

The Business Network Central & East Lancashire

Membership Terms

Introduction

The membership of The Business Network Central & East Lancashire is subject to the provisions of The Business Network Central & East Lancashire Contract. The Contract is made up of the following:

- (a) The Confirmation Letter; and
- (b) These Membership Terms.

If there is any conflict or ambiguity between the terms of the documents listed above, the Membership Terms shall take precedence.

1. INTERPRETATION

1.1 Definitions:

Member: the party named as the Member in the Confirmation Letter.

Member Materials: any materials provided by the Member.

Confirmation Letter: the letter titled "Membership Confirmation Letter" setting out the details of the Member and the Fees.

Contract: the agreement between the Member and TBNCEL for the provision of the Networking Facilities in accordance with these Membership Terms and the Confirmation Letter.

Fees: the charges payable by the Member for the supply of the Networking Facilities.

TBNCELCEL: The Business Network Central & East Lancashire

Membership Terms: these terms and conditions set out in clause 1 to clause 9 (inclusive).

Networking Facilities: the networking services provided by TBNCEL and access to the support provided on the TBNCEL website.

2. COMMENCEMENT AND TERM

The Contract shall begin on the date the Confirmation Letter has been sent and the first payment of the Fees has been made. The Contract shall continue, unless terminated by either party providing 3 months' notice of termination, or the Contract is terminated in accordance with clause 8.

3. SUPPLY OF NETWORKING FACILITIES

3.1 TBNCEL shall supply the Networking Facilities to the Member in accordance with the Contract.

3.2 In supplying the Networking Facilities, TBNCEL shall:

- (a) perform the Networking Facilities with reasonable care and skill; and

- (b) comply with all applicable laws, statutes, regulations from time to time in force for the provision of the Networking Facilities.

4. MEMBER'S OBLIGATIONS

4.1 The Member shall:

- (a) co-operate with TBNCEL in all matters relating to the Networking Facilities;
- (b) provide such access that TBNCEL requires to calls or any premises to carry out the Networking Facilities;
- (c) meet the requirements TBNCEL reasonably require for attendance at any meetings or to access the TBNCEL website; and
- (d) provide, in a timely manner, such information as TBNCEL may reasonably require, and ensure that it is accurate in all material respects.

4.2 If TBNCEL's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Member, its agents, subcontractors, consultants or employees (including non-payment of an invoice), TBNCEL shall:

- (a) not be liable for any costs, charges or losses sustained or incurred by the Member that arise directly or indirectly from such prevention or delay;
- (b) be entitled to payment of the Fees which it may reasonably expect to have received despite any such prevention or delay; and
- (c) be entitled to recover any additional costs, charges or losses TBNCEL sustains or incurs that arise directly or indirectly from such prevention or delay.

5. INTELLECTUAL PROPERTY

5.1 TBNCEL and its licensors shall retain ownership of all its intellectual property rights that it holds prior to and generates during the period of this agreement, including those contained in any material provided to the Member by TBNCEL.

5.2 TBNCEL shall licence the Member to use any material provided by TBNCEL as part of the Networking Facilities for the purposes specified or reasonably implied when the material was provided for the period of this agreement.

5.3 The Member licences TBNCEL to use any Member Materials provided as required for the provision of the Networking Facilities and/or to the requirements of any regulator or similar body for the purpose of demonstrating its entitlement to use the same.

5.4 Each party shall indemnify and keep indemnified and hold harmless the other against any loss or damage, costs, expenses, damages and losses (limited to any direct losses, but including interest, penalties and reasonably incurred legal costs and all other reasonably incurred professional costs and expenses) suffered or incurred by the indemnified party in connection with any claim by a third party claim for the actual or alleged infringement of a third party's intellectual property rights arising in connection with the Networking Facilities (where the indemnity is from TBNCEL) and the Member Materials (where the indemnity is from the Member), excluding any

claim caused by an action of the indemnified party, such indemnity to be capped at a maximum amount of £10,000 in aggregate for any and all claims.

