

1. Contract Definitions

- 1.1 "Application Form" means all order forms, contracts and services agreements relating to the provision of the Services provided by KubeNet T/A Kube Networks Ltd and our telecommunications providers from time to time.
- 1.2 "Authorised Person" means an employee, consultant or subcontractor of KubeNet.
- 1.3 "Associated Company" means any subsidiary of KubeNet or other associated company as defined by Sections 736 and 736A of the Companies Act 1985.
- 1.4 "Client" means a person whose Application Form is accepted by KubeNet and for whom KubeNet has opened a Communications Account.
- 1.5 "Contract" means the contract governed by these terms and conditions made between KubeNet and the Client created upon acceptance by KubeNet of the Client's Application Form and evidenced by the opening of a Communications Account for the Client.
- 1.6 "Least Cost Routing Software" means software installed on a telephone system, which automatically enables the routing of, calls via different telephone operators.
- 1.7 "Services," means re-routing the Client's telecommunications over KubeNet's telecommunications providers Networks under the terms of the Contract.
- 1.8 "Services Literature" means KubeNet's literature specific to the Services and other associated services existing from time to time.
- 1.9 "User" means the Client and any individual or company permitted by the Client to use the Services.
- 1.10 "Communications Account" means the account opened by KubeNet in the name of the Client upon creation of the Contract and relating to the Services.
- 1.11 "KubeNet" means KubeNet T/A Kube Networks Ltd which expression shall, where the context so requires, include its successors and assigns any Associated Company thereof.
- 1.12 "KubeNet Access Equipment" means call routing apparatus supplied by KubeNet.

2. The Services

- 2.1 General
 - a) The Client shall complete, sign and return to KubeNet an application form prior to KubeNet agreeing to provide the Service.
 - b) Where the Client has Least Cost Routing Software available for use at its premises, KubeNet will, if necessary and at its sole discretion, reprogram it in order to provide the Services.
 - c) Where the Client does not have Least Cost Routing Software available for use at its premises, KubeNet will, if necessary, and at its sole discretion supply, install and connect the Client to KubeNet Access Equipment in order to provide the Services, or provision the service via carrier pre-select (CPS).
 - d) KubeNet shall use all the reasonable care and skill of a competent telecommunications provider to provide the Client with the Services throughout the term of the Contract.
 - e) KubeNet shall be at liberty, where necessary, to improve, update or upgrade the Services or alter the provision of the Services.
- 2.2 The Client undertakes to KubeNet that:
 - a) The Services will only be used in accordance with the Contract;
 - b) Only the Client and Users shall use the Services and no other person shall be suffered or permitted to use the same;
 - c) Upon the termination of the Contract, no attempt shall be made to make calls via the Services;
 - d) The Services Literature and any other instructions regarding the use of the Services as may be notified to the Client by KubeNet from time to time shall be complied with promptly and such literature and instructions shall be deemed to form part of the Contract.
- 2.3 The Client agrees that at all times during the term of the Contract it shall:
 - a) Provide access to all appropriate sites for any Authorised Persons during the Client's normal working hours and allow the removal, installation and maintenance of KubeNet Access Equipment;
 - b) Keep its telecommunications equipment in good working order and ensure that the equipment complies with all applicable standards and approvals so as to enable KubeNet to provide the Services;
 - c) Only use and connect the telephones, ducting, cables, sockets and other equipment to the Services that have been approved in advance by KubeNet in writing and comply with all the relevant legislation relating to the use of such equipment;
 - d) Provide all reasonable assistance required by KubeNet to enable it to provide the Services;
 - e) Inform KubeNet by no less than 2 month's prior notice in writing of any premises relocation or change of telephone numbers on which the Services are registered;
 - f) Provide a safe working environment for Authorised Persons working on the Client's premises;
 - g) Have a fully commissioned firewall device at its premises;
 - h) Indemnify KubeNet fully against all losses, liabilities, costs (including legal costs) and expenses which KubeNet may incur as a result of any breach of the Client's obligations under the Contract or misuse of the Services;
 - i) Pay KubeNet (at its then current published rates, which are available upon request) for all call-outs visits required from KubeNet where KubeNet determines that (i) the problem with the Services is not the fault of KubeNet or the KubeNet Access Equipment or (ii) the KubeNet Access Equipment has been damaged by the Client.
- 2.4 The Client undertakes to KubeNet to ensure that the Services are not used:
 - a) For the transmission of any material which is intended to be a hoax call to emergency services or is of a defamatory, offensive, abusive, obscene or menacing character; or
 - b) Fraudulently or in connection with a criminal offence; or
 - c) Otherwise in a manner which constitutes a violation or infringement of the rights of any other party; or
 - d) Otherwise than for the purpose of a telecommunications system.

