

Our Ref: RM00000000XXX

## Network Services Terms and Conditions:

### 1. CONTRACT DEFINITION

1.1 'Application Form' means the application/order form relating to the provision of the Services in the form provided by AVANDDA Limited/AVANDDA Limited (AVANDDA Ltd/AVANDDA Ltd) from time to time incorporating these terms and conditions.

1.2 '**Associated Company**' means any subsidiary or holding company of AVANDDA/AVANDDA or other associated company as defined by Sections 736 and 736A of the Companies ACT 1985.

1.3 '**Authorised Person**' means a Director or authorised signatory of AVANDDA/AVANDDA.

1.4 '**Account Number**' means the account opened by AVANDDA/AVANDDA in the name of the Customer upon creation of the Contract and relating to the Services.

1.5 '**Customer**' means a person, company, body corporate or other entity or association whatsoever or howsoever whose Application Form is accepted by AVANDDA/AVANDDA and for whom AVANDDA/AVANDDA has opened an Account Number.

1.6 '**Contract**' means the contract governed by these terms and conditions made between AVANDDA/AVANDDA and the Customer created upon acceptance by AVANDDA/AVANDDA of the Customer's Application Form and evidenced by the opening of an Account Number. Subject to Clause 1.17, the Agreement becomes effective when signed by a Director or authorised signatory of AVANDDA/AVANDDA.

1.7 '**AVANDDA/AVANDDA**' means AVANDDA/AVANDDA Limited whose registered office is at 820 Birchwood Boulevard, Birchwood, Warrington WA3 7QZ Company Number 4975559 which expression shall, where the context so requires, include its successors and assigns and any Associated Company thereof.

1.8 '**AVANDDA/AVANDDA Equipment**' means any equipment supplied by AVANDDA/AVANDDA

1.9 '**Additional Provisions**' means any Terms additional to those outlined within the Terms of this Agreement as evidenced on the Application Form.

1.10 '**Discount**' means the amount at which any of the Services are provided by AVANDDA/AVANDDA to the Customer during the Contract at less than the full rate as outlined under Additional Provisions on the Application Form.

1.11 '**Discount Services**' means any Services provided by AVANDDA/AVANDDA to the Customer from time to time and not charged for by AVANDDA/AVANDDA from time to time or charged at a Discount.

1.12 '**Least Cost Routing Software**' means software installed on a telephone system which automatically enables the routing of calls via different telephone operators.

1.13 '**Minimum Term**' means the minimum duration of this Contract, which unless otherwise expressly stated on this Application Form shall be 36 months from the date the Customer first starts to receive the Services.

1.14 '**Services**' means re-routing the Customer's telecommunications including without limitation all calls, voice, fax and data traffic over the AVANDDA/AVANDDA Network and any additional Services as outlined on the Application Form and provided under the terms of this Agreement. Services shall be deemed to include Discount Services where appropriate.

1.15 '**Services Literature**' means AVANDDA/AVANDDA's literature specific to the Services and other associated services existing from time to time.

1.16 '**User**' means the Customer and any individual or company utilising the Services provided to the Customer under the Terms of this Agreement.

1.17 '**Refusal of Service**' means the non-provision of the Services outlined on the Application Form due to circumstances outside of AVANDDA/AVANDDA's control and including, but not limited to, the Customer's poor credit history. AVANDDA/AVANDDA reserves the right to make a reasonable administrative charge for service thus far rendered to the Customer in such instances.

### 2. THE SERVICES

#### 2.1 Services

a) the Customer shall complete, sign and return to AVANDDA/AVANDDA an order form agreement prior to AVANDDA/AVANDDA agreeing to provide the Services.

b) where the Customer Has Least Cost Routing Software available for use at its premises, AVANDDA/AVANDDA will, if necessary, and at its sole discretion, reprogram it in order to provide the Services.

c) where the Customer does not have Least Cost Routing Software available for use at its premises, AVANDDA/AVANDDA will, if necessary, and at its sole discretion supply, install and connect the Customer to AVANDDA/AVANDDA Access Equipment in order to provide the Services.

d) AVANDDA/AVANDDA shall use all the reasonable care and skill of a competent telecommunications provider to provide the Customer with the Services throughout the term of the Contract.

e) AVANDDA/AVANDDA shall be at liberty, where necessary, to improve, update or upgrade the Services or alter the provision of the Services without any notice to the Customer.

