

## **Terms and Conditions**

These are the terms and Conditions which govern contracts into which Birchills Telecom Ltd (Birchills) (Co. Regn. No. 6602617) who operate from Aldridge Prime, 200 Rookery Lane, Aldridge, Walsall WS9 8NP enters with its Customers.

These terms and Conditions together with the quotation document form the entire agreement with the customer.

It is agreed as follows:

### **1. Definitions and Interpretation**

1.1. In this agreement the following terms shall have the following meanings:

Acceptable Use Policy means the policy document contained in Schedule 2 of this Agreement or any future variation thereof

Direct Debit Mandate means an instruction to the Customer's bank or building society to pay Birchills by Direct Debit.

Recurring charges are monthly charges for the operation of the service which apply irrespective of usage and include telephone line rental, broadband provision charges, telephone number charges, handset and channel monthly charges

The Network Operator means the company which operates the physical connections either to the Internet or PSTN or both.

The Service shall mean the services provided

The Site is the property belonging to the Customer where the Service is to be installed.

The Switchover Date means the date when the new service commenced

1.2. In this agreement words expressed in any gender shall where the context so requires or permits include any other gender.

1.3. Words importing persons shall include bodies corporate and partnerships and other incorporated bodies and vice versa.

1.4. Words expressed in the singular shall where to context so requires or permits include the plural.

1.5. The headings to clauses are inserted for ease of reference only and shall not affect the construction of this agreement.

1.6 This agreement constitutes the entire agreement between the Customer and Birchills and replaces all previous documents and discussions.

### **2. Commencement and Term**

2.1. This Agreement takes effect on and from the date of this agreement and shall continue until it is terminated by either party by giving the other 30 days notice.

2.2. The minimum duration of this Agreement is 30 days ("the Term").

### **3. Provision of the Service**

3.1. Birchills will use reasonable endeavours to provide the Service.

3.2. The Service shall commence on the date of this Agreement and continues until terminated in accordance with this contract.

3.3. Birchills is a member of the Internet Telephony Service Providers Association (ITSPA) and subscribes to its Code of Practice. Birchills has its own code of practice which is compliant with the ITSPA code.

3.4. Entering this contract authorises Birchills to take over the Services from your current telecommunications service provider(s). The Customer agrees that a faxed or emailed copy of instruction shall be a legally binding contract. Telephone number porting is carried out in accordance with the Birchills Code of Practice

#### **4. Reliability and Faults**

4.2. Birchills shall not be liable for any losses or consequential losses, which may be caused by any problem with or interruption to the service.

4.3.1 IMPORTANT INFORMATION: Birchills provides voice over data network services, and as such, it is dependent on the Customer's connection to the data network and the data network itself. Your Service may therefore cease to function if there is a power failure or a failure in the underlying data network.

Significant differences in service reliability between the circuit switched public telephony networks and voice over data networks may exist because of the different technologies used. Circuit switched public telephony networks is reliant on analogue data streams which have no redundancy and are easily intercepted. Voice over data networks have multiple levels of redundancy built in and are encoded. If you do not understand the difference in technologies please ask us to explain before accepting this Agreement.

4.3.2 If the Customer reports a fault in the Service due to the physical network Birchills will report the fault to the Network Operator as soon as is reasonably practicable so that the Network Operator can arrange for an engineer to be dispatched to repair the fault as soon as possible.

4.3.3 If the Customer reports a fault due to the Birchills network then Birchills will make reasonable efforts to correct this fault as soon as possible.

4.3.4 999 Calls or 112 calls, are free, but will fail if you have a power cut or your broadband connection fails. It's always best to have a second means of contacting the emergency services such as a mobile phone or an analogue phone.

#### **5. Wiring**

5.1. Birchills does not carry out wiring that may be necessary for the customer to access the Service.

#### **6. Installing Equipment**

6.1. Where it is necessary for equipment to be installed to enable Birchills to satisfy this Agreement, then the Customer shall carry out this installation.

#### **7. Use of the Service**

7.1. The Service may only be used by the Customer in accordance with Birchills' Acceptable Use Policy.

7.2. The Customer will fully and effectually indemnify Birchills against any loss, claims or legal proceedings which are brought or threatened by a third party as a result of the Service being used otherwise than in accordance with the Acceptable Use Policy.

7.3 The service is exclusive to the Customer and may not be resold.

#### **8. Telephone Numbers**

8.1. The Customer does not own or have any claim over any telephone number or have any right to sell or transfer any telephone number provided to it for use with the Service.

8.2. Birchills will use all reasonable endeavours to enable customers to transfer their telephone numbers.

## **9. Throttling Filtering and Limiting**

9.1. Birchills does not deliberately filter Internet traffic

## **10. Prices**

10.1. Birchills reserves the right to increase or decrease the prices agreed by giving the Customer 30 days notice of such changes in writing.

