

NETWORK SERVICE AGREEMENT TERMS AND CONDITIONS

DEFINITION
1.1 In these Conditions:
Commencement Date: the date specified in the Network Service Agreement.
Contract: the contract between the Customer and the Supplier for the supply of the Service in accordance with these Conditions and the Network Service Agreement.
Customer: the company cited in the Network Service Agreement for whom the Supplier has agreed to provide the Service.
Intellectual Property Rights: all patents, rights to inventions, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in goodwill or to use for passing off, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
Minimum Term: the agreed minimum term for the provision of the Service as specified in the Network Service Agreement.
Network Service Agreement: the Network Service Agreement entered into by the Customer.
Previous Paid Termination Charges: means any termination charges paid by the Supplier on behalf of the Customer to the Customer's previous network provider at any time before or after the Commencement Date.
Service: the telecommunications service to be supplied to the Customer's telephone lines by the Supplier and which may include a broadband access line that will provide internet connectivity as outlined in the Specification.
Supplier's Website: www.nixgroup.co.uk.
Specification: the description or specification of the Service as set out in the Network Service Agreement.
Supplier: Nix Network Services LLP, trading as Nix Network Services, a Limited Liability Partnership incorporated and registered in England and Wales with company number OC347488 whose registered office is at Winchester Hill Business Park, Winchester Hill, Romsey, Hampshire, SO51 7UT.
Toll Fraud: any interference or access to the Customer's PABX phone system or the Customer's telephone lines and/or the making of calls by any third party utilising the Customer's telephone lines whether fraudulent or otherwise. For the avoidance of doubt, fraudulent activity includes but is not limited to: (i) calls made from the Customer's PBX without their knowledge; (ii) calls made utilising the Customer's authentication details; and (iii) calls made from an authenticated IP address.
1.2 The Customer and legislative provisions are to be understood as a reference to that provision as amended, re-enacted or extended at the relevant time.
1.3 Headings do not affect interpretation and are provided for convenience only.
BASIS OF CONTRACT
2.1 The Contract shall come into force on the date the Network Service Agreement is signed by the authorised representatives of the Customer and received by the Supplier and subject to condition 2.2 below, shall continue, unless terminated earlier in accordance with the provisions of these Conditions, until the end of the Minimum Term. The term of the Contract shall automatically extend for 36 months (Extended Term) at the end of the Minimum Term and at the end of each Extended Term, unless either party gives written notice to the other, no later than 90 days before the end of the Minimum Term or the relevant Extended Term, to terminate this Contract at the end of the Minimum Term or the relevant Extended Term as the case may be.
2.2 In the event the Customer has ten or less employees' condition 2.1 shall not apply. Instead the Contract shall continue, unless terminated earlier in accordance with the provisions of these Conditions, until either party gives 90 days written notice to the other party to terminate the Contract expiring on or after the Minimum Term.
2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made by or on behalf of the Supplier which is not set out in the Contract.
2.4 Any samples, drawings, description matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Service described in them. They shall not form part of the Contract or have contractual force.
2.5 These Conditions apply to the contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by any trade, custom, practice or course of dealing.
2.6 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.
SUPPLY OF THE SERVICE
3.1 The Service shall be supplied by the Supplier to the Customer from the Commencement Date in accordance with the Specification in all material respects.
3.2 The Supplier reserves the right to change the Specification without the prior consent of the Customer so that the Service conforms to any applicable safety or statutory requirements.
CUSTOMER OBLIGATIONS
4. The Customer shall:
a) co-operate with the Supplier in all matters relating to the Service and provide the Supplier with assistance from the Customer's employees where reasonably required;
b) permit or procure permission for the Supplier to freely and safely access its premises and service connection points;
c) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Service, and ensure that such information is accurate in all material respects;
d) ensure that only attachments approved for connection under the Telecommunications Act 1984 are connected with the Service;
e) use the Service in accordance with such instructions/conditions as may be notified in writing by the Supplier from time to time;
f) not use the Service in a manner which constitutes a violation or infringement of the rights of any other party and in this respect the Customer shall, without limitation, (i) secure implementation and management of their systems including any hardware not provided by the Supplier such as Firewalls or PBX, (ii) maintain security and confidentiality of authentication details for online service portals and other services; (iii) mitigate exposure to any suspected or known security breach by resetting passwords, requesting that accounts are disabled and reporting the incident to the Supplier; and (iv) report the incidents to the Police;
g) obtain and maintain all necessary licences, permissions, licenses, consents, registrations and approvals which may be required before the Commencement Date;