#### 2.2 The Customer undertakes to AVANDDA/AVANDDA that:

a) for the duration of the Minimum Term it will route all its inbound, non-geographic and outbound calls (including without limitation all its voice, fax and data traffic) via AVANDDA/AVANDDA on an exclusive basis. For the avoidance of doubt the Customer acknowledges and accepts that during the Minimum Term it shall not use any services offered by a third party which are competitive with or substantially similar to the Services. In the event of any breach by the Customer of this Condition 2.2(a) the terms of Condition 4.12 shall apply;

b) the Services and the AVANDDA/AVANDDA Network will only be used in accordance with the Contract;

c) only the Customer and Users shall use the Services and the AVANDDA/AVANDDA Network and no other person shall be suffered or permitted to use the same;

#### 2.3 Upon the termination of the Contract:

a) no attempt shall be made to make calls via the Services or otherwise to use the AVANDDA/AVANDDA Network and; (ii) the Customer shall pay in full an amount equal to the Discount for the period any of the Services have been supplied as Discount Services. Such payment to be in accordance with and subject to Condition 4;

b) the Services Literature and any other instructions regarding the use of the Services and the AVANDDA/AVANDDA Network as may be notified to the Customer by AVANDDA/AVANDDA from time to time shall be complied with promptly and such literature and instructions shall be deemed to form part of the Contract.

#### 2.4 The Customer 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 Customer's normal working hours and allow the removal, installation and maintenance of AVANDDA/AVANDDA Access Equipment;

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- b) keep its telecommunications equipment including without limitation the AVANDDA/AVANDA Access Equipment in good working order and ensure that the equipment complies with all applicable standards and approvals so as to enable AVANDDA/AVANDA to provide the Services;
- d) provide all reasonable assistance required by AVANDDA/AVANDA to enable it to provide the Services;
- e) inform AVANDDA/AVANDA by one month's prior notice in writing of any premises relocation or change of telephone number(s) on which the Services are registered;
- f) provide a safe working environment for Authorised Persons working on the Customer's premises;
- g) indemnify AVANDDA/AVANDA fully against all losses, liabilities, costs (including without limitation legal costs) and expenses which AVANDDA/AVANDA may incur as a result of any breach of the Customer's obligations under the Contract or misuse of the Services or the AVANDDA/AVANDA Network;
- h) pay AVANDDA/AVANDA (at its then current published rates) for all call-out visits required from AVANDDA/AVANDA where AVANDDA/AVANDA determines the problem with the Services or the AVANDDA/AVANDA Network is not the fault of AVANDDA/AVANDA or the Comms Access Equipment or the Comms Access Equipment has been damaged.

2.4 The Customer undertakes to AVANDDA/AVANDA to ensure that the Services and the AVANDDA/AVANDA Network 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, AVANDDA/AVANDA RIGHTS**

3.1 AVANDDA/AVANDA shall be entitled to alter any access or authorisation number or method of accessing the Services from time to time and may reprogram the Customer's equipment as a result.

3.2 AVANDDA/AVANDA may suspend the Services to the Customer at its sole discretion including but not limited to the following: -

- a) in the interests of the quality of the Services or the AVANDDA/AVANDA Network;
- b) if any credit limit agreed between AVANDDA/AVANDA and the Customer 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 AVANDDA/AVANDA (in its reasonable opinion) in connection with the use of the Services or the AVANDDA/AVANDA Network.
- f) if in AVANDDA/AVANDA's reasonable opinion it suspects the Customer is offering to resell the Services to any third party.

3.3 AVANDDA/AVANDA may collect and store data and information about the Customer and its use of the Services and provide this information to companies affiliated with AVANDDA/AVANDA including without limitation any Associated Company and (ii) third parties.

