

Terms of Sale - Wholesale Voice Services

1. **Provision of Services** SmartIPX will offer, either directly or through its Affiliates, to provide Services to the Partner during the Term of this Agreement, and will provide the Partner with Rate Amendments calculated in accordance with Wholesale Services Clause 5. The service levels that will be applicable to the Services are set out within the Operational Level Agreement published separate to this Agreement.
2. **Traffic Management** SmartIPX's obligation to provide the Services subject to its normal network management controls. SmartIPX in its sole discretion reserves the right to take any decision it deems appropriate to manage its network, including limiting traffic from the Partner on any route during conditions of network congestion.
3. **Routing Decisions** How SmartIPX chooses to route traffic received from the Partner to the Destination is entirely at its discretion (and can include a route via a third party carrier).
4. **Calling Line Identification** SmartIPX agrees, subject to the remainder of this clause, to pass on to the Destinations all available calling line identification ("CLI") information within a call for all traffic that is received from the Partner as part of the Services. The service under this clause 4 is offered on the basis that:
 - 4.1. it will only be provided in relation to destinations that are confirmed between the Parties in writing as being applicable;
 - 4.2. the CLI will be provided in an international format, as defined in ITU recommendations Q.767 and Q.763 (international application) and the Parties will comply with any applicable laws in the jurisdictions they operate in; and
 - 4.3. SmartIPX will not actively remove the CLI from any call passed to it to the extent the CLI is sent by the Customer, unless and to the extent that the CLI is sent with the presentation restriction parameter set to "presentation restricted", in which case SmartIPX will pass on both the CLI and the restriction parameter or use all reasonable endeavours to ensure that the CLI is not presented to the Destination (as applicable, depending on whether the Destination is the final destination of the call).
5. **Interconnect & Interconnection Charges**
 - 5.1. Interconnection: The Parties will interconnect to perform the Services via either a Public IP address or a direct connect connecting SmartIPX's POP on our third party network partner, Epsilon Telecommunications.
 - 5.2. Works to be completed to interconnect: A Public IP address will be provided for SIP interconnect.
 - 5.3. Payment of interconnection costs: Any interconnection costs under this clause 5 will be authorised under a specific Purchase Order and payable upon receipt of an invoice in accordance with clause 6.
 - 5.4. All traffic will be charged according to the Tariff Rate Amendment issued providing a minimum 7 day notice period prior to price increases taking effect.
6. **Term**
 - 6.1. Initial Term: This Agreement will start on the Effective Date and continue for a minimum 30 days
 - 6.2. Rolling monthly term: After the Initial Term, this Agreement will remain in effect on a 7 day rolling basis until terminated by either Party giving the other no less than 7 days notice of its desire to terminate this Agreement.
7. **Charge**
 - 7.1. **Charging:** The Partner will pay for the Services in accordance with the relevant Rate Amendment (as varied from time to time in accordance with clause 5.4). The Customer accepts the rates and terms stated in the relevant Rate Amendment for traffic to a Destination (including the nature of the voice product being supplied) by sending traffic to SmartIPX in respect of that Destination or continuing to receive Origination traffic.
 - 7.2. Calculation of duration of calls for charging: All calls will be billed with a one (1) second minimum and thereafter in one (1) second increments unless otherwise specified in a Rate Amendment.
 - 7.3. Rounding of rated calls: After each call is rounded in accordance with clause 7.2, the duration of all calls to a particular Destination at a particular rate will be totalled for the entire billing period, rounded to the next highest second per call, and then 'rated' (i.e. computed from minutes to either GBP£, \$USD or Euro). Once this total has been 'rated' the resulting amount may be rounded. It is not acceptable to 'rate' and then round each individual call.
8. **Modifications:** SmartIPX may, by giving the Partner prior written notice in accordance with clause 5.4
 - 8.1. vary the rates as stated in an existing Rate Amendment; or
 - 8.2. cease to provide the Services to a particular Destination,
 - 8.3. provided that (subject to clause 9), for the Initial Term, SmartIPX agrees to only vary the rates on a 7 day basis