h) be solely liable for any costs arising as a result of Toll Fraud;
i) in the event the Contract includes broadband services, obtain and install at its own cost such equipment as the Supplier advises is required for the provision of the broadband services.
4.1 The Customer acknowledges that the Service known as 'fraud monitor' is not a fraud prevention system and does not prevent unauthorised access to the Equipment. It is the sole responsibility of the Customer to setup and maintain their own security independently of the Service. Therefore the Supplier accepts no liability whatsoever for any costs incurred as a result of a breach of security. The Supplier reserves the right to invoice the Customer for any fraudulent activity made.
4.2 The Customer shall indemnify and keep indemnified the Supplier completely and in full against all costs and losses (including less of liabilities, damages, claims, charges, damage to property, call costs charged by BT or others and expenses) incurred by the Supplier as a result of or in connection with:
a) any breach of the Customer's obligations under the Contract;
b) the death of any of the Supplier's employees caused by the negligence or willful misconduct of the Customer;
c) Toll Fraud or other fraudulent activity;
d) investigations into Toll Fraud or other fraudulent activity.
The Customer shall reimburse the Supplier on written demand for any such costs and losses sustained by the Supplier pursuant to this condition 4. The Supplier recommends the Customer obtains professional security advice with regard to PBX, trunking or other equipment or resource.
4.3 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Service until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it of performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this condition 4; and
c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.
PRICE AND PAYMENT
5.1 The price of the Service shall be the relevant price at the time the Service is in use as determined by the tariff stated in the Network Service Agreement.
5.2 The Supplier shall be entitled to vary the tariff stated in the Network Service Agreement from time to time by giving not less than three months notice to the Customer.
5.3 Some call tariffs may be subject to a connection or minimum call charge.
5.4 The Supplier shall invoice the Customer monthly in arrears. The Supplier may at its discretion submit invoices to the Customer via email. The Customer may also view its invoices online on the Supplier's Website.
5.5 The Customer shall pay any invoice submitted by the Supplier by direct debit by the due date detailed on the invoice. Time for payment shall be of the essence of the Contract.
5.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Service at the same time as payment is due for the supply of the Service.
5.7 Without limiting any other right or remedy of the Supplier, if the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (**Due Date**), the Supplier has the right to charge the Customer interest on the overdue amount at the rate of 4 per cent per annum above the then current Bank of England base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
5.8 The Supplier reserves the right to charge an administration fee if the Customer has cancelled its Direct Debit instruction or has insufficient funds in its bank account on the Direct Debit due date, without informing the Supplier in advance.
5.9 The Customer agrees that any dispute relating to an invoice (including the calculation of any amounts payable) must be notified to the Supplier within six months of the date of the invoice and the Customer shall not be entitled to any credit or refund relating to disputes raised after the expiry of this period.
INTELLECTUAL PROPERTY RIGHTS
6. All Intellectual Property Rights in or arising out of or in connection with the Service shall be owned by the Supplier. The Customer acknowledges that, in respect of any third-party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier the license such rights to the Customer.
LIMITATION OF LIABILITY
7.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; or misrepresentation, or breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
7.2 Subject to condition 7.1:
a) the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract;
b) the Supplier shall have no liability whatsoever if any sum owing by the Customer to the Supplier has not been paid;
c) the Supplier shall, as stated in condition 4.2, have no liability for any breach of the Customer's security; and
d) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed an amount equal to the aggregate price paid by the Customer to the Supplier in the three month period immediately preceding the matter giving rise to the liability in question.
7.3 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
7.4 The Supplier's employees or agents are not authorised to make any representations concerning the Service unless confirmed by the Supplier in writing.
DATA PROTECTION
8.1 The following definitions are used in this clause 8:
Applicable Law means (i) any law, statute, regulation, by-law or subordinate legislation in force from time to time to which a party is subject and/or which is applicable in any jurisdiction that the Service is provided to or in respect of; (ii) the common law and laws of effect applicable to the parties (or either of them) from time to time; (iii) any binding court order, judgment or decree as applicable to the parties (or either of them) from time to time; or (iv) any applicable direction, policy, rule or order that is binding on a party and that is made or given by any regulatory body having jurisdiction over that party or any of that party's assets, resources or business;
Customer Personal Data means any Personal Data which the Supplier receives pursuant to the performance of the Service;