### **4. CHARGES AND PAYMENTS FOR THE SERVICES**

4.1 All sums due to AVANDDA/AVANDA under the Contract shall become due on the date of the relevant invoice and are payable within 14 days (including week-ends and bank holidays) of the date of the relevant invoice. Unless otherwise stated, any rental or recurring charges are invoiced monthly in advance and call charges and any ad-hoc maintenance or similar charges are invoiced monthly in arrears which will begin on the date on which the Service becomes operational. Charges will be based on AVANDDA/AVANDA's records

4.2 In the event of any error or omission in a AVANDDA/AVANDA invoice for any period, AVANDDA/AVANDA may issue a corrective invoice at a later date.

4.3 If the Customer fails to make any payment within the 14-day period following the date of the relevant invoice, without prejudice to its other rights hereunder, AVANDDA/AVANDA shall have the right to require the Customer to pay all sums due on demand.

4.4 Time of payment of all sums due to AVANDDA/AVANDA under the Contract shall be of the essence.

4.5 AVANDDA/AVANDA reserves the right to amend its charges for the Services in response to market conditions and legislative changes which increase costs that are deemed unreasonable to absorb without change.

4.6 AVANDDA/AVANDA shall use its best endeavours to bring to the attention of the Customer any variation in prices prior to their implementation.

4.7 Without prejudice to AVANDDA/AVANDA's rights to treat the non-payment as a material breach of the Contract, AVANDDA/AVANDA reserves the right to charge interest on outstanding amounts from the due date until payment is received in full at a rate equal to 4% per annum above the Lloyds TSB Bank plc base lending rate as current from time to time whether before or after judgment. Interest shall continue to accrue notwithstanding termination of the Contract for 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.

4.8 AVANDDA/AVANDA reserves the right to charge for administrative costs incurred by AVANDDA/AVANDA in pursuing late payers.

4.9 All sums due to AVANDDA/AVANDA under the Contract are subject to Value Added Tax ('VAT'), and any other applicable taxes, levies or charges which may from time to time be introduced.

4.10 The Customer shall be liable for all charges arising from use of the Services by any person utilising the Customer's registered Services telephone number(s) (with or without Customer's authorisation) until such time as the Customer has notified AVANDDA/AVANDA of any unauthorised use of the Service. Such notice should be sent by the Customer to AVANDDA/AVANDA in writing by 1st Class Recorded Delivery. The Customer must retain the relevant receipt as proof.

4.11 The Customer accepts and acknowledges that the Services are not guaranteed to be secure and AVANDDA/AVANDA does not guarantee the prevention or detection of any unauthorised attempts to access the Services.

4.12 AVANDDA/AVANDA shall not be responsible for call charges or other charges resulting from fraudulent and/or unauthorised use of the Equipment and/or Services or any use of the Equipment and/or Services by any unauthorised third parties (who are not employees of the Company). The Customer shall be responsible for all use of the Services in association with the Customer's accounts whether or not authorised by the Customer. The Customer agrees to immediately notify AVANDDA/AVANDA of any unauthorised use of the Customer's account of which the Customer becomes aware and the Customer agrees to pay all additional charges related to fraudulent and/or unauthorised usage. The Customer is therefore urged to verify with their equipment provider that all necessary steps to combat fraudulent and/or unauthorised use have been taken.

4.13 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, fraud prevention or the tracing of debtors.

4.14 In the event of the Customer obtaining any services from a third party which are competitive with or substantially similar to the Services during the Minimum Term or if there has been a material breach of the Contract, the Customer accepts that AVANDDA/AVANDA shall be entitled to invoice the Customer during each month of the remainder of the Minimum Term an amount equal to either:

- a) the average of the monthly amounts invoiced by AVANDDA/AVANDA to the Customer prior to the breach by the Customer of Condition 2.2(a); or b) the actual amount payable by the Customer for the Services during such month (whichever is the higher).

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## **5. AVANDDA/AVANDA ACCESS EQUIPMENT**

5.1 The Customer shall provide without charge or cost to AVANDDA/AVANDA appropriate equipment space, ducting, environment and continuous stable electrical power to install and maintain the AVANDDA/AVANDA Access Equipment at its premises and to enable AVANDDA/AVANDA to provide the Services.

5.2 It is deemed that title to any AVANDDA/AVANDA Access Equipment shall remain with AVANDDA/AVANDA and whilst the AVANDDA/AVANDA Access Equipment is on the Customer's premises, the Customer shall ensure that it is kept safe, secure and fully insured and is not interfered with by any person.