## **11. Payment**

11.1. Payment of all monies due to Birchills shall be made by monthly Direct Debit only and the Customer shall complete a Direct Debit Mandate in favour of Birchills on completion of this Agreement.

11.2. Birchills shall provide a bill for call charges and other itemised service charges by email in the month following the end of the month in which the Service was provided.

11.3. Birchills is not under any obligation to provide a hard copy of the bill or in any other format

11.4. Rental payment charges are collected monthly in advance and will be included in the monthly Direct Debit.

11.5. Payment for any sums due will be collected from the Customer within 7 days of the bill being provided to the Customer by email.

11.6. Birchills may suspend or determine this agreement if the Customer fails to make payment of any sums lawfully due to Birchills.

11.8. If payment continues to be uncollectable 7 calendar later Birchills may suspend the Service until payment is made.

11.9. If payment is not received in accordance with this Agreement, Birchills may charge the Customer daily interest on late payments at a rate equal to 18% per annum for the period beginning on the date on which payment is due and ending on the date on which payment is cleared.

11.10. The Customer is required to ensure that the name of the account holder is the same as the name on the payment details provided.

11.11. If the Customer makes a valid claim regarding excess invoice charges for any part of the Service which results in an overpayment by the Customer and such overpayment is as a result of an error by Birchills then the excess charge will be refunded by credit to the Customer's account. A maximum credit equivalent to three months average cost applies to this clause.

11.12. If the Customer intends to dispute any charge on an invoice the Customer must do so in writing to Birchills within 14 days of the date of the invoice and provide Birchills with all relevant information in support of the disputed charge.

11.13. Depending on the amount of the disputed charge(s) the following procedures apply: amount to:

(i) If the disputed charge is less than 5% of the total charges listed on the invoice, the Customer will pay the full amount of the invoice pending a final decision from Birchills; or

(ii) if the disputed charge is more than 5% of the total charges listed on the invoice, the Customer must pay the remaining amount of the invoice that is not in dispute.

Any disputes will be resolved promptly and if it is established that any sums are due from Birchills to the Customer then these sums will be repaid immediately.

11.14. If it is established by Birchills that the disputed charges are lawful then the Customer shall immediately pay all amounts due to the Birchills.

11.15. If this Agreement comes to an end or is terminated Birchills will refund any sums due to the Customer, after first deducting any sums that the Customer owes to Birchills under this Agreement or any other agreement Birchills has with the Customer.

## **12. Hardware**

12.1. Birchills offers hardware for sale at the prices displayed on the web site

12.2. All hardware shall remain the property of Birchills until the full purchase price is paid to Birchills but the risk of the hardware shall be borne by the Customer from the date that they are delivered

12.3 All hardware is delivered with a 24 months return to base warranty (RTB)

If the hardware should fail due to a manufacturer's defect within 24 months then it should be delivered to Birchills. If the hardware is deemed to have a manufacturer's defect it will be repaired or replaced with an equivalent item and returned free of charge.

The customer should ensure that the problem they are experiencing is not related to the host computer, software or other issues. Hardware returned where no fault is found will incur handling and return freight charges.

The warranty does not cover preventative maintenance or cost and replacement of consumable items. The warranty does not cover parts and labour required as a result of mains supply electrical surges, lightning strikes, neglect, damage or misuse by the customer. The warranty does not cover hardware that has not been used in accordance with its specifications.

## **13. Voice Announcements and Music Terms of Use**

Birchills Telecom offers voice announcements and music for use on our telephone service on IVR, On Hold and Voicemail and other announcements.

We hereby grant you a perpetual, exclusive licence to use the voice content produced by us on our service. You may not alter the content or use it in any other way.

Where we have incorporated third party material in the recordings we grant you the same rights to the material that we have been granted to us.

## **14. VAT**

13.1. All prices are exclusive of VAT which will be added at the appropriate rate if applicable.

## **15. Termination**

14.1. This Agreement may be terminated with 30 days written notice by either party, however the Customer will be liable to pay Birchills all amounts due

14.2. Birchills may by written notice terminate this Agreement immediately and without liability for compensation or damages if the Customer:

- (a) fails or ceases to make payment for the Service;
- (b) instructs their bank to stop the Direct Debit instruction in favour of Birchills;
- (c) breaches any term or condition of this Agreement and fails to remedy such breach within a reasonable period in the absolute discretion of Birchills;
- (c) dies, becomes bankrupt, has a receiving order made against them, makes any arrangement with their creditors generally or takes or suffers any similar action as a result of debt or being a company

## **16. Complaints and Dispute Resolution**

15.1. Birchills subscribes to the ITSPA complaints procedure which is reproduced in the Birchills Code of Practice below.