3. KubeNet's Rights

- 3.1 KubeNet shall be entitled to alter any access or authorisation number or method of accessing the Services from time to time and may reprogram the Client's equipment as a result.
- 3.2 KubeNet may suspend the Services to the Client at its sole discretion including but not limited to the following:
 - a) In the interests of the quality of the Services;
 - b) If any credit limit agreed between KubeNet and the Client from time to time is exceeded;
 - c) If any term of the Contract is breached (including, without limitation, in the event of a failure to make any payment or provide any deposit required to be made or provided under the Contract);
 - d) In order to comply with an order, instruction or request of any government, emergency service organisation or other competent authority; or
 - e) If fraud or attempted fraud is suspected by KubeNet (in its reasonable opinion) in connection with the use of the Services.
- 3.3 KubeNet may collect data and Information about the Client's use of the Services and provide this information to (i) companies affiliated with KubeNet and (ii) third parties, but solely for the purposes of providing the Services to the Client.

4. Charges and payments for the service

- 4.1 All sums due to KubeNet under the Contract shall become due on the date of the relevant Invoice and must be paid within 14 days (including weekends and bank holidays) of the date of the relevant invoice.
- 4.2 If the Client fails to make any payment within the 14-day period following the date of the relevant invoice, without prejudice to its other rights hereunder, KubeNet shall have the right to require the Client to pay all sums due on demand.
- 4.3 Time of payment of all sums due to KubeNet under the Contract shall be of the essence.
- 4.4 KubeNet reserves the right to amend its charges for the Services from time to time.
- 4.5 KubeNet shall use its best endeavours to bring to the attention of the Client any variation in prices prior to their implementation.
- 4.6 Without prejudice to KubeNet's rights to treat the non-payment as a repudiative breach of the Contract, KubeNet reserves the right to charge interest on outstanding amounts until payment is received in full at a rate equal to 3% per annum above the HBOS Bank plc base lending rate as current from time to time whether before or after judgement. Interest shall continue to accrue notwithstanding termination of the Contract to, any cause whatsoever and is deemed to accrue on a day to day basis from and including the date for payment under Condition 4.1
- 4.7 KubeNet reserves the right to charge for administrative costs incurred by KubeNet in pursuing late payers.
- 4.8 All sums due to KubeNet under the Contract subject to Value Added Tax ("VAT") and any other applicable taxes levies or charges which may from time to time be introduced.
- 4.9 The Client shall be liable for all charges arising from use of the Services by any person utilising the Client's registered Services telephone number(s) (with or without Client's authorisation) until such time as the Client has notified KubeNet of any unauthorised use of the Service.
- 4.10 Details of the Contract and the conduct of the account will be registered with a licensed Credit Reference Agency. Information thus registered may be used to help make credit decisions or, occasionally, fraud prevention or the tracing of debtors.
- 4.11 If the monthly call charges made by KubeNet to the Client fall below £50 per account, then KubeNet reserves the right to charge a minimum bill value of £50 per month, per account.
- 4.12 Unless otherwise stated KubeNet will charge a one-off cancellation fee of £25 per actual line (not telephone number) which will be charged on your last Invoice. If you leave the KubeNet Service before the first 12-month period of connection.