5.3 Upon termination of the Contract, the Customer will ensure that AVANDDA/AVANDA is allowed prompt access to all relevant premises to remove the AVANDDA/AVANDA Access Equipment.

5.4 On termination of this Agreement, the Customer must return all AVANDDA/AVANDA Access Equipment supplied by AVANDDA/AVANDA within 14-day s and in good working order. If the Customer fails in this respect, they will be liable for any costs AVANDDA/AVANDA incur in recovering the Equipment. If AVANDDA/AVANDA are prevented from recovering the Equipment, or if the Customer fails to return it to AVANDDA/AVANDA, the customer will be liable to pay to AVANDDA/AVANDA on demand a reasonable sum commensurate with the value of the Equipment.

## **6. TERMINATION**

6.1 This agreement will continue for the minimum term as stated and shall automatically be renewed thereafter on a recurring term equal to the original term and shall continue until such time as the agreement is terminated in line with the following conditions.

6.2 This agreement may be terminated by either party upon giving the other party 90 days' prior written notice by registered post, such notice to take effect at the end of the agreement Minimum Term or a Renewal Period as the case may be.

6.3 AVANDDA/AVANDA (without prejudice to its other rights) may terminate the Contract forthwith in the event that:

- a) the Customer fails to make any payment when it becomes due to AVANDDA/AVANDA or shall default in due performance or observance of any obligation under the Contract or any other contract with AVANDDA/AVANDA or an Associated Company and (in the case of remedial breach) fails to remedy the breach within a reasonable time specified by AVANDDA/AVANDA in its written notice 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 Customer 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 The terms of this Contract shall continue to bind the parties hereto to such extent and for so long as may be necessary to give effect to the rights and obligations embodied in it including without limitation Conditions 2.2, 4, 7 and 8.

6.5 If the Contract is terminated by either party hereto, the Customer shall:

- a) pay to AVANDDA/AVANDA all arrears of charges, Termination fees and any interest payable under the Contract and;
- b) return to AVANDDA/AVANDA all equipment owned or provided by AVANDDA/AVANDA and/or allow AVANDDA/AVANDA or its Agent access forthwith to the Customer's premises for the removal of any AVANDDA/AVANDA Access Equipment and pay any reasonable charges AVANDDA/AVANDA may have incurred in so doing;
- c) undertake and comply with the provisions of Condition 2.2(d); and cease being provided the Services and have no right to use the same.

## **7. CONFIDENTIALITY**

7.1 The Customer 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 AVANDDA/AVANDA.

7.2 The confidentiality obligations set out in Condition 7.1 shall survive the termination of the Contract.

7.3 Nothing in the Agreement shall prevent AVANDDA/AVANDA disclosing any of the Customer's confidential information to a Service Provider's employees, sub-contractors, advisers and other consultants on a 'need to know' basis provided those persons are aware of the confidential nature of the information.

## **8. LIMITATION OF LIABILITY**

8.1 The following provisions set out AVANDDA/AVANDA's entire liability (including any liability for the acts and omissions of its directors, officers, employees, agents or sub-contractors) to the Customer in respect of:

- (a) any breach of its contractual obligations arising under this Contract; and
- (b) any representation statement or tortious act or omission including negligence arising under or in connection with this Contract.

8.2 Any act or omission on the part of AVANDDA/AVANDA or their directors, officers, employees agents or sub-contractors falling within Condition 8.1 shall for the purposes of this Condition 8 be known as an "Event of Default".

8.3 AVANDDA/AVANDA's liability to the Customer for the tort of deceit and for death or injury resulting from their own or that of their directors, officers', employees', agents' or sub-contractors' negligence shall not be limited.

8.4 Subject to the provisions of condition 8.3, AVANDDA/AVANDA's entire liability in respect of any event of default shall be limited to damages not exceeding the sums paid by the customer to AVANDDA/AVANDA for the services pursuant to this Agreement in the preceding twelve month period in the case of a single event of default and twice the sums paid by the customer to AVANDDA/AVANDA for the services pursuant to this Agreement in the preceding twelve month period in the case of all events of default or series of connected events of default occurring in any twelve month period.

