

Icetrak Fax to Email Contract Terms and Conditions

Section 1: General terms and conditions

1 Definitions

1.1 In these terms the words and expressions listed below shall have the following meanings:

'Act': the Telecommunications Act 1984 as amended or modified from time to time;

'Agreement' these terms and conditions as may be modified or updated from time to time pursuant to clause 18;

'Associated Company': any subsidiary or other associated company from time to time as defined by Section 736 and 736A of the Companies Act 1985;

'Licence': the licences granted to us or any other relevant third party (and any supplements or amendments to this licence from time to time);

'Network': the telecommunication system(s) used by us for the provision of Service;

'Service': procuring the creation of an Icetrak fax to email account enabling you to receive faxes direct to your email package and the provision of a Telephone Number in order to facilitate the same;

'Telephone Number': any access telephone number allocated to you by us pursuant to these terms;

'we' or 'us or 'our'': Icetrak Limited or its successors or assigns or any Associated Company thereof;

'you': the customer entering into the Agreement.

1.2 In this Agreement any undertaking by you not to do any act or thing shall be deemed to include an undertaking not to permit or suffer the doing of that act or thing.

1.3 In this Agreement the expressions 'you' and 'we' shall include your and our respective successors and permitted assigns and our and your respective employees and agents.

1.4 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.

1.5 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.

1.6 Unless the context otherwise requires, a reference to a clause is to a clause of this Agreement.

1.7 The headings in this Agreement are inserted for convenience only and do not affect its interpretation.

2 Duration

Unless otherwise stipulated, the Agreement shall come into force immediately and shall continue until the Service is either cancelled or the Agreement is terminated in accordance with clause 7.

3 Provision and use of Service

3.1 Your use of the service confirms your acceptance of these terms and conditions

3.2 You shall only use the Service in accordance with this Agreement and such conditions as we may notify you in writing from time to time and/or in accordance with the relevant provisions of the Act, the Licence, any direction of the Director General of Telecommunications or other competent authority and any licence granted thereunder which may be relevant.

3.3 You shall not use the Service:

- (a) for any communication which is of a defamatory, offensive, obscene, infringing or indecent nature or abusive or of a menacing character; or
- (c) to violate or infringe any rights of or to cause unwarranted inconvenience or anxiety to any third party; or
- (d) in such a way as to constitute a violation of any laws or regulations of any other country.

3.4 You shall indemnify and keep us indemnified against all liabilities, claims, damages, losses and costs howsoever arising from any use in breach of this clause 3.

4 Provision of information

4.1 You will promptly provide us (free of charge) with all information and co-operation which we may reasonably require from time to time to enable us to proceed with the performance of our obligations under the Agreement.

4.2 You will inform us promptly of any change of email address, telephone numbers or any other details which you originally provided to us.

4.3 In order for us to investigate abuse of the Network, you will co-operate in allowing us to examine any records relating to the use of the Service or the equipment connected to it.

4.4 We may collect and store data and information about you and your use of the Service and provide this information to (i) companies affiliated with us including without limitation any Associated Company and (ii) third parties.

5 Charges and Payment

5.1 We do not presently charge you for the Service. If we subsequently decide to make any charge for the Service we will provide you with 30 days prior notice of these charges (during which notice period the Service will still be provided to you on a no charge basis) If you still use the Service after the 30 day notice period the Charges will automatically start being incurred by you and you hereby agree to pay the same.

5.2 If you do not make material use of the Service (as more particularly detailed in clause 7.3(e) and are notified by us that we intend to re-allocate the Telephone Number allocated to You, we may give You the option (at our discretion) to agree a monthly fee with you which will be payable by You to retain the relevant Telephone Number. The amount of this monthly fee will be partly based on the quality of the designated Telephone Number.

5.3 Unless otherwise specified in the Agreement, payment of all sums due under the Agreement (if any) shall be made within 14 days (including weekends and bank holidays) of the date of the relevant invoice. If you fail to make payment within this period we shall have the right to require you to pay all sums due under all contracts between us on demand.

5.4 Payment of all sums due under the Agreement (if any) shall be made by BACS, cheque, credit card or such other method as we may reasonably specify from time to time and payment of all such sums shall be made in full (without any set-off, deduction or withholding whatsoever).

5.5 Without prejudice to our other rights, we reserve the right to charge daily interest on all outstanding amounts (if any) at the rate equal to 4% per annum above the HSBC Bank plc Base Lending Rate as current from time to time. Interest shall continue to accrue notwithstanding termination of the Agreement for any cause whatsoever.

5.6 Charges (if any) are exclusive of Value Added Tax ('VAT'), and any other taxes applicable from time to time, which you shall pay.

6 Access to the Icetrak Support resources.

6.1 We will provide you with access to our support resources via email only.

6.2 We will provide certain information on the Service via our website and you can email requests for support via our website www.icetrak.com

6.3 Any requests for support will be responded to within four working hours of receipt of your email during normal office hours Monday to Friday excluding Public Holidays.

7 Termination

7.1 The Agreement may be terminated by either party at any time by 14 days notice (including weekends and bank holidays) in writing to the other party.

