

Terms of Sale - Wholesale Origination & Number Rental Services

The terms and conditions for sale and delivery of Services contained herein shall apply to all Origination & Number quotations and any orders submitted by the Partner to SmartIPX.

1. **Acceptance by SmartIPX** of the Partner's order is made under the express understanding and condition that only the terms and conditions contained herein or any amended or newer version therefore shall govern and establish any rights and obligations of the parties. Any terms and conditions set forth on any documents utilised by the Partner and any communications (written or oral) between the parties that are inconsistent with or are not included in the terms and conditions herein, or any amended or newer version therefore shall be of no force or effect.
2. **Interoperability:** SmartIPX shall endeavour to ensure interoperability of Services in order to make the Numbers reachable from as many mobile and fixed networks as possible. However, SmartIPX relies on the interoperability and interconnects of Services with third party networks in each country for end to end connectivity, SmartIPX does not warrant and represent that the Numbers will be reachable from all mobile and fixed networks.
3. **Partner Obligations:** Partner shall pay for the Service in accordance with the rates agreed on order or varied from time to time via a Rate Amendment and the relevant payment terms.
 - 3.1. Partner shall require each Subscriber to comply with our AUP
 - 3.2. Partner shall require each Subscriber to comply with the provisions of the Service Description
 - 3.3. Partner agrees that the service provided to the Subscriber where US numbers are being used:
 - 3.3.1. does not qualify as a "VOIP Interconnected service" in the meaning of the applicable FCC regulations and orders or
 - 3.3.2. if considered to be a "VOIP interconnected service" as furnished by the Partner to the Subscriber, it is the Partner's exclusive responsibility to provide the Service fully in compliance with all FCC requirements applicable, including but not limited to emergency services requirements
 - 3.4. Partner shall ensure that it has obtained and maintains all authorisations necessary to purchase the Service from SmartIPX and resell it to its customers under materially similar terms of contract with the ones of this Agreement. The Partner shall ensure that the usage of the Service and any specific Feature shall comply with any applicable laws.
 - 3.5. Partner shall develop and maintain a Subscriber register containing at least the following information per end user: name, ID number, place of residence or business and other relevant information. Within 24 hours from SmartIPX's first request, Partner must make available to SmartIPX end user information or information relevant to the Services is providing.
 - 3.6. Partner acknowledges that SmartIPX transmits the CLI in compliance with the applicable international rules and standards from the point of entry to the point of exit of its network. By selecting a CLI format other than the default E.164 format the Partner is fully responsible for any consequences resulting from the altered presentation and SmartIPX may without notice modify the format if required to do so by an NRA
 - 3.7. Partner acknowledges and agrees to abide with the guiding principles on CLI Presentation (CLIP) and CLI Restriction (CLIR) and block CLI presentation when the caller opts for CLIR, and keep CLI information confidential and only make use of CLI information for the purpose of providing a telecommunication service (call conveyance, customer care, billing, emergency assistance and managing the network)
4. **Charges**
 - 4.1. SmartIPX reserves the right to modify its Charges upon a 7 days prior written notice. Unless notified otherwise adjusted charges will only apply for Services ordered as from the application date of the new pricing.
5. **Payment Terms**
 - 5.1. Partner shall pay the Charges in accordance with this Clause 5 and that this Clause 5 shall apply to all Charges and payments notwithstanding any other legal or administrative regulation.
 - 5.2. Before or upon ordering any Service, Partner shall have agreed:
 - 5.2.1. Post pay terms, or
 - 5.2.2. A deposit payment by transfer to the SmartIPX bank account details provided
 - 5.3. By ordering any Service with SmartIPX, Partner explicitly allows SmartIPX to debit its business account
 - 5.4. Charges will be accrued from the relevant Service Date. The Non Recurring Fees will be invoiced by SmartIPX upon an order from the Partner, Prepaid Credits will be invoiced by SmartIPX upon receipt of

a payment related to an order for a Usage based Service or Feature. The Monthly Fees will be invoiced by SmartIPX monthly in advance except for the first Monthly fee. The first Monthly fee and the Non Recurring Fee will be fully invoiced upon receipt of an order from the Partner.