- 5.5 Except as specifically provided in this agreement, the enforcement and protection of a party's intellectual property rights shall be in the sole discretion and control of that party and any and all recoveries resulting from such enforcement or protection actions shall be retained by that party.

6. FEES AND PAYMENT

- 6.1 In consideration for the provision of the Networking Facilities, the Member shall pay TBNCEL the Fees in accordance with this clause 6.
- 6.2 All amounts payable by the Member exclude amounts in respect of value added tax (**VAT**), which the Member shall additionally be liable to pay to TBNCEL at the prevailing rate (if applicable), subject to receipt of a valid VAT invoice.
- 6.3 The Member shall pay each invoice due and submitted to it by TBNCEL, within 30 days of its date, by BACS transfer to a bank account nominated in writing by TBNCEL.
- 6.4 If the Member fails to make any payment due to TBNCEL by the due date for payment, then, without limiting TBNCEL's remedies under clause 8:
- (a) the Member shall pay interest on the overdue amount at the rate of 3% per annum above Barclays Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Member shall pay the interest together with the overdue amount.
 - (b) TBNCEL may suspend all Networking Facilities until payment has been made in full.
- 6.5 All amounts due under this agreement shall be paid by the Member to TBNCEL in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 6.6 TBNCEL may revise the Fees at any time by providing 30 days notice. Unless the Member terminates the Contract the revised Fees shall apply from the end of the 30 day notice period.

7. LIMITATION OF LIABILITY

- 7.1 Nothing in this Contract shall limit or exclude the TBNCEL's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation; and
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.
- 7.2 Subject to clause 7.1, TBNCEL shall not be liable to the Member, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement for:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill;
- (g) fines or penalties;
- (h) and
- (i) any indirect or consequential loss.

7.3 Subject to clause 7.1, TBNCEL's total liability to the Member, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Contract and/or the Networking Facilities shall be limited to 50% of the Fees paid by the Member under this Contract in the 6 month period preceding any such event.

8. TERMINATION

8.1 Without affecting any other right or remedy available to it, either party to this Contract may terminate it with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of this Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under this Contract has been placed in jeopardy.

8.2 Without affecting any other right or remedy available to it, TBNCEL may terminate the Contract with immediate effect by giving written notice to the Member if the Member fails to pay any amount due under this Contract on the due date for payment and remains in default not less than 30 days after being notified to make such payment.

8.3 On termination of this Contract for whatever reason:

- (a) the Member shall immediately pay to TBNCEL all of TBNCEL's outstanding unpaid invoices and interest;

- (b) termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract which existed at or before the date of termination; and
- (c) any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

9. GENERAL

9.1 **Force majeure.** Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

9.2 **Assignment and other dealings.**

- (a) The Member shall not assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all its rights and obligations under this Contract without TBNCEL's prior written consent.
- (b) TBNCEL may at any time assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all its rights under this Contract.

9.3 **Confidentiality.**

- (a) Each party undertakes that it shall not at any time during this Contract, and for a period of five years after termination of this Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 9.3(b).
- (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under this Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 9.3; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) No party shall use any other party's confidential information for any purpose other than to perform its obligations under this Contract.

9.4 **Entire agreement.**

- (a) This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations, and understandings between them, whether written or oral, relating to its subject matter.

- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance, or warranty (whether made innocently or negligently) that is not set out in this Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.
- 9.5 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 9.6 **Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:
- (a) waive that or any other right or remedy; or
 - (b) prevent or restrict the further exercise of that or any other right or remedy.
- 9.7 **Severance.** If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Contract.
- 9.8 **Data Protection**
Both parties shall comply at all times with the Data Protection Legislation and shall perform its obligations under the Contract in such a way as to comply with the obligations under the Data Protection Legislation.
- 9.9 **Notices.**
- (a) Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, or email.
 - (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 9.8(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.
 - (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 9.10 **Third party rights.** No one other than a party to this agreement shall have any right to enforce any of its terms.

- 9.11 **Bribery.** The parties shall comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010.
- 9.12 **Governing law.** This Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with the law of England and Wales.
- 9.13 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.