

NON-GEOGRAPHIC NUMBERS SOLUTIONS PRODUCT AGREEMENT TERMS & CONDITIONS NGNSPATC 06/09

1. Definitions

Capitalised terms used in these terms and conditions shall have the following meanings, or otherwise the meanings stated in the MSA:

"Agreement Date" means the date that AN notifies the Customer of AN's acceptance of the relevant Customer order;

"Call Charges" means the charges payable by the Customer in respect of calls received by each NGN, as specified in the Pricing Schedule;

"Connection" means the connection by AN of the relevant NGN to the Customer's telecommunications equipment;

"Minimum Term" means the period specified in the Pricing Schedule for each NGN forming part of the Product, but in any event not less than three (3) months, from either (i) the date of Connection; (ii) the date of transfer to AN of the relevant NGN; (iii) the date of expiry of the relevant previous minimum term under a Product Agreement; or (iv) the date of the Product Agreement, whichever is the later;

"Minimum Minutes" means the minimum number of minutes of calls (as specified in the Pricing Schedule) to be received in aggregate by the NGNs specified in the Product Agreement during the entire Minimum Term. If the Minimum Minutes is specified in the Pricing Schedule as a monthly figure, the Minimum Minutes shall be this figure multiplied by the number of months in the Minimum Term;

"MSA" means the master services agreement between the parties, or the version of the master services agreement terms and conditions, that is referenced on the Order Form;

"NGN" means a telephone number the digit structure of which contains no geographic significance for routing calls;

"Order Form" means the order form, to be completed and signed by the Customer, containing information regarding the Customer and the Product;

"Pricing Schedule" means the pricing schedule for the Product referenced on the Order Form;

"Product" means the provision and/or connection of NGNs to the Customer by AN, as specified in the Product Agreement and/or in any Additional Order;

"Product Agreement" means the agreement between AN and the Customer on these terms and conditions, and including the terms and conditions of the MSA that are incorporated by clause 2.1, including the Pricing Schedule, the Order Form, any continuation sheets, any addendums, and any Additional Orders accepted by AN;

"Premium Rate Regulator" means Phonepayplus or any successor body which regulates the use of NGNs;

"Revenue Share Agreement" means an agreement between the parties, as specified in the Pricing Schedule or otherwise, to share revenue received by AN in respect of calls to an NGN;

"Revenue Share Threshold" means (unless otherwise stated on the Pricing Schedule or elsewhere) ten thousand (10,000) minutes of calls, which must be received in any given calendar month by the relevant NGNs in order for revenue share payments to be made by AN to the Customer under a Revenue Share Agreement;

"Supplier" means the supplier from whom AN obtains facilities to provide the Product from time to time pursuant to a licence, contract or otherwise; and

"Total Minutes" means the aggregate number of minutes received by the relevant NGNs, either between specified hours or at any time (as specified in the Revenue Share Agreement). References to "clauses" are to clauses of these terms and conditions (and not clauses of the MSA), unless otherwise stated.

2. Product Agreement

2.1 The Product Agreement shall be deemed to incorporate the terms and conditions of the MSA. In the event of any conflict, the terms and conditions of the Product Agreement prior to such incorporation shall prevail.

2.2 The Customer authorises AN to transfer to AN any relevant NGNs and services forming part of the Product from any third party providing the Customer with such NGNs and services.

3. Use of the Services

3.1 The Customer agrees to use the Product until expiry of each Minimum Term and to ensure that the NGNs specified in the Product Agreement receive (in aggregate) at least the Minimum Minutes. The Customer acknowledges that the charges for the Product have been set by AN on the basis that the Customer achieves the Minimum Minutes.

3.2 AN agrees to provide the Product at the agreed rates and costs in accordance with the Pricing Schedule.

3.3 The Customer shall not route calls to a mobile or international (except international outbound) telephone number, to a Non-Geographic Number, to any telephone exchange line that is not on the fixed public switched telephone network or to a premium rate service, other than as specified under the Product Agreement. If a Customer breaches this clause 3.3 then, without prejudice to any other rights and remedies that AN may have, AN shall be entitled to charge the Customer £7.28 per minute for each call.

3.4 The Customer acknowledges that an NGN supplied by AN as part of the Product does not belong to and shall not become the property of the Customer and shall remain the property of AN or the Supplier.

3.5 The Customer shall not attempt to apply for registration of an NGN supplied by AN as part of the Product as a trade or service mark whether on its own or in conjunction with some other words or trading style.

3.6 As the Supplier is entitled at its sole discretion at any time to withdraw or change any NGN supplied by AN as part of the Product, AN shall be entitled at any time to withdraw or change any such NGN upon giving the Customer reasonable prior notice in writing to that effect.

3.7 The Customer shall give AN at least seven (7) days' prior written notice before using any international freephone number that is not used immediately from the live date.

3.8 AN reserves the right to withdraw, or make additional rental charges for, any NGN forming part of the Product on thirty (30) days' written notice if such NGN is not used within two (2) months from Connection.

3.9 The Customer agrees that it is responsible for ensuring that all NGNs are correctly listed in the Order Form and are as required by the Customer.

4. Revenue share

4.1 Following any Revenue Share Agreement, AN shall make revenue share payments by BACS transfer within sixty (60) business days of the end of every calendar month, in respect of calls from the preceding calendar month.

4.2 From the beginning of the first calendar month following the Revenue Share Agreement, if the Revenue Share Threshold is achieved by the relevant NGNs, then AN will calculate the revenue share payment by multiplying the Total Minutes for that calendar month by the relevant pence-per-minute revenue share payment as agreed in the Revenue Share Agreement.

4.3 If any Supplier fails to make all or part of its payments to AN, in relation to minutes of calls that originate on its network and which are made to the relevant NGN, then AN will make no payment to the Customer in relation to those minutes.