- 5.5. A soft copy invoice will be provided in electronic format (pdf). Any invoice shall be due and payable within the payment terms confirmed on the invoice.
- 5.6. If the Partner fails to pay the non recurring charge or the first monthly fee, the order will be rescinded.
- 5.7. The Partner shall pay a late payment interest of 1% per month of undisputed amounts on any amount owed but not paid by the due date until payment is made in full as well as a 15% late payment indemnity calculated on the undisputed amount.
- 5.8. If the Partner disputes in good faith any portion of any invoice, Partner must within 10 calendar days following the date of such invoice pay the undisputed amount of the invoice, together with written documentation substantiating Partner's basis for disputing the Charges. If the Partner does not dispute in writing within such 10 Calendar day period, Partner shall irrevocably have waived its right to dispute that invoice.
- 5.9. All Charges or other sums due by partner and payable to SmartIPX are stated exclusive of taxes and surcharges. All applicable taxes and all fees, duties, charges and surcharges, whether charged to or against Provider, incident to or based upon the provision, sale, or use of the Service shall be payable by the Partner at the then prevailing rate.

6. Term and Service Date

- 6.1. After 3 months from a Number's Service Dates, Partner may terminate a Number upon provision of written notice. In case a Partner cancels a number within 3 months from the Service Date, SmartIPX reserves the right to claim 3 months of Monthly fees in respect of the cancelled Number(s)
- 6.2. Specific orders such as Toll Free may have a minimum 6 Monthly fees applicable prior to any cancellation notice period which will be confirmed at time of order.
- 6.3. The final Monthly fee will apply in full to the calendar month in which the cancellation notice is given. There are no pro rata charge calculations applicable.
- 6.4. Channels are ordered for a minimum term of 12 months. Partner may terminate Channel on or at any time after the expiry of 12 months as from the Service Date of the Channel in question upon providing written notice.
- 6.5. If the Partner terminates prior to the 12 month period, SmartIPX reserves the right to claim 12 months of Monthly fees in respect of the cancelled channel(s).

7. Suspension

- 7.1. SmartIPX may, at its sole discretion and without prejudice to any right which it might have to terminate the Agreement, elect to suspend forthwith the provision of a Service until further notice in the event that:
 - 7.1.1. Partner's business account is depleted and Partner fails to provide sufficient funding within 15 days following the date of invoice until such time as the monetary default is cured, or such balance is at a level that cannot cover Partner's estimated traffic during the time required for Partner to replenish its business account. For the avoidance of doubt, SmartIPX will send one or more reminders by email when an invoice is past due;
 - 7.1.2. Undisputed amounts remain unpaid after the due date of the invoice despite one or more reminders sent by SmartIPX;
 - 7.1.3. It is entitled to terminate the agreement pursuant to clause 9;
 - 7.1.4. It is obliged to comply with an order, injunction or request of an NRA, a court, government or agency;
 - 7.1.5. It has reasonable grounds to believe that the service is being used fraudulently or illegally;
- 7.2. Partner or Subscriber(s) use of the Services or Numbers is in violation of the Service Description
- 7.3. In the event that SmartIPX exercises its right to suspend the Service pursuant to clause 8 it shall whenever reasonably practicable, give prior notice of such suspension to Partner.
- 7.4. SmartIPX shall not be liable for any loss, damage or inconvenience suffered by the Partner as a result of any suspension made pursuant to Clause 7.1. The Partner will in no event be entitled to any compensation should such suspension occur.

8. Termination

- 8.1. If the Partner fails to pay an invoice by its due date or does not have sufficient prepaid credit to support the service, and with no formal dispute activity underway, SmartIPX may terminate this Agreement and cease providing Services, without notice or liability to the Partner. In such an event

SmartIPX may deactivate or release all Numbers allocated to the Partner which may make them available to other Partners. Upon deactivation SmartIPX cannot guarantee that one or more Numbers can be re-allocated to the Partner if it desires to reactive the Service. In case of reactivation of a Service, the Partner will pay a new Non recurring charge. In the event SmartIPX elects to suspend Service until the monetary default is cured, SmartIPX reserves the right to exercise the option to terminate the agreement at any time during the suspension period. The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under the Agreement.

- 8.2. In addition to any other rights at law or in equity, SmartIPX may immediately terminate if its obliged to comply with an order, instruction or request of an NRA, a court, government, agency, emergency service organisation or other competent administrative or regulatory authority.