7.2 Without prejudice to your other rights, you may terminate the Agreement on giving written notice to us, taking immediate effect, if we are in breach of a material obligation under the Agreement and fail to remedy the breach within 30 days after receipt of a written notice giving full particulars of the breach.

7.3 Without prejudice to our other rights, we may terminate the Agreement on giving written notice to you, taking immediate effect, if:

- (a) 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 you or if a receiver or trustee is appointed of your estate, or a voluntary arrangement is approved or an administration order is made, or a receiver or administrative receiver is appointed of any of your assets or undertaking or a resolution or petition to wind you up is passed or presented (otherwise than for the purpose of reconstruction or amalgamation) 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; or
- (b) you fail to make any payment when it is due under the Agreement; or
- (c) you default in due performance or observance of any material obligation under the Agreement and (in the case of a remediable breach) fail to remedy the breach within such reasonable time as we specify; or
- (d) you provide us or have provided us with false, inaccurate or misleading information for the purposes of obtaining Service, or
- (e) you do not make material use of Service for a significant period and for these purposes you not receiving a fax using the Service once in any one calendar month period will be deemed not to be making material use of the Service for a significant period; or
- (f) we have reasonable grounds to suspect fraud or misconduct in connection with your use of the Service or by any other third party whatsoever, with or without your knowledge or approval; or
- (g) we are directed by the Director General of Telecommunications or other competent authority to cease to provide or allow the provision of any Service.

8 Consequences of termination

8.1 On termination of the Agreement, all outstanding Charges (if any) shall be payable by you.

8.2 Upon termination of the Agreement for any reason you shall forthwith cease to use the Service.

8.3 Termination or expiry of the Agreement shall not affect the provision of any clauses which are intended to survive the termination or expiration of this Agreement including without limitation clauses 3.3, 5.2 to 5.6 (inclusive), this clause 8, 10.1, 11, 12, 16, 17 and 19 to 22 (inclusive) which shall continue to apply.

9 Suspension of Service

9.1 We may at our sole discretion suspend immediately the provision of Service until further notice on notifying you either orally (confirming such notification in writing) or in writing if:-

- (a) we are entitled to terminate the Agreement or
- (b) we are instructed or requested to do so by Government, an emergency services organisation, or other competent authority.

9.2 Any suspension of Service shall not exclude our right subsequently to terminate the Agreement.

10 Allocation and use of Telephone Numbers/number portability

10.1 Subject to any statutory or licence provisions relating to number portability, we will procure that Telephone Numbers are allocated to you for the sole purpose of the Service, You will not acquire any rights whatsoever in such Telephone Numbers and you shall make no attempt to port the same nor apply for registration of the same as a trade or service mark, whether on its own or in conjunction with some other words or trading style.

10.2 We may, for commercial, operational or technical reasons or in order to comply with the requirement of any competent authority, withdraw or change any Telephone Number or code or group of numbers or codes allocated to you provided that we give to you reasonable notice.

10.3 If we are able to allocate to you, at your request, a special Telephone Number applicable to the Service, you shall be responsible for all necessary investigations and inquiries as to the legitimacy or use of

such number and we shall have no liability whatsoever with respect to the number chosen and its use by you.

10.4 We cannot accept any liability for claims arising relating to the use of, or ability to use or to continue use of, a particular Telephone Number.

11 Software and copyright in documents

11.1 Where we provide you with Software (if any), all legal and beneficial rights in it remain our property or the property of our licensor.

11.2 Copyright in all documents, drawings and information supplied to you in connection with the Agreement shall remain vested in us or the copyright owner. Such documents, drawings and information shall not be copied, disclosed or used (except for the purpose for which they were supplied) without our prior written consent.

12 Limitation of liability

12.1 Except as expressly provided in the Agreement, we shall have no other obligation, duty or liability whatsoever in contract, tort or otherwise to you.

12.2 Subject to clause 12.12 we shall not be liable to you in contract, tort or otherwise including any liability for negligence or for breach of statutory duty for:

- (a) any loss of revenue, goodwill, business, contracts, anticipated savings or profits; or
- (b) any indirect, special or consequential loss, howsoever arising.

12.3 In clause 12.2 'anticipated savings' means any expense which you expect to avoid incurring or to incur in a lesser amount than would otherwise have been the case by reason of using the Service.

12.4 SUBJECT TO CLAUSE 12.12 OUR AGGREGATE LIABILITY IN CONTRACT, TORT OR OTHERWISE INCLUDING WITHOUT LIMITATION NEGLIGENCE HOWSOEVER ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF OUR OBLIGATIONS UNDER THIS AGREEMENT ("EVENT OF DEFAULT") SHALL BE LIMITED TO DAMAGES NOT EXCEEDING THE SUMS PAID BY YOU TO US FOR THE SERVICE PURSUANT TO THIS AGREEMENT IN THE PRECEDING TWELVE MONTH PERIOD OR £1,000 WHICHEVER IS THE HIGHER.

12.5 Subject to clause 12.2 we shall have no liability to you in respect of any Event of Default unless you have served notice of the same upon us within six months of the date that you became aware of the circumstances giving rise to the event of default or the date when you ought reasonably to have become so aware.