## **17. Confidentiality**

17.1. Birchills and the Customer will keep in confidence any information, whether written or oral, of a confidential nature obtained under or in connection with this Agreement except to the extent any disclosure is required by law.

17.2. The Customer and Birchills will not, without the consent of the other, disclose such information to any person other than their employees or professional advisers who shall require the information in order for the Customer or Birchills to fulfil its obligations under this Agreement or in the case of the Customer, its users to the extent that they are required to use or access the Service.

17.3. Birchills will only use personal data (as defined within the Data Protection Act 1998) obtained from the Customer following provision of the Service for the following purposes:-

- (a) administering the Customer's account;
- (b) notifying the Customer of changes to the Service;
- (c) enabling Birchills to supply the Service to the Customer; and
- (d) for invoicing purposes.

16.4. Birchills will not pass personal data obtained from the Customer to any third parties for marketing purposes but may send the Customer information about Birchills' own products and services which it considers may be of interest to the Customer unless the Customer specifically requests in writing that Birchills does not.

## **18. Variations**

18.1. Birchills may vary the terms of this Agreement by giving 30 days notice in writing to the Customer.

## **19. Business Contract & Legal Advice**

19.1. This is a contract intended to create legal obligations between the parties named at the beginning of the document.

19.2. By entering this agreement you are agreeing to the terms and conditions contained herein. Please ensure that you have read and fully understand.

19.3. If you do not completely understand the agreement you should seek independent legal advice before agreeing.

19.4. This is a business contract and the Customer should ensure that they wish to enter into it. There is no cooling off period and the Agreement is in force once agreed.

19.5. The Customer has all requisite power to enter into and perform this Agreement and has taken all necessary action to authorise the entry into and performance by it of its obligations in the Agreement.

## **20. Fraud Prevention and Credit Checking**

20.1. Birchills may check the Customer's details with a fraud prevention agency. If the Customer provides information that Birchills reasonably believes to be false or incorrect and Birchills suspects fraud, Birchills may record this information with a fraud prevention agency. Birchills and other organisations may use and search this information.

20.2. As part of a Customer approval process Birchills may check the credit file of the Customer at any time prior to entering this Agreement or at any time thereafter.

20.3. The Customer will not take any measures to compromise the security of the system (including ensuring that passwords are not shared) and will reimburse Birchills Telecom for any costs incurred should they do so.

## **21. Miscellaneous**

21.1. This Agreement embodies the entire understanding of the parties in respect of the matters contained or referred to in it and there are no promises, terms, conditions or obligations oral or written express or implied other than those contained in this Agreement.

21.2. This Agreement shall be governed by English law and the Customer consents to the exclusive jurisdiction of the English courts in all matters.

## **22. Intellectual Property**

22.1. The Customer and Birchills do not acquire any rights or licences to the other's intellectual property rights.

22.2. If software, documentation or manuals are provided to enable the Customer to receive and use the Service, Birchills grants the Customer, for the duration of the Agreement, a nonexclusive, non-transferable licence to use such software, documentation or manuals for the Customer's own use.

## **23. Assignment of Rights and Obligations**

23.1. The Customer and Birchills may not transfer any of their rights or obligations under the Agreement without the written consent of the other, except that:

(a) The Customer may transfer its rights or obligations or both to a Group Company with the written consent of Birchills, such consent not to be unreasonably withheld or delayed; and

(b) Birchills may transfer its rights or obligations or both to another Company without consent provided that it notifies the Customer that it has done so.

## **24. Fair Use**

24.1 Birchills Telecom's policy towards Fair Usage is that customers should be able to use the service in an appropriate manner to meet their reasonable business needs. This includes calling both mobiles and landlines as required but does not include premium rate (including 0845 numbers) or foreign numbers.

We do not think that it is fair usage if a Customer drives automated traffic through our network, for example, with power dialling or by automating traffic from a landline to mobiles via our network. We also do not think it fair usage if a Customer resells or redistributes our service to other parties.

All call packages from Birchills have a call threshold of 1 hour above which calls will be charged at our normal rates.

If a Customer's usage is continually unfair, or is not consistent with the usage we would typically expect, we reserve the right to change customers to a metered package more suited for their usage. In extreme cases we may suspend or terminate the Customer's ability to access Birchills Telecom's service.

## **BIRCHILLS CODE OF PRACTICE**

Birchills Ltd operates from Aldridge Prime, 200 Rookery Lane, Aldridge, Walsall WS9 8NP Telephone 01922 213333. All contact can be made via Mr David Hill, Chairman.

Birchills provides IT and communications specialising in "cloud" or "grid" based services on demand. The purpose of this Code is to inform customers of their relationship with us.

Birchills is a member of the Internet Telephony Service Providers Association (ITSPA) and subscribes to its Code of Practice.

**IMPORTANT INFORMATION:** Birchills provides voice over Data Network services, and as such, it is dependent on your connection to the data network and the data network itself. Your service may therefore cease to function if there is a power failure or a failure in the underlying data network.