Data Protection Legislation means all applicable data protection legislation including from 25 May 2018 onwards Regulation (EU) 2016/679 (the General Data Protection Regulation) (the GDPR) and any national implementing laws, regulations and secondary legislation (or in the event that the UK leaves the European Union, all equivalent legislation enacted in the UK in respect of the protection of Personal Data) (all as amended, updated or re-enacted from time to time); and
Personal Data, Data Subject, Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation. Both parties will comply with all applicable requirements of the Data Protection Legislation. Subject to clause 8.8, the parties acknowledge that the purpose of the Data Protection Legislation is to protect the rights of the Data Controller and the Supplier is the Data Processor in respect of Customer Personal Data. Clause 8.7 sets out the nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject.
8.2 Without prejudice to the generality of clause 8.2, the Customer will ensure that it has all necessary and appropriate consents and notices in place to enable lawful transfer of the Customer Personal Data to the Supplier for the duration and purposes of the Contract.
8.3 Without prejudice to the generality of clause 8.2, the Supplier shall, in relation to any Customer Personal Data processed by it in connection with the performance by the Supplier of its obligations under the Contract:
8.4.1 process that Customer Personal Data only on the written instructions of the Customer unless the Supplier is required by Applicable Law to process Customer Personal Data otherwise in accordance with the Customer's written instructions. Where the Supplier is relying on Applicable Law as the basis for processing Customer Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Law unless the Applicable Law prohibits the Supplier from so notifying the Customer;
8.4.2 immediately inform the Customer if the Supplier becomes aware of a written instruction given by the Customer under clause 8 that, in the Supplier's opinion, infringes Data Protection Legislation and the Supplier shall be entitled to suspend the Service (or for that Supplier's discretion just the part of the Service which is impacted by the infringement) until such time as the parties have agreed appropriate amended instructions which are not infringing;
8.4.3 ensure that it has in place appropriate technical and organisational measures for the protection of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Customer Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Customer Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it); and
b) in so far as possible and taking into account the nature of the processing, to assist the Customer in the fulfilment of the Customer's obligations to respond to requests from Data Subjects exercising their rights under the Data Protection Legislation;
8.4.4 ensure that all personnel who process Customer Personal Data are obliged to keep the Customer Personal Data confidential except where disclosure is required in accordance with Applicable Law;
8.4.5 assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities;
8.4.6 at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination or expiry of the Contract unless required by Applicable Law to store the Customer Personal Data; and
8.4.7 maintain and on request provide to the Customer information to demonstrate its compliance with this clause 8 and allow for audits by the Customer or the Customer's designated auditor subject to the Customer giving the Supplier reasonable prior notice of such information requests or audits; keeping all information obtained or generated thereby strictly confidential (save for disclosure required by Applicable Law); and ensuring that such audit or inspection is undertaken during normal business hours and with minimal disruption to the Supplier's business.
8.5 The Customer consents to the Supplier appointing the following as third-party processors of Customer Personal Data under the Contract:

Name or categories of sub-processor	What sub-processing do they do
NIX Communications Group Ltd	All Customer information required for the provision of calls as part of the Service.
The Sage Group plc & Union Street	Settlement of Customer bank details for invoicing and payment
BT, TalkTalk, Gamma, Daisy, Nine, Voicelife, Voicelost, Timico	All Customer information required for the provision of calls as part of the Service.