5. KubeNet Access Equipment

- 5.1 The Client shall provide without charge or cost to KubeNet appropriate equipment space, ducting, environment and continuous stable electrical power to install and maintain the KubeNet Access Equipment at its premises and to enable KubeNet to provide the Services.
- 5.2 It is deemed that title to any KubeNet Access Equipment shall remain with KubeNet and whilst the KubeNet Access Equipment is on the Client's premises, the Client shall ensure that it is kept safe and secure and is not interfered with by any person.
- 5.3 Upon termination of the Contract, the Client will ensure that KubeNet is allowed prompt access to all relevant premises to remove the KubeNet Access Equipment.

6. Termination

- 6.1 Either KubeNet or the Client may terminate the Contract after the initial term of no less than 12 months, by giving notice in writing to the other (including weekends and bank holidays).
- 6.2 Voice and data connectivity (excluding ethernet) is subject to 3 calendar months' notice, which will take effect from the 1st of the following month from when we receive the request. Ethernet connections are subject to 4 calendar months' notice which will be taken from the 1st of the following month from when we receive the request.
- 6.3 KubeNet (without prejudice to its other rights) may terminate the Contract forthwith in the event that:
 - a) The Client fails to make any payment when it becomes due to KubeNet or shall default in due performance or observance of any obligation under the Contract or any other contract with KubeNet or an Associated Company and

- (in the case of remedial breach) fails to remedy the breach within a reasonable time specified by KubeNet in its written so to do; or
- b) An interim order is made, or a voluntary arrangement approved, or if a petition for a bankruptcy order is presented or a bankruptcy order is made against the Client or if any circumstances arise which entitle the court or a creditor to appoint a receiver, administrative receiver or administrator or to present a winding-up petition or make a winding-up order.
- 6.4 Conditions 2.2 and 4 and 7 of the Contract shall survive termination of the Contract for any reason whatsoever.
- 6.5 If the Contract is terminated by either, party hereto, the Client shall:
- a) Pay to KubeNet all arrears of charges together with any interest payable under the Contract up to the date of termination;
 - b) Return to KubeNet all equipment owned or provided by KubeNet and or allow KubeNet access forthwith to its Client's premises for the removal of any KubeNet Access Equipment.
- 6.6 All DSL connections (ADSL, FTTC & FTTP) will be subject to a termination fee of £40.00 upon cessation of the connection.

7. Confidentiality

- 7.1 The Client and any User shall at all times keep confidential the terms of this Contract and all matters relating to the Services, and shall not disclose the same to any third party without the prior written consent of KubeNet

8. Limitation of Liability

- 8.1 KubeNet shall have no liability under this Contract for the acts and omissions of other public telecommunication operators.
- 8.2 Save only as is otherwise specified in this condition 8.2, the entire liability of KubeNet in connection with the services or this contract, whether in contract, for or otherwise or to, consequential or indirect loss, is excluded. Non-exhaustive illustrations of consequential or indirect loss would include: loss of profit, revenue, contracts or business, damage to property of the client or anyone else and anticipated savings or profits. KubeNet accepts liability for death or personal injury resulting from its negligence and for any breach of its obligations implied by statute.
- 8.3 To the extent that all or any part of the Services are faulty, unavailable or interrupted as a result of KubeNet's negligence the Client's sole and exclusive remedy shall be to compensation in accordance with compensation schemes that may be introduced from time to time by KubeNet.
- 8.4 KubeNet shall not be liable for faults in the Client's telecommunications equipment, which results in KubeNet being unable to provide the Services.
- 8.5 KubeNet shall not be liable for any damages whatsoever to property at the Client's premises resulting from (i) the installation, repair or removal of KubeNet Access Equipment or associated wiring carried out by KubeNet or by KubeNet's contractors or (ii) any re-programming of the Client's existing Least Cost Routing Software unless such damage is caused by KubeNet or its contractors wilful misconduct or negligence subject to condition
- 8.6 Dates and times for provision of the Services shall be estimates only and no liability shall accrue to KubeNet for failure to meet any such dates or times.
- 8.7 KubeNet will not be held responsible for any loss due to programming errors or omissions made by Authorised persons.
- 8.8 In the event of any failure in the Services, KubeNet shall not be liable to the Client for any charges incurred by the Client should it direct its telecommunication traffic to another carrier.
- 8.9 KubeNet reserves the right not to provide the Services due to any technical limitations in the Client's telephone system, telephone exchange or KubeNet Access Equipment.