9. Indemnity and Liability

- 9.1. Each Party agrees that it shall not be liable to the other for any claims or costs sustained by the other party, its interconnected carriers, peering partners or end users due to:
- 9.2. any failure in or breakdown of equipment or transmission facilities associated with providing the Service and managed or operated by third parties;
- 9.3. any loss of data, the quality, content and accuracy of information received through or as a result of the use of the Services; or
- 9.4. fraudulent use of passwords or other security codes, whether resulting from loss, theft, hacking or disclosure to another person, unless such failure, breakdown, loss or fraudulent use is resulting from the negligence of the first mentioned party
- 9.5. Notwithstanding any other provision of the Agreement to the contrary, in no event shall either party be liable to the other party for consequential, special or indirect losses or damages sustained by them or any third parties with regard to the Services, irrespective of whether under contract, tort or otherwise (including, without limitation, loss of profits, loss of revenues, loss of subscribers or damage to reputation or goodwill).
- 9.6. Either party shall not be liable to the other for any failure to comply with its obligations under the Agreement to the extent that such liability arises as a result of the failure to fulfill its obligations under the agreement or Force Majeure
- 9.7. Subject to what is specifically provided in case of infringement or claim for infringement of intellectual property rights, either party's liability against the other for any damages under the Agreement, except in the case of willful misconduct or fraud, shall be limited to the credits due under an Operational Agreement where such Operational Agreement Level applies, and shall otherwise in no event exceed the higher of either (1) the total amount of charges invoiced by SmartIPX for Origination and Number services and paid by the Partner in 6 months prior to the event that caused the liability, or (2) £10,000 for each event or series of related events.
- 9.8. Except with respect to actions by SmartIPX for non-payment of invoices, the parties expressly agree that no claim for losses or damages whatsoever in connection with the Agreement shall be made more than six (6) months after the date that the event giving rise to such claim is known or reasonably should have been known to the party making such claim.
- 9.9. Partner agrees that SmartIPX will not be held liable in case Services or a part of them are no longer provided following the (1) bankruptcy or the winding up order of SmartIPX's upstream carrier(s) or (2) a computer based attack on SmartIPX's network and equipment. However in these cases SmartIPX will do its best reasonable commercial efforts to restore the Services or the affected parts of them as soon as possible.

10. Service Maintenance

- 10.1. Except in the case of emergencies, each party shall give no less than 2 business days prior notice of all scheduled maintenance or alteration that will affect the Services. Wherever reasonably possible each party shall endeavour to perform these activities in such a way as to minimise any interruption in the provision of the Service.
- 10.2. Any suspension or degradation of Service resulting from a scheduled maintenance shall not be included in any operational level calculation set forth in the Operational Level Agreement published separately.

11. Data and Privacy

- 11.1. Each party will, by virtue of provision of the Service, come into possession of Personal Data related to its subscriber.

- 11.2. The Partner will inform the owner of the personal data about their right to access, the right to request and modify, amend or delete their Personal Data. The Partner warrants that it has obtained and will obtain all legally required consents and permissions from the owner of the personal data for the use, processing and transfer of Personal Data in accordance with Clause 12
- 11.3. The Partner acknowledges and agrees that SmartIPX may use and/or process Personal Data:
 - 11.3.1. In connection with the provision of Services and Features such as number portability and directory services (if available)
 - 11.3.2. For the purpose of administration, provisioning, billing and reconciliation, verification of Partner Identity and solvency, maintenance, support and product development, fraud detection and prevention, sales, revenue and customer analysis and reporting, and;
 - 11.3.3. For the purpose of providing information about SmartIPX and its range of Service (e.g. new services, promotions, etc), it's professional and social activities, and about any topics that could be of interest to Partner by voice or email.
 - 11.3.4. Any owner of the personal data may, by sending written notice to SmartIPX, withdraw consent for such use, processing or transfer of Personal Data as set out above, unless it is required to (1) provision, manage, account and bill for the Services; (2) carry out fraud detection; or (3) comply with any statutory obligation, regulatory requirement or court or public authority order.

12. Data and Privacy - Collection and Transfer of Personal data

- 12.1. Partner acknowledges that, in accordance with Article 4.6 , Partner shall collect end user personal information that may be transmitted by the Partner to SmartIPX.
- 12.2. The Partner shall ensure that the collection of the subscriber information complies with the privacy rules where the data collection is taking place. As such, the partner shall ensure that the end user consent is validly obtained and prior information has been provided in respect to the purpose of the data collection, processing and transfer.
- 12.3. As per the country's specific ordering process indicated, the Partner agrees that the end user personal information provided to SmartIPX in the scope of the provision of the Service is transferred to SmartIPX partners upon the Partner ordering of the Service or throughout the provision of the same.
- 12.4. For the purpose of Article 17.3, the Partner shall ensure that the subscriber has given their consent unambiguously to the transfer of his personal information according to the Service needs, including as applicable, to jurisdiction outside of the European Union. The Partner shall give subscribers an opt out option to these transfers while informing the subscriber that, in case of opt-out, no provision of Service for the specific country will be possible.
- 12.5. The Partner shall maintain the subscriber information up to date at all times during the provision of the Service and shall always ensure that the end user information to SmartIPX corresponds at all times with the information of the effective subscriber of that Number.