9. **Minimum Volumes and Volume Commitments:** Pricing is contingent on the Partner meeting any minimum traffic volume stated within the initial Rate Amendment. If that volume threshold is not met, then SmartIPX will not be obliged to set Rate Amendments in accordance with clause 5.4(c), and may vary the Rate Amendments at its discretion
10. **Sending and Receiving Rate Amendments:**
- 10.1. Rate Amendments must be sent by electronic email transmission to the Partner at the email address provided for Rate Amendments specified at the time of interconnect testing.
- 10.2. A Rate Amendment will take effect seven (7) days after the date on which the Partner has received notice in accordance with this clause 5.6, subject to Clause 5.5
- 10.3. An email sent to the specified email address will constitute adequate proof of delivery.
11. **Information contained in Rate Amendments:** Each Rate Amendment must comply with the following requirements:
- 11.1. the information must be presented in a standard format, The following is an example of an appropriate format:

Destination Name		Rate	Rate Per Minute	Rate Per Call	
	Prefix	Suffixes	£GBP	£GBP	Effective Date
Azerbaijan-Fixed	994		0.1423	00	1-Aug-2012
Azerbaijan-Fixed-Baku	994	123,124,125	0.1424	00	1-Aug-2012
Azerbaijan-Mobile	994	404,560,7077	0.15	0.00	1-Aug 2012

- 11.2. every Destination quoted must have an associated code listed;
- 11.3. a code must only be associated with one Destination;
- 11.4. codes and rates for all Destinations quoted must be present;
- 11.5. Destination names and codes can be repeated on multiple lines as long as the rate remains constant;
- 11.6. a set of codes with a different rate should have a different name;
- 11.7. all codes that have a separate rate or are excluded must be quoted in a way that makes that clear;
- 11.8. there can be no exceptions such as "All mobile and audio text codes are £1" unless those exceptions are specified in the standard format with codes;
- 11.9. codes are in the longest-match format, for example calls to 64251 will be rated at 90p, calls to 6423 will be rated at 75p, and 64 will be rated at 50p. In this format, any calls to a number beginning 64 and not having 23 or 251 following would be rated at 50p;
- 11.10. codes may be split in the prefix/suffix format as shown above or a list of full codes on each line or one code is provided on each line;
- 11.11. multiple lines may be necessary for some Destinations if there are a large number of codes; and
- 11.12. to avoid ambiguity, whenever a rate or code changes for one Destination within a country, all rates and codes for that country should be re-quoted.
12. **Invoicing and Payment**
- 12.1. **Invoice:** SmartIPX will raise ad hoc invoices for credit purchases of an agreed amount. SmartIPX will then debit your account on a real time basis. Within 7 days of the end of each calendar month, SmartIPX must provide the Partner with a Statement of Account detailing the Services that it provided during that month. The account data will include, for each Destination and Origination, details of:
- 12.1.1. the number of calls received by SmartIPX;
- 12.1.2. the number of minutes measured and billed by SmartIPX, together with the associated service type for each call
- 12.1.3. the total amount already debited to the Customer as per the daily credit management activity;
- 12.1.4. the total actual amount deducted for that month's usage; and/or the revenue payment value for an invoice to be submitted by the customer for settlement
- 12.2. **Who and where to send invoices:** Copies of invoices will be sent via electronic email transmission to the person and addresses stated specified during the interconnection set up.
- 12.3. **How payment is made:** Payment will be made by wire transfer to the bank account designated by SmartIPX from time to time. The Partner is responsible for all bank charges. Only the actual amount received as cleared funds by SmartIPX will be credited to the Customer account.
- 12.4. **Request for call details:** Upon request, SmartIPX will also make available to the Customer the individual call detail records for standard retail voice services upon which all account debits issued

under clause 12.1.13 has been calculated. Note Short Duration Call Center traffic is specifically excluded from provision of individual call detail records.