8.5 Subject to Condition 8.3, AVANDDA/AVANDA shall not be liable to the Customer in respect of any Event of Default for loss of profits, goodwill, contracts, opportunity or any other type of special, indirect or consequential loss whatsoever or howsoever even if such loss was reasonably foreseeable or AVANDDA/AVANDA had been advised of the possibility of the Customer incurring the same.

8.6 If a number of Events of Default give rise substantially to the same loss then they shall be regarded as giving rise to only one claim under the Contract.

8.7 Except in the case of an Event of Default arising under Condition 8.3, AVANDDA/AVANDA shall have no liability to the Customer in respect of any Event of Default unless the Customer shall have served notice of the same upon AVANDDA/AVANDA within six months of the date the Customer became aware of the circumstances giving rise to the Event of Default or the date when it ought reasonably to have become so aware.

8.8 AVANDDA/AVANDA shall not be responsible for complying with statutory regulations, or local by-laws, or the fulfilment of any special regulations affecting the Customer.

8.9 Save as set out in Condition 8.3, AVANDDA/AVANDA shall have no liability under this Contract of the acts and omissions of other public telecommunication operators or the breakdown total or partial of the AVANDDA/AVANDA Network or any other network.

8.10 To the extent that all or any part of the Services are faulty, unavailable or interrupted, the Customers sole and exclusive remedy shall be to be compensation in accordance with compensation schemes that may be introduced from time to time by AVANDDA/AVANDA.

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- 8.11 AVANDDA/AVANDA shall not be liable for faults in the Customer's telecommunications equipment which result in AVANDDA/AVANDA being unable to provide the Services.
- 8.12 Dates and terms for provisions of the Services shall be estimates only and no liability shall accrue to AVANDDA/AVANDA for failure to meet any such dates or times. AVANDDA/AVANDA will not be held responsible for any loss due to programming errors or omissions made by any person.
- 8.13 In the event of any failure in the Services, AVANDDA/AVANDA shall not be liable to the Customer for any charges incurred by the Customer should it direct its Services to another carrier.
- 8.14 AVANDDA/AVANDA reserves the right not to provide the Services due to any technical limitation in the Customer's telephone system, telephone exchange or AVANDDA/AVANDA Access Equipment.
- 8.15 The obligations set out in this Condition 8 as to limitations of liability shall remain in full force and effect notwithstanding the expiration or any termination of this Contract for any reason whatsoever.

#### **9. DEPOSIT**

9.1 AVANDDA/AVANDA may at any time before or after the provision of the Services require payment by the Customer in a manner specified by AVANDDA/AVANDA of a sum to be held by way of a deposit as and against any charges arising from use of the Services by the Customer and AVANDDA/AVANDA shall be entitled to offset such deposit against any sums due under this Contract from time to time including interest due or owing to AVANDDA/AVANDA pursuant to Condition 4.7.

#### **10. ASSIGNMENT**

- 10.1 The Customer shall not assign, transfer, sub-contract, delegate or otherwise deal with all or any of its rights under the Contract.
- 10.2 AVANDDA/AVANDA shall have the right to assign or otherwise transfer, sub-contract, delegate all or any of its rights and obligations hereunder to an Associated Company or other person.

#### **11. FORCE MAJEURE**

Neither AVANDDA/AVANDA or the Customer 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 telecommunication 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**

Failure by either AVANDDA/AVANDA or the Customer to exercise or enforce any right conferred by this 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**

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. SERVICE OF NOTICE**

14.1 All notice to AVANDDA/AVANDA herein provided shall be sent by the Customer in writing by 1st Class Recorded Delivery post and the Customer must retain the relevant receipt as proof.

#### **15. GENERAL**

- 15.1 Reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted, with or without amendment.
- 15.2 Unless there is something inconsistent in the subject or context, words denoting the singular number only include the plural and vice versa; words denoting one gender only include the other genders.
- 15.3 Unless the context otherwise requires, a reference to a Condition is to a condition of the Contract.
- 15.4 The headings in the Contract are inserted for convenience only and do not affect its interpretation.
- 15.5 If any provision of the Contract is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Contract had been entered into with the invalid provision eliminated.

**16. GOVERNING LAW** The Contract shall be governed, construed and interpreted in accordance with English law and the parties submit to the exclusive jurisdiction of the English 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.