8.6 The Supplier confirms that it has entered or (as the case may be) will enter into with each third-party processor a written agreement incorporating terms which are substantially similar to those set out in this clause 8.5, in either case, the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 8.
8.7 This clause sets out the nature and purpose of processing by the Supplier, the duration of the processing by the Supplier, the types of Personal Data and the categories of Data Subject:
8.7.1 Purpose of processing: For the purpose of the supply by the Supplier of the Service to the Customer in accordance with the Contract.
8.7.2 Nature of processing: Use of data in order to contact and liaise with the Customer and in order to supply the Service.
8.7.3 Duration of processing: The term of the Contract.
8.7.4 Types of Personal Data: Name, telephone number, email address, emails and bank details.
8.7.5 Categories of Data Subject: The Customer and/or employees of the Customer.
8.8 The Supplier records and monitors all calls received and made by it and will be the Data Controller in respect of any Personal Data collected as a result. Please see the Supplier's privacy notice at <https://www.nixcommunications.co.uk/privacy-policy/> for details of how the Supplier will use Personal Data collected from such calls.
INSOLVENCY OF CUSTOMER AND SUSPENSION
9.1 Without limiting its other rights or remedies, the Supplier may terminate the Contract by giving 14 days written notice to the Customer:
a) the Customer suspends payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or having no assets of sufficient value to discharge its debts, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
b) a resolution is passed, or an order is made, for or in connection with the winding up of the Customer;
c) the Customer is the subject of a bankruptcy petition or order;
d) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
e) an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
f) a floating charge or other security is granted by the Customer and the Customer has appointed an administrative receiver;
g) a receiver is appointed over the assets of the Customer;
h) the Customer fails to pay any amount due under this Contract on the Due Date;
i) the Customer at any time does not have the necessary valid licence to run its telecommunications system;
j) the Customer commits a material breach of the Contract and (if such breach is remediable) fails to remedy that breach within 14 days of being notified in writing of the breach.
9.2 Without limiting its other rights or remedies:
a) the Supplier may terminate the Contract for convenience without liability at any time by giving 30 days written notice to the Customer if the Customer;
b) the Supplier shall have the right to suspend provision of the Services under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in condition 9.1 or the Supplier reasonably believes that the Customer is about to become subject to any of them. If the Service is suspended the Customer shall remain liable to pay the price until the Contract is terminated.
TERMINATION BY THE CUSTOMER PRIOR TO EXPIRY OF MINIMUM TERM AND TERMINATION FEE
10. Notwithstanding condition 2.1 and 2.2, the Customer may terminate the Contract upon 90 days written notice to the Supplier prior to the expiry of the Minimum Term subject to payment by the Customer of an early termination fee equal to the average of the price paid by the Customer to the Supplier in the three months immediately preceding the notice of termination multiplied by the number of months remaining within the Minimum Term at termination. If less than three months has elapsed prior to the date of the notice of termination the average of the price paid by the Customer from the Commencement Date to the date of the termination notice shall be used multiplied by the number of months remaining within the Minimum Term at termination.
10.1 In the event the Contract is terminated prior to the expiry of the Minimum Term due to any act or omission of the Customer, the Customer shall, on demand, in addition to its payment obligations under clause 10.1, reimburse to the Supplier the Previously Paid Termination Charges.
CONSEQUENCES OF TERMINATION
11.1 On termination of the Contract for any reason:
a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
b) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
c) clauses which expressly or by implication have effect after termination shall continue in full force and effect.
11.2 In the event the Supplier terminates the Contract in accordance with condition 9.1 prior to the expiry of the Minimum Term the Customer shall be liable to pay an early termination fee calculated in accordance with the provisions of condition 10.
GENERAL
12.1 The Supplier shall be in writing and, unless otherwise specified in the relevant paragraph, be addressed to the addressee at its registered office or principal place of business or such other address as may at the relevant time have been notified to the party giving the notice. Any notice of termination of the Contract served by the Customer must be marked for the attention of the Managing Director of the Supplier and sent by recorded delivery.
12.2 No delay or failure by the Supplier in enforcing any provision of the Contract shall constitute a waiver of that provision or any other provision. No waiver by the Supplier of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision. No waiver by the Supplier shall be effective unless in writing.
12.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part then the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
12.4 The Supplier's rights are cumulative and in addition to any rights available at common law.
12.5 Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by the Supplier.
12.6 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formulation (including non-contractual disputes or claims) shall be governed by and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

The Direct Debit Guarantee

- This Guarantee is offered by all Banks and Building Societies that take part in the Direct Debit Scheme.
- If there are any changes to the amount, date or frequency of your Direct Debit Nix Network Services LLP will notify you 10 working days in advance of your account being debited or as otherwise agreed. If you request Nix Network Services LLP to collect a payment, confirmation of the amount and date will be given to you at the time of request.
- If an error is made in the payment of your Direct Debit by Nix Network Services LLP or your Bank or Building Society, you are entitled to a full and immediate refund of the amount paid from your Bank or Building Society.
- If you receive a refund you are not entitled to, you must pay it back when Nix Network Services LLP asks you to.
- You can cancel a Direct Debit at any time by simply contacting your bank or building society. Written confirmation may be required. Please also notify us.