4.4 AN reserves the right to reduce the pence-per-minute revenue share rate specified above if any Supplier changes the payment rates to AN.

4.5 AN reserves the right to reduce pence-per-minute revenue share rates and to stop payments due to changes of regulator policy (including without limitation Ofcom) or Supplier policy and for this to be backdated to the date of such change. If the backdating means that AN has overpaid the Customer then AN may either off-set the overpayment against its next payment or invoice to the Customer for repayment of the over payment. Repayments will become due within 30 (thirty) days of the invoice date.

4.6 AN reserves the right to cease payments to the Customer under a Revenue Share Agreement upon thirty (30) days' written notice or immediately upon written notice if any of the circumstances set out in clause 11.1.2 or 11.1.3 of the MSA apply to the Customer.

5. Advertising campaigns

5.1 If at any time the Customer has more than thirty (30) lines in any call centre taking calls in relation to the Product, the Customer must provide AN with an accurate forecast of the Customer's total monthly calls and minutes and the daily profile for each month of the following six (6) months, on commencement of the Product Agreement and at the beginning of every six (6) month period thereafter.

5.2 The Customer must give AN seven (7) days' written notice of any Customer proposed campaign, which is expected to generate seventy-five per cent (75%) or more busy-hour call traffic than outlined in the forecast provided in accordance with clause 5.1. For the purposes of this clause, "busy-hour" means the hour of the day in which the highest number of telephone calls is made.

5.3 The Customer must notify AN at any time if the Customer expects that it will receive more than five hundred (500) call attempts in any fifteen (15) minute period.

5.4 The Customer undertakes (if so required) to advise AN in advance of its requirements for the use of the Product for the following three (3) month period.

5.5 AN shall have no liability to the Customer in respect of the performance of AN's obligations under the Product Agreement if any failure arises out of the Customer's failure to comply with its obligations under this clause 5.

6. Charges

6.1 Charges for the Product shall be invoiced in accordance with clause 8 of the MSA and the Pricing Schedule.

6.2 The connection charge as stated in the Pricing Schedule shall be paid on the Agreement Date and will not be refundable to the Customer in the event of the Product Agreement being terminated.

6.3 The monthly charges for the Product (as stated in the Pricing Schedule or otherwise) shall be invoiced monthly in advance. The first monthly charge will be payable by the Customer to AN pro-rata for the period commencing from the Agreement Date up until the last day of the month.

6.4 The Customer shall pay the Call Charges and any other charges one (1) month in arrears in accordance with the Pricing Schedule.

7. Termination

7.1 The Product Agreement shall commence on the Agreement Date and shall continue in respect of each Product until expiry of the Minimum Term (which may commence after the date of the Product Agreement, in accordance with its definition), and thereafter until terminated in accordance with this clause 7 or by AN under clause 11 of the MSA.

7.2 If the Customer wishes to terminate a Product in whole or in part prior to Connection, AN may agree (at its absolute discretion) to accept such termination upon the basis that the Customer shall reimburse to AN any circuit cancellation charges levied on AN by BT, or other Supplier and the Customer shall pay to AN an administration fee of £500 within fourteen (14) days of such cancellation.

7.3 Either party may terminate any Product, or the Product Agreement, by giving to the other party not less than three (3) months' prior written notice to expire at any time following expiry of the relevant Minimum Term.

8. Minimum Minutes

8.1 If the Minimum Minutes are not achieved upon expiry of the Minimum Term, the Minimum Term will, immediately prior to expiry, be deemed to be extended by a period equivalent to one quarter of the original Minimum Term.

8.2 If, upon termination of the Product Agreement or expiry of the Minimum Term (as extended by clause 8.1), the Minimum Minutes have not been achieved, AN will be entitled to charge the Customer the sum specified in the table below (plus VAT) multiplied by the shortfall i.e. the Minimum Minutes less the actual aggregate number of minutes of calls received by the NGNs during the entire Minimum Term.

Shortfall (as % of Minimum Minutes)	Pence-per-minute charge
10% or less	0 pence
More than 10%, less than or equal to 25%	0.25 pence
More than 25%, less than or equal to 50%	0.50 pence
More than 50%, less than or equal to 75%	0.75 pence
More than 75%	1.0 pence

8.3 The parties agree that the charges specified in clause 8.2 represent a reasonable pre-estimate of AN's loss in respect of the Customer failing to meet the Minimum Minutes.

9. Consequences of early termination

9.1 Upon termination of the Product Agreement prior to the expiry of the Minimum Term the Customer shall pay to AN on demand:

9.1.1 any arrears of the charges payable under the Product Agreement;

9.1.2 any sum due in accordance with clause 8.2;

9.1.3 an amount equal to the monthly charges for each complete unexpired month of the Minimum Term (and pro-rata for an period of less than one month); and

9.1.4 any termination charges imposed on AN by the Supplier.

10. Premium Rate Regulator

10.1 The Customer shall comply with any applicable code of practice or direction issued by the Premium Rate Regulator and shall promptly provide to AN any information or documentation required to allow AN to comply with the same.

10.2 AN may without liability or notice to the Customer:

10.2.1 suspend or terminate access to the Product or any part of it;

10.2.2 withhold and/or pay over to the Premium Rate Regulator any payment due to the Customer under any Revenue Share Agreement;

10.2.3 pass to the Premium Rate Regulator any information related to the Customer or use of the Product irrespective of any duty of confidentiality to the Customer; and/or

10.2.4 take any other action, when directed to do so by the Premium Rate Regulator.

10.3 The Premium Rate Regulator shall have the right to enforce this clause 10 under the Contracts (Rights of Third Parties) Act 1999.