13. **Billing Disputes:**
 - 13.1. If, in a billed Party's reasonable opinion, there is an omission or error in relation to a charge on an invoice, the billed Party may, within 10 days of the invoice or Statement date, dispute the invoice or statement by giving written notice ('Billing Dispute Notice') sent by email to the billing Party's address for billing disputes specified in the Agreement Details. A Party may not dispute an invoice based on a claim that the invoiced services included fraudulent calls, unless the billing Party committed the fraud.
 - 13.2. The Billing Dispute Notice must, as a minimum, include the date and number of the disputed invoice, itemised details of the charges in dispute, detailed reasons for dispute and documentation sufficient to support the billed Party's claim and to enable the billing Party to investigate it.
 - 13.3. The Parties agree to resolve any billing dispute in connection with this Agreement in accordance with the billing dispute process annexure attached to this Agreement.
 - 13.4. Unless the billed Party provides reasonable substantiation of its claim, the billing Party is entitled to rely on its records as proof of usage and charges incurred.
 - 13.5. If a Party does not notify the other Party that it disputes an invoice within the time specified in clause 13(a), then that Party is deemed to have accepted the invoice
 - 13.6. Subject to clause 13.3, the Parties agree to follow the process set out in this clause before either commences arbitration or legal proceedings except to enforce payment due under this Agreement or to seek urgent injunctive or declaratory relief.
 - 13.7. A Party claiming that a dispute has arisen between the Parties in connection with this Agreement, must give the other Party written notice ('Dispute Notice') sufficiently identifying and providing details of the matter.
 - 13.8. A representative of each Party must negotiate in good faith with the other to attempt to resolve the dispute or difference. If the dispute is not resolved within 14 days of the Dispute Notice being given, each Party must nominate a more senior representative. The more senior representatives must negotiate in good faith with the other to attempt to resolve the dispute.
 - 13.9. If the Parties agree on a resolution to the dispute, the agreed resolution becomes binding when documented in writing signed by both Parties.
 - 13.10. If the matter has not been resolved within 30 days of the Dispute Notice being given, either Party may commence legal proceedings and/or take other action it considers appropriate.
 - 13.11. Disclosure in the course of negotiation pursuant to this clause is not a waiver of confidentiality, and the use of any information disclosed by the other in the course of negotiation is subject to the confidentiality obligations of this Agreement.
14. **Credit Limits:** This is determined by the deposit value on account held by SmartIPX for the Partner.
15. **Fraudulent calls:** The Partner will not be excused of its obligations to pay SmartIPX for the services invoiced pursuant to this clause 12 based on a claim that fraudulent calls comprise, or may comprise, a portion of the debited Services. In no case will fraudulent calls form the basis for disputing a billed amount pursuant to clause 12 of this Agreement, unless it is proven that SmartIPX has perpetrated the fraud.
16. **Charges omitted:** Nothing in this Agreement or in the terms of any invoice or statement will prejudice SmartIPX's right to charge the Partner for any Services, the charges or costs for which should have been included within earlier invoices or statements but which were inadvertently omitted. This right will be limited to a period of 3 months from the date of the provision of the relevant Services, after which no charge may be made for those Services.
17. **Refund of Credit:** Should the account be terminated or the customer no longer wish to use SmartIPX services then all monies held on account will be refunded back to the Customer within 21 working days. These funds will have deducted any outstanding payments prior to return to the Partner
18. **Suspension of Service:** Payment not in full or credit limit exceeded: When payment in full is not made by the Partner on or before the due date, or if a credit limit established by SmartIPX pursuant to clause 14 has been exceeded, SmartIPX will have the right to suspend, on immediately effective notice, provision of the Services to the Partner (either in whole or in part) until such time as the Partner has paid all outstanding amounts, including any interest due pursuant to this Agreement.
19. **Acceptable Use Policy:** The Services are provided by SmartIPX on condition that they may not be used for any unlawful purpose or in any improper manner. SmartIPX may suspend the Services if, in its reasonable opinion, the Partner or its End-users are in breach of the Acceptable Use Policy and specifically use the Services for any unlawful purpose or in any improper manner.

20. **Termination for Breach**
- 20.1. Termination: Either Party will have the right to terminate this Agreement immediately by giving written notice.
- 20.2. Consequences of Termination: Termination of this Agreement will not affect the rights of the Parties which have accrued prior to the date of termination. Clauses 6, 9, 10, 14 and 17 will survive termination.
21. **No warranty:** Neither Party will gain any interest, right or title to any material provided to it under this Agreement, and will not be held liable for any errors or omissions in any information that it furnishes or makes available or for any loss or damage arising out of the other Party's use of any such information. To avoid doubt, this clause does not apply to each Party's obligation to correctly invoice the other.
22. **Limitation of Liability Specific to Wholesale Voice Services**
- 22.1. **Exclusions from liability:** To the maximum extent permitted by law, and except as expressly stated otherwise in this clause 22, in no event will either Party be liable to the other Party, its customers, End Users or any other person or entity in any respect, including, without limitation, for any direct, indirect, consequential, special, incidental, actual or punitive damages, or for any damages to or destruction to data, information, files or databases, loss of profits or other economic loss of any kind or nature whatsoever, arising out of performance, non-performance, mistakes, accidents, errors, omissions, interruptions, delays, or defects in the Services, including those which may be caused by regulatory or judicial authorities, arising out of or relating to the agreement or the obligations of either Party pursuant to this Agreement and whether the claim is under contract, negligence or any other theory of liability.
- 22.2. **Liability cap:** Despite clause 22, if either Party is ever held liable to the other Party in relation to this Agreement and whether the claim is under contract, negligence or any other theory of liability, the defaulting Party's liability in relation to any event or series of related events is limited to the greater of (i) the total amount invoiced or invoiceable by the defaulting Party for the 12 months prior to the event or events in question; or (ii) £100,000. This is the only remedy available to the non-defaulting Party.
23. **No warranty:** Other than the service levels set out in the Operational Level Agreement, SmartIPX does not make any warranty, whether expressed, implied, or statutory, as to the description, quality, merchantability, completeness or fitness for any purpose of the Services, or as to any other matter. Such warranties are excluded and disclaimed by SmartIPX.
24. **Third party and End User claims:** SmartIPX does not assume any liability for any act or omission of the Partner in the furnishing of the Services to its End Users. The Partner agrees to indemnify, defend, release, and hold harmless SmartIPX from and against any action, claim, court cost, damage, demand, expense, liability, loss (including legal costs), penalty, proceeding, or suit of any nature brought by or on behalf of its End Users in relation to the Services.
25. **Fraudulent Calls:** The Partner agrees to indemnify, defend, release, and hold harmless SmartIPX from and against any action, claim, court cost, damage, demand, expense, liability, loss (including legal costs), penalty, proceeding, or suit of any nature brought by or on behalf of its End Users arising from fraudulent calls.
26. **No Exclusivity on Supply:** Nothing in this Agreement will be deemed to restrict or prejudice the rights of SmartIPX to enter into similar resale agreements.
27. **Compliance with Laws:** Compliance required: The Parties must comply with all applicable laws and the requirements of any and all local, state or federal governmental agencies or regulatory authorities (domestic or foreign) having jurisdiction over the provision of the Services.
28. **Notices**
- 28.1. **Valid means of giving notice:** Notices required under this Agreement may be sent by electronic email transmission, or by prepaid, certified mail return receipt requested.
- 28.2. **Notice by mail:** When a notice or invoices is sent by mail, it will be deemed to have been given when delivered, received or refused by the Party to whom sent, when addressed to the person whose name or title and business address appears in this clause 17. The effective date of any notice will be the date of delivery or refusal of such notice, and not the date of mailing.
- 28.3. **Notice by email:** Notices, invoices and Rate Amendments given by email will be deemed to have been received when the log generated by the sender's computer or email server or equivalent, evidences the email being sent and/or the email was acknowledged either by a delivery receipt or otherwise, provided that if the email does not get sent on a Business Day at the place to which it is addressed, the notice will be deemed to be delivered on the following Business Day.

- 28.4. **Addresses for Notices, Invoices and Rate Amendments:** Notices, invoices and Rate Amendments are to be given to the addresses specified at time of the interconnect establishment or formally notified of a change by either Party.
29. **Changes to Terms:** SmartIPX may make changes to these Terms from time to time. If you do not agree with the amended Terms, you may terminate your relationship with SmartIPX in accordance with clause 6.
30. **Taxes** The Partner must pay or reimburse SmartIPX for any taxes, stamp duty or other government charges relating to this Agreement or the provision of the Services. Where the Partner belongs to a different member State of the European Union from SmartIPX for the purposes of the supply in respect of which the payment is made, the Partner shall provide to SmartIPX prior to the due date for payment or the raising of any invoice (whichever is the earlier) details of the Partner's own value added tax registration number, or if a non EU or UK registered company confirm their relevant business incorporation or tax code relevant to their country of operation.
31. **Data protection:** To the extent a Party procures the personal data of the other Party that Party must:
- 31.1. process that personal data only as is required to give effect to its obligations under this Agreement;
 - 31.2. implement appropriate technological and security measures to safeguard against unauthorised disclosure of or access to that personal data; and
 - 31.3. For the purposes of this clause 31, the phrases "process" and "personal data" shall have the meaning set out in the Applicable Data Protection Legislation.