12.6 We shall not be responsible for complying with statutory regulations, or local by-laws, or the fulfilment of any special regulations affecting you.

12.7 We shall have no liability under this Agreement of the acts and omissions of other public telecommunication operators or the breakdown total or partial of the Network or any other network.

12.8 We shall not be liable for either faults in your telecommunications equipment or email systems which result in us being unable to provide the Service.

12.9 Dates and terms for provisions of the Service shall be estimates only and no liability shall accrue to us for failure to meet any such dates or times.

12.10 In the event of any failure in the Service, we shall not be liable to you for any charges incurred by you should you direct your traffic to another carrier.

12.11 We reserve the right not to provide the Service due to any technical limitation in your telephone system, telephone exchange or email systems.

12.12 Nothing in this Agreement shall limit our liability for death or personal injury resulting from our negligence or the negligence of our employees while acting in the course of their employment or any other liability to the extent that it cannot be limited by law.

12.13 The obligations set out in this clause 12 as to limitations of liability shall remain in full force and effect notwithstanding the expiration or any termination of this Agreement for any reason whatsoever.

13 Notices

13.1 Any notices to be given under the Agreement shall, unless otherwise expressly stated, be in writing and shall be given by sending the same by first class post or facsimile transmission or email to the party's address stipulated in the Agreement or such other address as may be designated in writing from time to time or, if no such address is stipulated or designated, then to the registered or home office of that party or email registered by you when registering for the Service.

13.2 Any notice sent by first class post shall be deemed (in the absence of evidence of earlier receipt) to have been delivered two days after its despatch. Any notice given by email or facsimile transmission shall be deemed to have been delivered on the next day following transmission.

14 Assignment / subcontracting

14.1 You shall not assign or delegate all or any of your rights and obligations under the Agreement without our prior written consent, such consent not to be unreasonably withheld.

14.2 We shall have the right to assign or transfer all or any of our rights and obligations under the Agreement to any person.

14.3 We may subcontract any of our obligations in the Agreement to any relevant third party of our choice from time to time.

15 Force Majeure

Neither party shall be liable to the other under the Agreement, 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 supplies, flood, drought, lightning or fire, strike, lock-out, trade dispute or labour disturbance, the act or omission of Government, highways authorities, other telecommunications operators or administrations or other competent authority, the obstruction by a third party of line of sight between microwave installations, war, military operations, acts of terrorism or riot, difficulty, delay or failure in manufacture, production or supply by third parties of equipment or services required for the Service.

16 Data Protection

16.1 In this clause, in addition to the terms defined in clause 1.1, the following terms shall have the following meanings:

'Applicable Data Protection Law' means the EU Data Protection Directive (95/46/EC) or other applicable law or regulation as they may be amended from time to time; and

'Personal Data' means information defined as such in the EU Data Protection Directive (95/46/EC) or information treated as personal data under any other law or regulation applicable to the information.

16.2 You acknowledge that in providing the Service, we may process Personal Data, including, without limit, transferring it outside the European Economic Area and/or disclosing it to third parties. We will have in place adequate technical and organisational security measures so that the confidentiality of this processing complies with Applicable Data Protection Law, and you will:

- (a) comply with, and your acts or omissions will not cause us to be in breach of, any Applicable Data Protection Law;
- (b) obtain adequate consents from your customers and employees, including for transfers of Personal Data; and
- (c) be responsible for the instructions you may give to us regarding the processing of Personal Data. We will act on those instructions as reasonably necessary for the provision of the Service.

17 Entire agreement

17.1 The Agreement represents the entire understanding between you and us in relation to its subject matter and supersedes all prior agreements understandings or arrangements made by either party, whether oral or written.

17.2 Any terms and conditions (including dates) on any purchase order or other document whatsoever which you issue in connection with the Agreement shall not be binding on us nor be used to interpret the Agreement.

17.3 Each party acknowledges that it is not entering into this Agreement in reliance on any representation of the other except those contained in this Agreement and in the event of misrepresentation (other than fraudulent misrepresentation) the only remedy available shall be a claim for breach of contract.

18 Modification

18.1 If during the term of the Agreement we send to you a revised version of these terms together with a notice stating when they will come into force and you continue to make use of the Service after such date, then you will be deemed to have accepted these revised terms with effect from such date.

18.2 We shall have the right by notice in writing to you to modify the Agreement at any time so as to comply with any regulations or other requirement applicable to or imposed upon us under the Licence or by any competent authority.

18.3 Except as stated in clauses 18.1 and 18.2, the Agreement may only be modified if such modification is in writing and signed by a duly authorised representative of each party.

19 No waiver

Failure by either party to exercise or enforce any right conferred by the Agreement 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.

20 Severability

If any provision of the Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any other provisions and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect.

21 Contracts (Rights of Third Parties) Act 1999

A person who is not a party to this Agreement or an assignee (as expressly permitted hereunder) of any party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from the Act.

22 Governing law

The Agreement shall be governed by and construed and interpreted in accordance with English law, and the parties hereby submit to the exclusive jurisdiction of the English courts.