9. Deposit

- 9.1 KubeNet may, after consultation with the client, and at any time before or after the provision of the Service, request the payment of a sum to be held by way of a deposit to be used against any charges arising from use of the Service. KubeNet shall be entitled to offset such deposit against any sums due under this Contract from time to time including interest due or owing to KubeNet.

10. Assignment

- 10.1 The Client shall not assign or delegate or otherwise deal with all or any of its rights under the Contract.
- 10.2 KubeNet shall have the right to assign or otherwise delegate all or any of its rights and obligations hereunder to an Associated Company or other person upon serving one month's notice in writing to the Client.

11. Force Majeure

- 11.1 Neither KubeNet nor the Client 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 supply, flood, drought, lightning or fire, strike, lock-out, trade dispute or labour disturbance, the act or omission of Government, highway authorities, public telecommunications operators or other competent authority, war, military operations, or riot, difficulty, delay or failure in manufacture, production or supply by third parties of the Services or any part thereof.

12. No Waiver

- 12.1 Failure by either KubeNet or the Client to exercise or enforce any right conferred by the 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.

13. Entire Contract

- 13.1 The Contract represents the entire understanding between the parties in relation to the subject matter of the Contract and supersedes all other agreements and representations made by either party, whether oral or written.

14. Entire Agreement and Right to Amend

- 14.1 This Agreement represents the entire understanding between the parties in relation to the subject matter hereof and, except in relation to fraudulent misrepresentation(s), supersedes all other agreements and representations made by either party whether oral or written.
- 14.2 Each party acknowledges and agrees that in entering into this Agreement, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this agreement or not) other than as expressly set out in this Agreement. The only remedy available for breach of the warranties shall be for breach of contract under the Agreement. Nothing in this sub-clause shall limit or exclude any liability for fraud.
- 14.3 Kube reserves the right to amend this Agreement. If we are going to make an amendment, we will provide you with at least 30 days prior notice thereof.
- 14.4 If you ask Kube to amend the Agreement, we may ask you to confirm the request in writing. If we agree to such a change, unless the parties agree otherwise in writing, the Agreement will be amended from the date when we confirm the change in writing to you. Please note, in such circumstances, a new Initial Period may apply in respect of each additional or changed Service. For the avoidance of doubt, where a new minimum period in respect of new, additional or changed Services will operate beyond expiry of the Initial Period of the Agreement, the Initial Period of the Agreement will automatically be extended so as to expire at the same point as any such new minimum period.

15. Service of Notice

- 15.1 Any notice or invoice or other document which may be given under the Contract shall be deemed to have been duly given if left or sent by post (whether by letter or, by magnetic tape, or posted onto the KubeNet web site or any other form), telex or facsimile transmission (subject to the sender's machine producing confirmation that all pages have been sent) or, where the parties expressly agree, by electronic mail to the registered office of the party to be served to the other party in writing as an address to which notices, invoices and other documents may be sent.

16. Governing Law

- 16.1 The Contract shall be governed and construed and interpreted in accordance with Scottish law and the parties submit to the jurisdiction of the Scottish courts as regards any claim matter or dispute arising out of or relating to the Contract or any document entered into pursuant to the contract.

Signed on behalf of customer

Print name:

Signature:

Position:

Date: