the Credit Limit the Customer's Services may be suspended and ARK Consultants shall have the right to demand immediate payment of the full amount owing including any money in excess of the Credit Limit (ARK Consultants will use its reasonable endeavours to give Customers advanced warning of a breach of their Credit Limit during any particular month, however, ARK Consultants gives no warranty or assurance that it will ensure that such a warning shall be given)

5.5 All Call Charges payable under this Contract shall be calculated by reference to data recorded or logged by ARK Consultants and conditions to grant any rights to any other party other than ARK Consultants and the Customer or their nominee and not by reference to data recorded or

logged by the Customer.

5.6 All charges relating to any number provisioning shall be payable in advance of this Service being provisioned unless otherwise agreed in writing.

5.7 Any other charges shall be payable within the strict timescales laid out in the side agreement applicable for such Services.

5.8 ARK Consultants reserve the right to amend any prices within this agreement, in line with changes within the telecommunications industry, giving no less than 30 days notice.

5.9 A minimum monthly charge of £10 plus VAT shall be applicable on all accounts.

5.10 All payments from the customer should be via Direct Debit unless stated in writing by ARK Consultants and attached to the acceptance document.

6. LIABILITY AND INDEMNITY

6.1 Subject as expressly provided in this Contract all warranties; conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law

6.2 The Customer expressly affirms that it is not relying on any warranty, condition or representative not contained in this contract

6.3 ???? entire liability and the Customer's sole remedies in respect of any Default (defined in condition 7.3 herein) shall be set out in this condition 7. The Customer's remedies against ARK Consultants for any Default shall be limited to damages.

6.4 Subject only to condition 6.4, ARK Consultants aggregate liability to the Customer for damages in respect of negligence, breach of

contract, tort, misrepresentation or any other legal liability in connection with or related to the subject matter of this Contract ('Default') shall in no circumstances exceed the aggregate of three

months Call Charges or the amount of insurance available to ARK Consultants

to be called upon for liabilities of the type being claimed

6.5 ARK Consultants does not exclude or limit liability for death or personal injury arising from negligence of ARK Consultants, their

employees, agents and authorised representatives

6.6 In the event of any failure in the Service which, using its reasonable endeavours ARK Consultants could not have prevented, ARK Consultants shall not be liable to the Customer for any charges incurred by the Customer should the Customer divert its voice and/or data traffic, as applicable, to another carrier

6.7 Subject only to condition 6.4, ARK Consultants shall not in any event be liable for any indirect, consequential, incidental or special damages or any loss of profits, revenue, goodwill or anticipated savings whether sustained by the Customer or any other party even if advised of the possibility of such loss or damages.

7. CUSTOMER LIABILITY

7.1 The Customer undertakes to indemnify and hold harmless ARK Consultants

against all liabilities, claims, damages, losses, costs and proceedings arising in connection with the Customer's breach of its undertakings under this Contract (including but not limited to undertakings under conditions 3 and 4 hereof).

8. TERMINATION

8.1 Without prejudice to the rights of the parties under this Contract, either party may terminate this Contract forthwith in the event that:

8.1.1 The other party is in default in its performance or observance of any of its obligations under this Contract or any other agreement between the parties and, in the case of a remediable breach, fails to remedy the breach within 21 days written notice to do so; or

8.1.2 An interim order is applied for or made, a petition for a bankruptcy order is made or a voluntary arrangement is approved or an administration order is made, or a receiver is appointed in respect of any of the other party's assets or a resolution or a petition to wind up the other party is passed or presented (otherwise than for the purposes of reconstruction or amalgamation), or if any circumstances arise which entitle a Court or a creditor to appoint a receiver, an administrative receiver or an administrator, or to present a winding up petition or obtain a winding up order.

8.2 Without prejudice to its other rights, ARK Consultants shall have the right to terminate this Contract forthwith in the event that:

8.2.1 The Customer fails to make any payment when it becomes due;

8.2.2 The provider of the Services ceases to hold a licence granted to it pursuant to section 7 of the Telecommunications Act 1984, or any other requisite licence;

8.2.3 The Customer fails to use the Service for at least three months; or

8.2.4 Any other circumstances outside the control of ARK Consultants prevent the continuing supply of the Service including, but not limited to, any licence held by the Customer ceasing to be valid.

8.3 If the Agreement is terminated by either party for any reason then all sums due under this Contract shall become immediately due and payable by the Customer

9. SUSPENSION OF SERVICE

9.1 Notwithstanding conditions 5.2 and 8 above, ARK Consultants may at its sole discretion elect to suspend forthwith the provision of the Service until further notice without liability to the Customer for maximum period of 40 days on notifying the Customer either orally (confirming the same in writing) or in writing in the event that:

9.1.1 The Customer is in breach of any term of this Contract

9.1.2 The Customer delays necessary or prearranged maintenance or prevents it from being carried out; or

9.1.3 The Customer is suspected, in ARK Consultants reasonable opinion, or involvement with fraud or attempted fraud in connection

with the use of the Service of this Contract.

10.3 ARK Consultants does not warrant that any software

supplied will be free from defects or fit for any purpose except that described on any accompanying documentation nor does it make any representations or warranties concerning the compatibility of the software with the Customer's own computer equipment. ARK Consultants shall not be liable for any loss or damage incurred by the Customer due to any defect in the software. The sole liability of ARK Consultants in respect of any defects shall be for ARK Consultants to use its reasonable endeavours to procure that its own licensor provides correction of documented program errors not caused by the Customer, its employees or agents. ARK Consultants

obligation to procure correction of such program errors shall cease after 90 days from the Effective Date 10.4 ARK Consultants shall provide the Customer with updates whenever available to any software supplied and

reserves the right to charge the Customer a reasonable fee for such updates

10.5 Copyright in all documents and information supplied to the Customer under this Contract shall remain vested in ARK Consultants

or the copyright owner

10.6 All documents, drawings and information supplied by ARK Consultants are confidential and cannot be copied, disclosed or used except for the purpose for which they are supplied, without the prior written consent of ARK Consultants. The Customer shall ensure that its employees comply with the obligations of this clause 11.6.

11. GENERAL

11.1 This Contract and all rights, benefits and obligations under it may be assigned in whole, or in part, by ARK Consultants without reference to the Customer

11.2 This Contract and all its rights, benefits and obligations under it may not be assigned in whole, or in part, by the Customer without the prior written consent of ARK Consultants

11.3 This Contract represents the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes all prior understandings and representations, whether written or oral and unless otherwise stated in this Contract, this Contract may only be modified if such modification is in writing and signed by ARK Consultants and the Customer

11.4 Failure by either party to exercise or enforce any right conferred by this Contract 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

11.5 Neither party shall be held to be in breach of its obligations under the Agreement save for obligations to make payments under the Agreement, nor liable to the other party for any loss or damage which may be suffered by the other party due to any cause beyond the reasonable control of the parties including but not limited to any act of God including

weather failure, shortage of power supplies, flood, drought,

lightning, fire, lockout, trade dispute or labour disturbance, act or omission of Government highways, authorities, other telecommunications operators or other competent authority war military operations or riot

11.6 Any notice, invoice or other document to be given under this Contract may be given by either party only by posting by first class post or delivering the same to the other party at the address notified by such other party in writing as the address to which notices, invoices and other documents may be sent. Such notice, invoice or other document shall be deemed duly given 48 hours after posting or, if served by delivery, upon delivery

11.7 This Contract shall be governed by and construed and interpreted in ARK Consultants accordance with English law and the parties hereby submit to the nonexclusive jurisdiction of the English Courts

11.8 Conditions 4, 5, 8, 9.3, 11 and 12 shall survive termination or expiry of this Contract

11.9 Any provisions of this Contract which is declared void or unenforceable by any competent authority or court shall to the extent of such invalidity or unenforceability be deemed severable and shall not affect the other provisions of this Contract which shall continue unaffected.

12. TELESERVICES

12.1 If the Services shall be one or more of the Teleservices [definition] provided by ARK Consultants from time to time, including but not limited to CPS, routing of nongeographical numbers, fax to email, call management and audio conferencing, the following shall apply:

12.1.1 The Minimum Period shall be 12 months

12.1.2 The Minimum Notice shall be 1 month, and shall not be given prior to the end of the Minimum Period

If the Customer terminates this Contract within the Minimum Period any Call Charges or Additional Charges, which would have otherwise been, payable to the end of the Minimum Period shall become immediately due and payable

12.2 ARK Consultants shall be entitled, for operational or technical reasons or in order to comply with any numbering scheme or other obligation by any competent authority, to withdraw or change any telephone number or code or group of

numbers or codes allocated to the Customer, provided that ARK Consultants gives the Customer the maximum period of

10. INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIALITY

10.1 All intellectual property rights subsisting in the Numbers shall remain the property of ARK Consultants or its licensor. ARK Consultants

grants to the Customer a nonexclusive and non transferable licence to use the Numbers provided that at the termination of this Contract all Intellectual Property which may have accrued in the Numbers (which shall include any goodwill) shall revert to ARK Consultants or its licensor

10.2 On termination of this Contract for any reason, any software licence granted to the Customer under this Contract will terminate forthwith. The Customer agrees that it will return or destroy, at ARK Consultants

request, and erase all copies thereof from its computer

equipment. On request by ARK Consultants the Customer will certify that it has complied with the provisions of this clause 10.2. The Customer shall not reproduce, own nor allow any third party to use, nor modify the software.

notice in writing thereof practicable in the circumstances
12.3 The Customer shall notify ARK Consultants no less than 30 days written notice (or such other notice as may be

agreed between parties from time to time) in the event that an above average increase in the usage in any part of the Service is likely to occur, for example due to, including but not limited to a promotional campaign through radio, TV or print

media. ARK Consultants shall have no liability whatsoever to the Customer in respect of any failure by ARK Consultants to deliver any part of the Service should notice not be given by the Customers in accordance with this.

13. CONTRACT

Contracts (rights of third parties) Act 1999
The provisions of the Contracts(rights of third parties) Act 1999 will not apply to any contract made under these terms