Significant differences in service reliability between the circuit switched public telephony networks and voice over data networks may exist because of the different technologies used. Circuit switched public telephony networks is reliant on analogue data streams which have no redundancy and are easily intercepted. Voice over data networks have multiple levels of redundancy built in and are encoded. If you do not understand the difference in technologies please ask us to explain before entering into a contract.

Emergency calls will fail if you have a power cut or your broadband connection fails. It's always best to have a second means of contacting the Emergency Services such as a mobile phone or an analogue phone.

Birchills will use all reasonable efforts to enable customers to transfer their numbers to other members of ITSPA within the following recommended guidelines:

1. We will not unreasonably refuse to transfer a number.
2. We will take reasonable steps to ensure that number porting is a simple and efficient process for the customer. Normally a single number transfer should be achieved within 10 working days from the date of the customer's request. (More complex transactions may require longer).
3. Any charge to release a number is designed to cover only the reasonable costs of administration.

The ITSPA Code of Practice enables customers of ITSPA members to make complaints about a breach of the ITSPA code of practice directly to ITSPA. ITSPA cannot become involved in complaints regarding non-ITSPA members.

The following information should be read before making a complaint about an ITSPA member:-

1. The complaint against an ITSPA member should first be registered with the member in question.
2. The ITSPA member must respond to the complainant within 5 working days, copying the Secretariat into the response. If the member is unable to respond, they must contact the Secretariat to explain their position.

3. The ITSPA member must endeavour to resolve the complaint within 10 working days. The complainant should be informed via email, letter, telephone call or in person.
4. If a complaint cannot be resolved, then the complainant should contact the Secretariat. The complaint should be set out in an email or letter, which the Secretariat will forward on to the member.
5. The ITSPA Council will review the complaint and decide on appropriate action within 3 months.

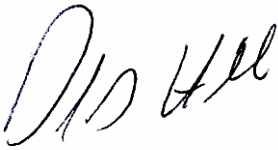
Further details are provided within the ITSPA Code of Practice itself, including the possible sanctions that the ITSPA Council can pursue, should a member contravene the Code of Practice. These details are provided below. The Code of Practice can be viewed in its entirety on the ITSPA website (<http://www.itspa.org.uk/cop.htm>).with its Communication provider. Birchills would use the Ombudsman Services scheme

Customers must give the company a chance to settle their complaint before applying to Ombudsman Services . Customers can apply to use Ombudsman Services if their complaint has not been settled within 8 weeks of first complaining to the company, or if the company has referred the customer to the scheme. An application form must be sent to Ombudsman Services within nine months of first complaining to the company.

You may contact ITSPA at ITSPA Secretariat Email: [admin@itspa.org.uk](mailto:admin@itspa.org.uk) sip:[info@itspa.org.uk](mailto:info@itspa.org.uk) Tel: 020 7340 8733 Fax: 020 7340 8747

You may contact OFCOM at Ofcom, Riverside House, 2a Southwark Bridge Road, London, SE1 9HA. If you want to complain to Ofcom please call 020 7981 3040 or 0300 123 3333.

Signed



David Hill Chairman

Last Reviewed November 2014

Last Reviewed October 2015

Last Reviewed February 2016

#### **BIRCHILLS ACCEPTABLE USE POLICY**

Birchills Ltd has a registered office at Aldridge Prime,200 Rookery Lane, Aldridge, Walsall WS9 8NP. Telephone 01922 213333. All contact can be made via Mr David Hill Chairman.

Birchills' goals are to:-

- Provide a high quality, reliable service to our customers
- Respect the privacy of our customers
- Protect the security/integrity of our network and systems

To achieve these goals, we encourage responsible use of our network and ISPs' networks. Compliance with applicable laws is always a requirement.



Please read this Acceptable Use Policy carefully before using Birchills systems or services.

You may not use the Birchills systems and services for any purpose that is unlawful or otherwise prohibited by this Acceptable Use Policy.

#### Prohibited Uses

The Service must not be used:

- in any way that is unlawful or in contravention of any instructions, licence, code of practice or guidelines issued by any regulatory authority, nor any third person's rights; nor
- to make offensive, menacing, indecent, nuisance or hoax calls or to cause annoyance or inconvenience to any other person; nor
- to deliberately send or knowingly receive, upload, download or use any material which is deemed offensive, abusive, indecent, defamatory, or obscene under international law; nor in any way deemed to be fraudulent, nor in connection with any criminal offence

#### Responsibility

Customers and users of the Birchills Network are responsible for restricting their own access to undesired content, sites, and services. Birchills cannot accept liability for harm that results from violations of this Policy by other users of the network.

A violation of this Policy by a Customer is a material breach of the contract and may result in termination or other consequences as specified in the contract